

August 20, 2022

Gary Jensen
Director of the Office of National Environment
Federal Highway Administration
1200 New Jersey Ave SE, Room E72-328
Washington, DC 20590

Subject: National Electric Vehicle Infrastructure Formula Program (Docket No. FHWA-2022-0008)

Dear Mr. Jensen:

The America Association of State Highway and Transportation Officials (AASHTO) appreciates the opportunity to provide input to the Federal Highway Administration (FHWA) in response to the Notice of Proposed Rulemaking (NPRM) for the National Electric Vehicle Infrastructure (NEVI) Formula Program, as published on June 22, 2022. AASHTO is a nonprofit, nonpartisan association representing the state transportation departments (state DOTs) in the 50 states, the District of Columbia, and Puerto Rico. AASHTO advocates for all transportation modes—air, highway, rail, water, and public transportation—and its primary goal is to foster the development, operation, and maintenance of an integrated national transportation system. AASHTO and the state DOTs have a long history of successful partnership and collaboration with the U.S. Department of Transportation (USDOT) and its modal administrations, and we look forward to continuing this important work.

AASHTO and the state DOTs readily support the President’s ambitious goal of building a new national network of 500,000 electric vehicle (EV) chargers by 2030, as funded in part through the Infrastructure Investment and Jobs Act (IIJA). We will do our part to ensure that the NEVI Formula Program sets up the EV infrastructure industry for long-term success in achieving important environmental outcomes as directed by Congress. In pursuit of this shared goal, we ask that the proposed regulations recognize differing local needs, such as grid capacity and EV adoption levels, and industry constraints, such as the lack of materials compliant with current and anticipated Buy America requirements.

As the key partner to USDOT in the federally-supported, state-administered federal transportation program, AASHTO is pleased to provide the following comments and information in response to the propose rules governing the NEVI Formula Program.

Ensure the NEVI Program Sets up the EV Infrastructure Industry for Long-Term Success

Long-term operation and maintenance of charging infrastructure should not be a state DOT responsibility, just as state DOTs do not operate or maintain gasoline or diesel fueling infrastructure today. The NPRM seems to assume that state DOTs will own and operate the charging stations installed through the NEVI Program. This is likely not the case; many of these requirements will be passed on to third-party vendors or contractors.

The proposed rule would impose significant constraints and requirements (e.g., annual reports, quarterly reports, IT connectivity, and workforce requirements) on the private sector vendors and contractors who will implement the NEVI Program. State DOTs request more flexible and less burdensome requirements

to 1) make participation in the NEVI Program more attractive to the private sector, thus encouraging more competitive bids during the procurement process, and 2) make long-term stewardship of the charging infrastructure more financially viable for the private sector.

Extend the Buy America Manufactured Products Waiver for EV Infrastructure

AASHTO and the state DOTs strongly support the President’s goal of promoting domestic jobs and encouraging economic growth by maximizing the use of American-made products and materials in federally-funded projects, while also successfully delivering a national network of 500,000 electric vehicle charging stations. In addition, AASHTO appreciates that USDOT has listened to concerns regarding potential delays and anticipated disruptions to project delivery related to the new Buy America requirements and has provided a temporary, 180-day waiver for the new category of construction materials. However, states continue to have significant concerns regarding the readiness of industry for the transition to new Buy America requirements, as well as the anticipated reexamination of the current Buy America waiver for manufactured products. AASHTO anticipates tremendous near-term negative impacts on the delivery of needed transportation projects—including deployment of EV charging infrastructure—in communities around the country if new and expanded requirements are implemented too quickly. Additional work needs to be undertaken at the federal level—including robust market research into the availability of American-made materials and products—to ensure a successful transition to any new or revised Buy America requirements. Thus, AASHTO strongly recommends continuation of the public-interest waiver for manufactured products, especially as it relates to EV charging infrastructure, as this will help ensure a successful rollout of EV infrastructure in a timely manner across the country.

