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The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington DC 20590

RE: Comments for U.S. Department of Transportation (DOT) Federal Highway Administration (FHWA) National Electric Vehicle Infrastructure Formula Program (NEVI) Notice of Proposed Rulemaking (NRPM) Request for Comments

Docket number FHWA-2022-0008

Dear Secretary Buttigieg:

The National Association of State Energy Officials (NASEO) appreciates the opportunity to submit comments regarding the proposed regulations setting minimum standards and requirements for projects funded under the National Electric Vehicle Infrastructure (NEVI) Formula program, authorized through the *Infrastructure Investment and Jobs Act of 2021 (IIJA).* NASEO submits these comments on behalf of the governor-designated State Energy Directors and their offices from each of the 56 states, territories, and the District of Columbia.

NASEO recognizes the need to develop national standards for the installation, operation, and maintenance of EV charging stations and commends the efforts of FHWA to provide clear guidance and standards for NEVI-funded projects. Over the past decade, NASEO has worked with State Energy Offices regionally and nationally as they have led electric vehicle supply equipment planning and infrastructure deployment and related electric grid planning. NASEO is excited to build on these efforts through the NEVI program and to contribute to the nationwide effort to build a convenient, affordable, and reliable network of electric vehicle chargers across the country. To support these efforts, NASEO offers a set of comments, questions, and considerations for FHWA, with the goal of clarifying requirements under the NEVI program and enhancing states' flexibility to deploy NEVI-funded EV charging infrastructure.

The IIJA requires minimum standards be developed related to six areas: 1) Installation, operation, and maintenance by qualified technicians of EV infrastructure, 2) Interoperability of EV charging infrastructure, 3) Traffic control devices and on-premise signs acquired, installed, or operated, 4) Data

requested to a project funded under the NEVI program, 5) Network connectivity of EV charging infrastructure, and 6) Information on publicly available EV charging infrastructure locations, pricing, real-time availability, and accessibility through mapping applications. Below are NASEO's comments on each of the six areas identified in the IIJA.

Section 680.106: Installation, Operation, and Maintenance by Qualified Technicians of Electric Vehicle Charing Infrastructure

Section 680.106(b) outlines the minimum and type of chargers required in order to provide appropriate charging for EVs *en route* to their final destinations. This section would require a minimum of four charging ports capable of simultaneously charging four EVs. NASEO encourages FHWA to allow states flexibility to meet minimum station and port requirements over the lifetime of the NEVI program, enabling states to "phase in" additional ports. By explicitly allowing flexibility for states to gradually build out the required charging ports in rural areas and those with low expected utilization, FHWA will enable more strategic deployment of EV infrastructure across the country.

Section 680.106 (e) would require charging stations to be available for use by the public 24 hours a day and seven days a week. NASEO supports FHWA's goal of providing a reliable national EV charging network available to the public, especially during times of emergency such as evacuations from natural disasters. With that in mind, NASEO recommends FHWA grant flexibility to the states to use NEVI funding to enable back-up generators and on-site generation paired with EV infrastructure investments to ensure a particular number of chargers to be available during power outages. By enabling chargers to be paired with on-site storage and generation FHWA can ensure EV charging infrastructure is resilient and reliable during natural disasters and other events.

In addition, NASEO recommends that FHWA work with the U.S. Department of Energy's Office of Cybersecurity, Energy Security and Emergency Response (CESER) – the ESF12-lead federal agency for energy – and NASEO to develop best practices pertaining to the development of cybersecurity, physical protection, and other security standards for Electric Vehicle Service Equipment (EVSE). CESER, NASEO and the Joint Office are well-positioned to engage industry partners in a non-regulatory setting and leverage existing public-private partnership mechanisms in the development of such standards. Additional guidance on how states can ensure that cyber and physical protective measures can be implemented will be beneficial for states to ensure charging stations are available 24 hours a day, particularly in states where first responders, emergency services, and evacuees might depend on reliable EV charging infrastructure.

Section 680.106(f) outlines proposed requirements for payment methods used at EV charging stations. NASEO commends the FHWA's efforts to ensure EV customers have payment options that are secure, equitable, and accessible. NASEO recommends credit card readers be required as a payment method across all stations while allowing states flexibility to support EV stations serving fleets and underserved communities with additional payment options.

