

United States Senate

WASHINGTON, DC 20510

July 28, 2022

Stephanie Pollack, Deputy Administrator
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Dear Deputy Administrator Pollack,

This letter is in response to the Federal Highway Administration's (FHWA) recently published Notice of Proposed Rulemaking *National Performance Management Measurements: Assessing Performance of the National Highway System, Greenhouse Gas Emissions Measure* that would obligate state departments of transportation (DOTs) and metropolitan planning organizations (MPOs) to measure transportation-related greenhouse gas emissions. The Administration suggests that states should use federal funding from the bipartisan *Infrastructure Investment and Jobs Act* (IIJA) to fulfill the obligations set forth in the NPRM; however, this proposed rule falls outside the scope and congressional intent of the bipartisan IIJA. Furthermore, the implementation of calculating and tracking greenhouse gases (GHG) emissions is overly burdensome on state DOTs and MPOs. For these reasons, we urge you to rescind this proposed rule.

This proposal comes on the heels of a December FHWA memorandum entitled *Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America*, which drew backlash from lawmakers, state DOTs, and others for running afoul of congressional intent. We are equally concerned about this proposed rule, as it represents yet another example of FHWA using guidance and rulemaking to meet the Administration's climate agenda, under the guise of implementing the IIJA.

IIJA established new programs to incentivize and reward state DOTs and MPOs for implementing emissions reduction strategies in their planning and programming for surface projects. The climate-related programs were forged as a compromise to meet the Administration's priorities without mandating state DOTs and MPOs set and meet GHG performance targets. They were developed in a bipartisan manner in order to build common ground on contentious policies like GHG emissions targets.

Finally, the proposed rule requires state and local governments to develop and establish targets and report on progress to lower emissions. While some state environmental agencies track GHG emissions, they are not tracked and calculated by state DOTs. The proposed rule even admits this, stating that according to a 2018 survey, "relatively few State DOTs" are tracking CO₂ emissions and that "even fewer are using performance measures and quantitative approaches to do so." This rule's requirement is clearly outside the mission of state DOTs, which is to develop and maintain a safe and efficient transportation system. Therefore, we find it impractical that state DOTs will be able to easily measure GHG emissions by calculating fuel sales and vehicle miles travelled, as required in the rule. Furthermore, it is an implausible assumption that state DOTs, through planning and programming of transportation projects, will be able to lower the state's GHG emissions year over year in order to show improvement on air quality. As you know, transportation

planning and programming is a multistep, multiyear process. A state DOT's ability to select projects that will improve overall air quality year after year is impracticable and unlikely.

Imposition of these burdensome, and potentially unlawful, regulations also comes at a time when states are struggling to deal with the price and availability of construction materials and record inflation-economic headwinds we have not faced in decades. Your department's focus should be on helping to alleviate these burdens so we can take full advantage of the opportunity before us to fulfill the bipartisan vision of the IIJA and rebuild the nation's infrastructure.

In order to accomplish this goal, FHWA must implement IIJA, as enacted by Congress. Unfortunately, this proposed rulemaking violates both of these principles and we urge you to rescind the rule.

Sincerely,



Deb Fischer
United States Senator



Dan Sullivan
United States Senator



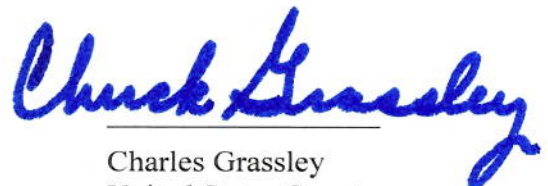
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