Give State DOTs Greater Flexibility to Meet Local Needs and Conditions

AASHTO supports FHWA’s goal of establishing a national network of EV charging stations. To achieve this goal, state DOTs need flexibility to implement charging networks that suit local conditions, including local geography, electrical grid capacity, population density, average daily traffic, and anticipated demand for EV charging. We ask that the proposed regulations establish a process by which state DOTs can seek and receive specific exceptions to the requirements, in line with the [Exception Template](#) provided on the website of the Joint Office of Energy and Transportation, but with expanded exception options. For example, in very rural areas where it is unlikely that four vehicles will need to charge simultaneously, a state DOT might seek an exception that would allow power-sharing between charging ports; this would allow the ports to achieve 150 kW but would not require costly grid upgrades to equip the charging station to provide 600 kW. Additional opportunities to establish more flexible requirements are noted in the addendum to this letter.

As mentioned previously, AASHTO and the state DOTs look forward to partnering with the Federal Highway Administration and other stakeholders on the implementation of EV infrastructure across our nation. We greatly appreciate the opportunity to provide information as FHWA develops minimum standards and requirements for implementation and encourage FHWA to carefully consider the input provided herein. AASHTO has included responses to the NPRM sections as an appendix to this letter.

If you have any questions about these comments and recommendations, please contact Jim McDonnell, Director of Engineering, at (202) 624- 5448 or jmcdonnell@aaashto.org.

Sincerely,



Shawn D. Wilson, Ph.D.

President, American Association of State Highway and Transportation Officials
Secretary, Louisiana Department of Transportation and Development

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§ 680.102 Applicability

State DOTs seek clarification regarding which portions of the proposed regulations would apply only to the NEVI Program and which would apply to all Title 23 federally funded projects. For example:

- Is §680.106(b) [Number of Chargers] the only section of the NPRM that would apply exclusively to the NEVI Formula Program?
- Will all the other provisions in §680.106, as well as throughout the rest of the NPRM, apply to other Title 23 federally funded projects, such as: §11401 Grants for fueling and charging infrastructure; formula programs such as the Surface Transportation Block Grant; discretionary programs such as RAISE or INFRA grants; other allocated programs; and innovative financing programs?
- Specifically, will §680.106(c)-(d) require that all Title 23 federally funded projects provide DC Fast Chargers at 150 kW with at least one Combined Charging System (CCS) Type 1 connector permanently attached? If medium- or heavy-duty charging projects are pursued under Section 11401 grants, a different connector type may be more appropriate.
- Similarly, residential Level 2 chargers installed with NEVI discretionary grant funds should be exempted from the public access and networking requirements. States and communities should be able to use this funding to make convenient, affordable overnight charging available for residents of multi-unit dwellings (MUDs), especially those in low-income and disadvantaged communities.
- Will employees who maintain chargers installed on private property, such as at MUDs, have to meet §680.106(j) [Qualified Technicians] requirements, such as EVITP certification?

§ 680.106 Installation, operation, and maintenance by qualified technicians of electric vehicle charging infrastructure

§ 680.106(a) Procurement Process Transparency for the Operation of EV Charging Stations

AASHTO supports transparency in the procurement process for EV charging stations. State DOTs have existing laws and processes to achieve transparency and solicit input during procurement, such as public posting of information on state DOT websites. These processes are governed by state public records laws, many of which allow private sector partners to exclude financially sensitive business information and trade secrets, among other information, from public disclosure. These existing state transparency requirements and public disclosure laws will be applied to projects implemented through the NEVI Program.

To ensure the long-term success of the NEVI Program, ownership and operation of EV charging stations must be attractive to and financially viable for potential private sector partners. To that end, AASHTO seeks clarification that §680.106(a)(2)(vi) would not require rate regulation by the states. Pricing at charging stations is determined by many factors outside the control of state DOTs or station owners; for locations with limited use, such as rural and underserved areas, peak electricity rates and usage during those times can significantly impact the station owner's costs.

§ 680.106(b)-(d) Number of chargers; Connector type; Power levels

Number, Distribution, and Power Level of Chargers

AASHTO supports striving for the installation of four DC Fast chargers, each offering 150 kW of power (or higher power levels), spaced every 50 miles, within one mile of a corridor exit. Where we 1) lack commercial establishments to host a charging site within a 50 mile stretch of road, 2) lack electrical

capacity, and/or 3) have exceptionally low demand potential over time, flexibility is needed. AASHTO encourages FHWA to create a process by which state DOTs can apply for and receive exceptions to requirements related to the number, distribution, and power level of chargers.