Section 680.106(j) requires states to ensure the installation and maintenance of EVSE is performed safely by a skilled workforce that has appropriate licenses, certifications, and training. The proposed regulation specifies that all electricians installing, maintaining, and operating

EVSE be certified through the Electric Vehicle Infrastructure Training Program (EVITP). The EVITP curriculum has certain licensing requirements that create a barrier for small businesses and other entities to acquire the curriculum. In addition, many states do not have a sufficient number of EVITP technicians or programs in their states, and may not be able to provide EVITP training quickly enough to efficiently roll-out infrastructure under the NEVI program, due to certain EVITP training constraints. NASEO recommends that EVITP content be made available for other training certification programs to increase accessibility and equity in workforce development, and also encourages FHWA to recognize multiple employment certification programs within a state. Recognizing multiple certification programs will ensure states can build a diverse and equitable workforce, particularly in rural and disadvantaged communities.

NASEO also shares concerns that electricians are not often required at stations to make repairs on to address communication network issues, for example, that can be resolved remotely. NASEO requests clarification regarding the certification of technicians and electricians that are required at each EV charging station.

Section 680.106(m) proposes requirements for which State DOTs and third parties can spend revenue generated from NEVI program income. Pursuant to 23 U.S.C. 156, the net income from the sale, use, lease, or lease renewal of real property acquired under the NEVI program must go back into the program. Many states will not own, lease, or operate EVSE, and instead will contract with the private sector to own and operate EVSE. NASEO requests clarification from FHWA regarding how states may limit the private sector from spending revenue generated from charging stations. In addition, states request clarification on the timeframe of a "reasonable return" on investments for state DOTs and third parties.

Section 680.112 Data Submittal

NASEO strongly supports the role of the Joint Office in managing data pertaining to NEVI projects. Section 680.112 (b) proposes that charging station use, reliability, and maintenance data be collected quarterly. The data required would include data describing basic operations and usage of each charging station as well as charging station locations, charging session metrics, and how much energy is dispensed per port. Since many states will not own the EV infrastructure, challenges may arise in requiring privately owned charging companies to submit required data. Some State Energy Offices recommend building in data requirements in their contracts with third-party EVSE suppliers. NASEO requests guidance on how states can enter agreements with the private sector as well as best practices of obtaining data from EVSE suppliers.

In addition to obtaining data from charging companies, FHWA proposes data pertaining to NEVI funded charging programs be collected quarterly. NASEO requests flexibility on the frequency of submitting data as many states have expressed concerns regarding meeting this requirement.

Section 680.114 Charging Network Connectivity of Electric Vehicle Charging Infrastructure

NASEO appreciates the cybersecurity threats mentioned in reference to the Open Charge Point Protocol (OCPP). As described in the NPRM, Smart Charge Management and Plug and Charge are newer technologies not yet widely adopted in the industry. NASEO affiliate partners and State Energy Offices have noted cybersecurity concerns with Smart Charge Management and

Plug and Charge technology. NASEO requests federal guidelines be developed to implement secure communication methods and secure remote software monitoring and management. Federal guidelines will ensure all 50 states enable the adoption of standardized communication protocols throughout the national network of EV infrastructure.

Section 680.116 Information on Publicly Available Electrical Infrastructure Locations, Pricing, Real-Time Availability, and Accessibility Through Mapping Locations

Section 680.116(a) proposes requirements regarding the communications, display, and structure of the price for electrical charging. In the NPRM, FHWA acknowledges that several states restrict the ability to display charges in $/kWh. NASEO recommends FHWA grant flexibility to states to require display of pricing for energy in a way that is consistent with a state's current regulation and state law, while simultaneously working towards a national standard.

In addition, the proposed standards include station uptime requirements of 97 percent. NASEO agrees that a high minimum uptime is necessary to ensure consistent service, and requests guidance from FHWA on how states may enforce uptime requirements consistently across vendors, and across borders. In addition, NASEO requests clarification on when the 97 percent uptime needs to occur, for example during peak usage hours. NASEO has concerns regarding the definition of *availability* as a charger may technically be available for use, though could be physically blocked due to exterior factors like traffic cones, other cars etc. NASEO requests clarification on the definition of *available* as well as clarification on whether third parties will be held responsible for not adhering to uptime requirement based on exterior factors. State Energy Offices have also noted the difference between functioning charging networks and hardware. NASEO requests clarification on whether the 97 percent uptime needs to occur for the charging network or for the hardware.

NASEO appreciates the opportunity to provide comments on the NPRM for the NEVI program. As highlighted above, increased flexibility for phasing in charging requirements, submitting data, and displaying pricing information will be instrumental in helping states implement the NEVI program and future charging station installations. Increased clarification and federal guidance on adhering to the EVITP and enforcing the uptime requirement will also assist in creating a reliable and accessible national EV charging network.

Thank you for your consideration, and we look forward to continuing our work with the U.S. Department of Transportation, U.S. Department of Energy, and other partners in supporting the buildout of a nationwide EV infrastructure network.

Best regards,

David Terry
Executive Director, NASEO