

August 22, 2022

Docket Management Facility, U.S. Department of Transportation  
1200 New Jersey Avenue SE  
Washington, D.C. 20590

Subject: FHWA Docket Number FHWA-2022-0008  
National Electric Vehicle Infrastructure Formula Program

The Montana Department of Transportation (MDT) respectfully submits the following comments in response to the Federal Highway Administration's (FHWA) proposed rule for the National Electric Vehicle Infrastructure Formula Program (NEVI). Also please note that MDT fully endorses the comments filed jointly by the state transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming.

As a key partner to USDOT in the federally supported, state-administered federal transportation program, MDT appreciates the opportunity to provide comments in response to the proposed rule governing the NEVI Formula Program as well as EV charging projects funded under other provisions of title 23, United States Code.

MDT continues to support a rulemaking process that limits undue burden and costs on states; preserves a state administered, federally assisted program as provided thru law; and preserves state flexibility in delivering its programs. In support of the proposed rulemaking, MDT offers the following comments:

**§ 680.106(a)(2)(vi) Transparency**

Similar to § 680.106(m), proposed 680.106(a)(2)(vi) would require transparency as to "any information describing how prices for EV charging are to be set under the proposed contract [apparently with a third party] in accordance with state law." The proposed rule should be made explicit that this and other sections of the proposed rule "do not require rate regulation by the state." Pricing, especially in rural areas, can be significantly influenced by the actual number of chargers and when charging occurs. 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. 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. Pricing at charging stations is determined by many factors outside the control of state DOTs or station owners and states shouldn't be required to regulate.

**§ 680.106(b)-(d) Number of chargers; Connector type; Power levels**  
**Number, Distribution, and Power Level of Chargers**

Flexibility is needed for the spacing and number of charger requirements for NEVI and other title 23 funded stations. Rural States should not be required to seek exception for vast regions of

their state due to grid capacity issues, distances between communities and/or interstate access points, local geography, sparse population density, or low average daily traffic/demand. States must have the flexibility to suit local conditions in order to facilitate prompt and efficient implementation where scarce dollars are most needed. Consideration should be given to revising the requirements to be based on population density and average daily traffic as these factors inform demand.

#### **§ 680.106(f) Payment methods**

MDT 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. However, to ensure a reliable and accessible network, publicly funded EV charging stations must allow for payment methods available to all members of the public, particularly the unbanked communities where cash, credit, and debit cards with both chip and contactless features are needed.

#### **§ 680.106(h) Security**

MDT supports the implementation of cybersecurity strategies for EV charging infrastructure. State DOTs would benefit from additional guidance on standards for cybersecurity that provide uniformity across states and private vendors. Federal guidance or minimum standards would help state DOTs mitigate cybersecurity risks.

#### **§ 680.106(i) Long-term stewardship**

EV infrastructure in most states will be owned and operated by the private sector, like gasoline or diesel fueling infrastructure today. The proposed rule places responsibility for long-term operation and maintenance of NEVI funded chargers on state DOTs for infrastructure owned by the private sector which may be overreach of state authority. Clarification should be included in the proposed rule on how state will be expected to “ensure” maintenance.

#### **§ 680.106(j) Qualified technician**

Implementation of the NEVI program will require thousands of qualified electricians nationwide, requiring EVITP-certification could delay installation and increase costs particularly in rural areas with limited training facilities. Greater flexibility to meet the requirement for a “qualified technician” should be allowed. This provision could have unintended consequences for underserved communities.

#### **§ 680.106(m) Use of program income**

MDT does not plan to own and operate charging stations installed through the NEVI program and currently the requirements discourage private entities from participating in the program by limiting the use of revenue to expenses plus “a reasonable return on investments...as determined by the state DOT”. In rural areas EV charging investment is risky and potentially not profitable for many years, maybe longer than funding for the NEVI program. Income requirements in the rule will disincentivize private third-party vendors from participating due to new financial restrictions. This could have a disproportionate impact on the historically underserved communities where private investment is most needed. States should not have to regulate the rate of return and any related financial matters.

#### **§ 680.112 Data submittal**

Many of the data-reporting requirements will fall on third-party vendors and contractors, rather than on state DOTs. Consideration should be given to the efficiency and reasonableness of the substantial amount and frequency of the data and reporting in the proposed rule. We suggest that FHWA considers reducing the reporting to an annual cycle and considers creating data

reporting templates. This will ease some of the reporting burden on state DOT's and private entities.

**§ 680.116(a) Communication of price**

MDT appreciates a consistent pricing structure for all EV chargers as proposed in the rule with \$/kWh. However, state laws in some states prohibit DOTs from compliance with this proposed rule. States will need flexibility to use a structure similar to \$/minute to remain in compliance with their preexisting state laws and regulations.

**§ 680.118(a) Buy America**

Montana appreciates the 180-day waiver for the new category of construction materials to address concerns regarding potential delays and anticipated disruptions to project delivery related to the new Buy America requirements. However, as noted in the 86 Federal Register 67115 (November 24, 2021) docket on EV Charging Equipment and Buy America Requirements, USDOT and DOE are not aware of any EV chargers currently able to meet applicable Buy America requirement[s] for steel and iron. MDT continues to have significant concerns regarding the readiness of industry for the transition to new Buy America requirements and anticipates tremendous near-term negative impacts on the delivery of needed transportation projects in communities around the country if new and expanded requirements are implemented too quickly. MDT 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 roll-out of EV infrastructure in a timely manner across the country.

MDT greatly appreciates the opportunity to provide input on the National Electric Vehicle Infrastructure Formula Program. We encourage FHWA to carefully consider the input provided.



Rob Stapley  
Rail, Transit & Planning Administrator  
Montana Department of Transportation