State DOTs also need flexibility when determining distances between publicly available EV charging infrastructure. In some rural areas, it will be difficult to meet 50-mile spacing requirements, as less-traveled secondary roads may lack host sites, grid capacity, and grid connectivity. We echo the House Appropriations Committee report on the Fiscal Year 2023 Transportation-HUD appropriations bill, which noted that the executive branch should consider exceptions to the 50-mile test, especially in rural areas. Further, flexibility must also be provided to allow charging stations to be located more than one mile from an Interstate exit. This could be appropriate for any number of reasons, such as location of a business district or cost of expanding or upgrading the grid.

In some rural areas, four Direct Current Fast Chargers (DCFCs) could significantly exceed the demand for charging, while also necessitating costly investments to provide sufficient electricity. Multiple states have identified Alternative Fuel Corridors where travel demand models project that demand for charging will not support four DCFCs until 2030 or later. Moreover, stations along these corridors will likely cost more to build. To meet the power requirements of four 150 kW chargers, three-phase power is generally recommended. Many rural areas do not have three-phase power, and therefore states would need to make enormous infrastructure investments to expand the reach and capacity of the grid. Alternatively, stations in these areas could use batteries to store energy or rely on renewable energy sources; however, these station designs would also cost more. Consideration should be given to relaxing the requirements for areas where the electric grid cannot support the charging infrastructure envisioned in the NPRM.

In areas with lower projected demand, AASHTO recommends allowing power-sharing between charging ports. This would allow the ports to achieve 150 kW but would not necessitate costly grid upgrades or extra batteries to equip the stations to provide the required 600 kW. Current data on EV charging shows that vehicles rarely stay at peak power for a long period of time. Rather, charging speeds quickly peak and then decline as the vehicle demands a lower rate of charge. This implies that stations with dynamic power sharing will be able to meet the power level vehicles request most of the time.

We would also support lowering the required number of DC fast charging ports from four to two based on projected demand. The proposed approach could be implemented through the exception process that FHWA has already established for variations to the spacing requirement: based on a data-driven analysis, states could submit for approval of power-sharing or fewer ports on particular corridors or at particular sites.

Right-sizing stations based on projected demand would provide two additional benefits. First, by lowering the cost of right-sized stations, it would allow federal funds to be used in more Justice40 areas, including other rural and low-income areas of the state. Other routes, such as those connecting national parks and other federal and state lands, should also be considered. These locations are typically remote and far from population centers, but also receive a high volume of visitors, many of whom travel long distances to arrive at these destinations.

Second, it will make rural charging stations more attractive to private sector partners. State DOTs are concerned about finding contractors willing to invest in locations where one or more ports will likely remain unused most of the time. These locations risk incurring disproportionately high demand charges for electricity, driving up the cost for site owners. We believe that scaling station design to suit local conditions will improve the economic viability of the network. This will also increase the likelihood that stations remain in service after the initial five years of operation, reducing the long-term risk of gaps in the national charging network.

Connector Types

AASHTO supports the option to use NEVI funding to provide a permanently attached CHAdeMO connector and a permanently attached proprietary connector, such as a Tesla connector, in addition to a CCS Type 1 connector. We request flexibility for state DOTs to use NEVI Program funding beyond Fiscal Year 2022 for supplemental, optional, permanently attached CHAdeMO and proprietary connectors. State DOTs want to provide both forward and backward compatibility for past and future EV models. We also are committed to providing equitable mobility services for all EV drivers. In many regions, a high proportion of resale EVs (Electric Vehicles) are Nissan Leafs and other early EV models with CHAdeMO connectors. The NEVI Program should provide charging options for early EV adopters and lower-income EV owners who are more likely to purchase used cars.

Including Non-NEVI Chargers in the Network

In July 2022, the Biden Administration indicated that Tesla plans to open its network to other manufacturers' EVs in the fourth quarter of 2022. This influx of new open, public charging stations would change state DOT plans for establishing networks of EV charging stations every 50-miles; Tesla has [installed](#) over 1,400 Supercharger stations and 7,000 charger ports across the United States. Should Tesla follow through on this pledge, we ask that FHWA allow states to re-analyze the existing network of charging stations and adjust their NEVI Plans accordingly. Similarly, if a private entity installs a NEVI compliant charging station near a NEVI Program charger, state DOTs should be able to change the location of the NEVI Program charger to fill another gap in the system.

Definition of “Fully Built Out”

State DOTs would benefit from a clear explanation of when a corridor is “fully built out.” For example, once construction of a station is well underway, with permits obtained, sites secured, utility feeds in design, and vendor equipment ordered, could that station be considered “fully built out”? This would allow state DOTs to focus on projects funded through remaining NEVI Formula Program or discretionary grants while contractors complete station construction.

Requirements After a State Is Certified “Fully Built Out”

We seek clarification regarding how NEVI Program funding can be used after a state's portions of the Interstate Highways and Alternative Fuel Corridors are certified as “fully built out.” Would charging stations built using the remaining NEVI Program funds need to meet the same requirements, such as locating stations every 50 miles and within one mile of an exit, or providing four 150 kW DC fast charger ports at each station?

The proposed rule suggests that level 2 AC (Alternating Current) charging is only eligible for NEVI funding at sites that already have four 150kW DC fast charging ports. We request that this be clarified to allow for standalone level 2 AC charging sites after the Alternative Fuel Corridors are built out with DCFCs. We also request clarification of eligibility requirements for standalone AC charging sites. Many sites that are well-suited for DC fast charging would not necessarily be well-suited for level 2 AC charging in a combined location, so the current rule limits effectiveness of funding for level 2 AC charging sites.

§ 680.106(e) Availability

Emergencies

Many first responders, including safety patrol officers employed by state DOTs, lack the equipment or training to safely aid an EV that loses charge or otherwise becomes inoperable while on the road. “Road rangers” and similar emergency roadside assistance services can be equipped to provide short-term fast charging or other solutions to move EVs that lose their charge off the roadway and to the nearest charging

station. Federal funding, including funding through the NEVI Program, should support equipment and training for this type of emergency roadside assistance. Emergency responder training should also address any increased risk of battery fires or other hazards. We ask that FHWA provide flexibility to states so that new technologies and innovations can be adopted. The solutions for incident management may change as technologies improve, with options like in-road charging and battery swapping on the horizon.

In addition, we ask that certain federal regulations related to EVs be waived in the event of an emergency. This could include allowing a worker to service an EV charger even if worker training or certification requirements are not met by the individual providing the emergency assistance. As it is hard to fully anticipate emergencies, the wording of such an exclusion should be broad and permit states to determine emergency status.

Floodplains & Natural Disasters

Charging stations will be required to comply with local building and zoning codes, which may partly address flooding, heavy rainfall, high winds, heat, and other extreme weather concerns specific to the region. States and local governments should have the flexibility to implement restrictions that make sense for their communities. During natural disasters, evacuations could be severely hampered if charging stations are rendered inoperable by power outages. EVs could also hamper evacuations if they lose charge in the road on an evacuation route, halting traffic.

Training, public education, additional equipment and redundant systems are key to mitigating the risks posed by floods and other natural disasters. Federal funding should support redundant systems, like mobile charging, generators, emergency battery backups, and solar energy, and provide as much flexibility as possible to states to use funding to implement solutions to meet the needs of their communities. The federal government should encourage sharing of best practices for siting EVs in floodplains, providing sufficient electricity for EV drivers along evacuation corridors, and preparing for other natural disasters. Federal funding could also support training for first responders and education campaigns for the public on how to interact with EVs and EV charging infrastructure during crises.

§ 680.106(f) Payment methods

AASHTO supports the proposed regulations requiring that charging stations provide secure, accessible payment methods compatible with all major debit and credit cards and not limited by membership. In addition to the proposed requirements, State DOTs should be able to require:

- Additional methods, including non-contactless payment options such as chip card readers; and
- A toll-free phone number that connects users with real-time customer support should they experience any issues.

§ 680.106(h) Security

Cybersecurity

AASHTO supports the implementation of cybersecurity strategies for EV charging infrastructure. State DOTs would benefit from additional guidance on standards for cybersecurity. While state DOTs have their own cybersecurity strategies, these strategies are not uniform across states. Moreover, the EV charging stations present elevated, bi-directional risk for both customers and the state by connecting both privately-owned and state-owned assets, including but not limited to: the vehicle's onboard system, the EV charging station service provider's network, the driver's smartphone, banking information, telecommunications providers, and the electric grid. Federal guidance or minimum standards would help

state DOTs mitigate these cybersecurity risks. We note that any cybersecurity requirements will be passed on to third-party vendors through the contracting process.

While EV charging stations are a new and evolving technology, AASHTO recommends seeking insight from comparable industries, such as the petroleum industry. As with retail gasoline stations, EV charging stations are privately-owned and safety-critical infrastructure.

§ 680.106(i) Long-term stewardship

Five-Year Maintenance Period

State DOTs are divided over whether five years is an appropriate timeframe during which they should be required to “ensure that EVSE is maintained in compliance with NEVI standards.” Some states consider five years to be an appropriate timeframe. Others are concerned that some stations may not become financially viable within five years and will not survive without ongoing support from the public sector. Still others have calculated that they do not have the staff time or budgetary resources to fulfill the five-year maintenance period. In all cases, direct state DOT involvement during the maintenance period will be limited, given that the NEVI-funded chargers will be owned and operated by private sector contractors.

Longer-Term Stewardship

Just as state DOTs do not operate or maintain gasoline or diesel fueling infrastructure today, long-term operation and maintenance of EV charging infrastructure should not be the responsibility of state DOTs. Private entities will own, install, operate and maintain NEVI-funded chargers, both during and after the five years following installation.

Given the ownership model and budgetary constraints, state DOTs cannot commit to “maintaining or supporting maintenance of” a NEVI-funded charger that is “still functioning to meet its intended purpose after five years.” However, state DOTs will strive to select EV charging company partners with experience and staying power to better ensure that NEVI-funded stations are well-maintained over the life of the equipment. Furthermore, state DOTs should have the flexibility to continue to support a vendor for more than five years if the vendor is providing a high-level of service.

§ 680.106(j) Qualified technician

State DOTs agree that the installation and maintenance of EV charging infrastructure should be performed safely by a skilled and diverse workforce. However, we are concerned that the existing workforce may not be able to meet the requirements laid out in the NPRM: that “all electricians installing, operating, or maintaining EVSE” have “[c]ertification from the Electric Vehicle Infrastructure Training Program (EVITP)” or have graduated from an apprenticeship program that meets standards to be developed by USDOT and U.S. Department of Labor; and that for projects requiring two or more electricians, one be an apprentice.

Successful implementation of the NEVI Program will require thousands of qualified electricians nationwide. Relying exclusively on the services of the limited number of EVITP-certified electricians would significantly delay installation of EV charging infrastructure and could dramatically increase installation costs. Furthermore, requiring certification through the Electric Vehicle Infrastructure Training Program may limit the ability of state DOTs to contract with a diverse workforce and to work with local companies to install and maintain chargers.

State DOTs need greater flexibility regarding the qualifications of electricians to install and maintain EV charging infrastructure. AASHTO suggests:

- **Phasing in certification requirements:**
For example, during the first year of the NEVI program, require only that charging infrastructure be installed by licensed electricians. Requiring EVITP certification for all installers and technicians will delay EV charging projects beyond the six-month window for completion and will hinder the states' ability to foster a competitive environment and make the best use of an already limited workforce. An EVITP certification program could be introduced in the later years of the program when states have had time to prepare and more contractors have had time to take the course.
- **Recognizing multiple certification programs:**
In addition to our previously stated concerns about ensuring an adequate workforce to support implementation of the NEVI Program, we are also concerned about the equity and economic impacts of restricting qualification to EVITP certification. State DOTs are committed to diversifying the workforce and supporting local businesses. Requiring certified technicians will make these goals more challenging to achieve. Requiring one specific type of certification will likely adversely impact the disadvantaged businesses, which are more likely to struggle to access training facilities and institutions.
- **Waiving or further delaying certification requirements in rural areas:**
The need for flexibility will be particularly acute in rural areas with fewer training facilities or institutions to turn out a supply of "certified" workers. Even if training facilities are located in rural areas, contractors may struggle to find certified electricians; in rural states, skilled laborers with electrical certifications will often move to other states with higher pay rates and more demand for continued employment opportunities. One possible solution would be to require bidding contractors to advise the state DOT of how they will ensure use of "qualified technicians" and of their plans to increase workforce diversity.

Additionally, much of the operation and maintenance required by EV chargers do not involve electricians. We request that FHWA review operation and maintenance activities with owner/operators of existing charging stations to ensure that there are no unintended consequences to requiring EV chargers be maintained exclusively by certified electricians.

§ 680.106(k) Customer service

As noted in our response to § 680.106(f) [Payment Methods], states should be able to require a toll-free phone number at their stations, connecting users with real-time customer support should they experience any issues.

§ 680.106(l) Customer data privacy

AASHTO and state DOTs are committed to protecting customer data privacy. Per our response to §680.106(h) [Security], we request additional guidance to ensure uniformity and provide minimum standards.

§ 680.106(m) Use of program income

State DOTs need maximum flexibility with regards to use of NEVI program income. At least initially, EV charging stations may not be profitable, especially in very rural states. State DOTs, in consultation with the Joint Office on Energy and Transportation, should have the flexibility to determine methods of calculation and duration of a “reasonable return on investment” for third-party operators utilizing federal funding in partnership with a state DOT. Support to state DOTs from the Joint Office on estimating project revenue and the “reasonable return” on investment during project selection, contract development, and project monitoring will be necessary.

The NPRM states that revenues would be subject to similar treatment as in 23 U.S.C. 129, which sets limitations on program income earned from toll roads, bridges, tunnels, and ferries. AASHTO and state DOTs question whether agreements developed under the NEVI program will resemble conventional tolling agreements and would argue that revenue models for EV charging stations (many of which will be installed on private property) are quite different than tolling for use of public highways. For many states that have no experience generating revenue from toll roads, bridges, tunnels, and ferries, these requirements will be unfamiliar and overly burdensome. Given that many states do not plan to operate stations once complete, additional guidance is requested on the use of program income if a third-party assumes ownership.

§ 680.110 Traffic control devices or on-premises signs acquired, installed or operated

Requirements enumerated in 23 CFR part 655, including requirements in the Manual on Uniform Traffic Control Devices, already apply to traffic control devices related to EVs regardless of whether they are mentioned in the NEVI NPRM. Similarly, requirements enumerated in 23 CFR part 750 apply to on-premises signs regardless of whether they are mentioned in the NEVI NPRM. To avoid confusion, AASHTO recommends removing §680.110 and instead including this information in guidance, such as the Frequently Asked Questions on the website of the Joint Office of Energy and Transportation, which provides reminders about other relevant applicable regulations and laws.

§ 680.112 Data submittal

AASHTO affirms the importance of timely data collection and analysis to evaluate and support the NEVI Program. However, the requirements as they are currently outlined in the NPRM require substantial amounts of data to be submitted on a recurring basis. Though we expect many of the data-reporting requirements will fall on third-party vendors and contractors, rather than state DOTs, AASHTO is concerned that program delivery could be inhibited if the industry is not in a position to provide equipment that meets all the data collection and reporting requirements.

The NPRM requires large amounts of data, not just in the annual and quarterly reports, but also the public disclosure of data related to third-party price setting and static and real-time data for third-party mapping applications. AASHTO suggests that FHWA consider which sets of data are critical for the long-term success of the NEVI Program and which data are unnecessary or could be collected only in the first year.

We encourage FHWA to consider creating data reporting templates, as this would ease some of the reporting burden. Additionally, we believe integrating data collection standards will help mitigate potential issues with data reconciliation. By creating standards for submission, state DOTs and/or contracted entities will be able to submit the required information in a uniform manner, rather than contracted entities being required to potentially meet different reporting standards across state lines.

Additionally, creating a uniform reporting template and submission process would streamline the reporting process, relieving the burden on state DOT staff and third-party contractors. The estimated time burden for data collection is a substantial number of hours for many state DOTs and could be consequential given staffing challenges. While this level of hours for data collection could be reasonable for year one and two as the program is stood up and processes are developed, it would be concerning if this level of burden were persistent for the remaining years of the program. We encourage FHWA to examine existing data collection systems as models for a uniform data submission system. The U.S. Department of Energy's Alternative Fuels Data Center is already in use by states and could be replicated or extended for use for NEVI data submission.

Below are specific suggestions related the quarterly and annual data reports.

§ 680.112(b) Quarterly data submittal

Given the estimated burden of hours, AASHTO requests consideration of whether such a substantial amount of data is needed on a quarterly basis. Many states DOTs will pass along the data submittal requirements to the private sector owner/operators via contracts; this will likely increase the overhead costs for private-sector station owner/operators, who need to rapidly achieve financial viability. The quarterly data submittals will also require additional resources from the state DOTs to ensure compliance and to facilitate timely submission.

We request that FHWA review the proposed quarterly data to determine if it is efficient and reasonable to collect it all on a quarterly basis. For some of the data, such as the construction and installation updates, we request that if a quarterly report is determined to be necessary that it be a high-level check-box report accompanied by a more in-depth report in the annual submissions.

§ 680.112(c) Annual data submittal

AASHTO supports the annual data submission requirements. To reduce the burden on the state DOTs and their third-party partners, AASHTO suggests the development of templates for reporting and standards for the data submission process.

§ 680.114 Charging network connectivity of electric vehicle charging infrastructure

AASHTO supports charging network connectivity, which will improve the overall user experience across the national network. We do have concerns regarding this requirement as it relates to charging stations in rural areas, where the lack of internet service could inhibit communication with remote partners and entities. Given that many of the first NEVI-funded chargers will be located in more rural areas along interstate corridors, AASHTO requests that FHWA consider providing alternative communication options or exceptions for rural areas.

§ 680.116 Information on publicly available electric vehicle charging infrastructure locations, pricing, real-time availability, and accessibility through mapping applications

§ 680.116(a) Communication of price

AASHTO understands and appreciates the move toward a \$/kWh pricing structure, as it similarly replicates the way gasoline is dispensed and priced. However, state laws would inhibit the ability of some state DOTs to comply with this proposed rule. Some states have existing statutes and regulations that would prevent them from implementing a pricing structure that uses \$/kWh. These states will need flexibility to use a structure similar to \$/minute to remain in compliance with their preexisting state laws and regulations.

§ 680.116(b) Minimum uptime

AASHTO supports 97 percent uptime as a laudable goal for NEVI-funded chargers. That said, we have heard from many state DOTs that uptime for their existing chargers would not meet this standard and can be as low as 70 percent. We appreciate FHWA's recognition that a charger may be out of service for many reasons that are beyond the charging station operator's control, including electric utility service interruptions, internet or cellular service provider interruptions, and outages caused by vehicles. We note that charging station operators may also have to contend with additional challenges, such as nationwide or regional shortages of certified electricians or apprentices, disruptions to the supply chain that delay the procurement of replacement parts, and a shortage of materials that meet Buy America requirements. We ask that FHWA take such complications into consideration as well.

§ 680.116(c) Third-party data sharing

AASHTO seeks clarification on three items related to the third-party data sharing requirements:

- Do state DOTs need to develop a new database for collecting the required real-time information, or will this be the responsibility of network operators?
- Given that the NPRM would require providing real-time availability of datasets to third-party software developers, will API development or third-party software development activities be eligible for NEVI Program funding?
- Are the data transmissions from the charging station operator to the third-party software intended to be free?

§ 680.118 Other Federal requirements

§ 680.118(a) Buy America

AASHTO recommends that the Buy America waiver for manufactured products be extended, especially as it relates to EV charging infrastructure, and that individual construction materials within a manufactured product should not be subject to Buy America. Additional work needs to be undertaken at the federal level to ensure a successful transition to any new or revised Buy America requirements. States have significant concerns regarding the readiness of industry for this transition and the tremendous potential near-term negative impacts on the delivery of NEVI Program projects. See [AASHTO's response](#) on August 12, 2022, to Federal Docket DOT-OST-2022-0047, for additional recommendations on Buy America.

§ 680.118(b) Americans with Disabilities Act (ADA)

AASHTO fully supports providing equitable access to EV charging for differently-abled customers. State DOTs would benefit from additional guidance and best practices to ensure charging stations are ADA-compliant. For example:

- How many of the four DCFC (Direct Current Fast Charger) ports should be accessible to differently-abled customers?
- How can the charging stations meet the needs of customers with various and differing needs, such as those with visual impairment and those with mobility challenges?
- If a charging station has one ADA-compliant space, are there circumstances in which customers who are not differently-abled could use that space?