

## DOT Standards For EV Chargers Address Key Public Concerns

By **Levi McAllister and Maggie Curran** (June 27, 2022, 5:33 PM EDT)

On June 9, the U.S. Department of Transportation, through the Federal Highway Administration, or FHWA, proposed mandatory standards concerning the development and operation of publicly available electric vehicle charging infrastructure in U.S. markets.

The DOT's proposal is the first-ever initiative of the U.S. government to impose mandatory standards on EV charging infrastructure in an effort to create uniformity and consumer transparency in the EV charging sector.

Just as importantly, the proposed rule reflects the Biden administration's continued effort to further encourage EV deployment in U.S. markets — and to do so in a way that provides transparency and predictability to EV consumers concerning where and how they might charge their automobiles, and at what cost.

### Background

The bipartisan infrastructure law enacted in November 2021 created the National Electric Vehicle Infrastructure Formula Program.

The NEVI program will provide funding to states to deploy EV charging infrastructure, and to establish an interconnected network facilitating data collection, access and reliability to EVs and the broader electric grid.

The infrastructure law designates \$1 billion to the NEVI program each fiscal year starting in 2022 and running through 2026. Under the NEVI program, the FHWA apportions the funding among states, based on a formula where each state receives a share equal to the state's share of the combined amount the FHWA distributes in federal-aid highway apportionments and Puerto Rico Highway Program funding.

The administration of the federal funds begins with an EV infrastructure deployment plan. Guidance that the DOT issued in February explains that each state is required to develop and submit a plan to the FHWA for review and approval before any NEVI funding will be made available to the state.

All states must submit a plan no later than Aug. 1, and the FHWA is obligated to approve eligible plans by Sept. 30. Plans will be reviewed on a rolling basis. Until a plan is approved, a state is not permitted to apportion any funding allocated to that state under the application of the NEVI formula.



Levi McAllister



Maggie Curran

The guidance also clarifies that if a state either fails to submit a plan by the deadline — or if a state fails to carry out its plan — the FHWA may redirect that state's funding to local jurisdictions within the state for eligible projects on a competitive basis.

In order to qualify for grant funding under NEVI, a project must be located along a designated alternative fuel corridor. The February guidance recommends that states prioritize project investments along the interstate highway system, but a state may also nominate additional corridors for designation by the FHWA.

In the event that a state determines that all designated alternative fuel corridors are fully built out for EV charging infrastructure, that state may request certification by the FHWA, and — only after receipt of such certification — may use funding on other public roads or publicly accessible locations.

Funding distributed under NEVI must be used only for projects that are directly related to the charging of a vehicle, and only to support infrastructure that is open to the general public. Importantly, however, this provision is not limited only to charge point operators or the chargers themselves.

Instead, the guidance notably makes clear that renewable energy generation and adjacent-sited storage would qualify for funding, if it leads to lower construction and operating costs for the EV infrastructure. As such, renewable and storage developers are potential funding recipients, if and when they elect to pair their projects with EV charging assets.

Importantly, the guidance contemplates that any project receiving funding under NEVI must comply with mandatory standards that the infrastructure law directs the DOT to issue concerning publicly available network chargers. The DOT's June 9 proposal sets forth the proposed standards that, if adopted, would apply to NEVI project funding recipients.

### **Proposed Standards**

As noted, the infrastructure law directed the FHWA and the DOT to create minimum standards and requirements for the NEVI program. This will enable states to implement standardized EV charging station projects that will connect to form a national EV charging network that can be utilized universally by all EV vehicles.

In particular, the infrastructure law requested that the standards address the following six areas:

- Installation, operation and maintenance by qualified technicians of EV infrastructure;
- Interoperability of EV charging infrastructure;
- Traffic control devices and on-premise signs acquired, installed or operated;
- Data requested related to projects funded under the NEVI program, including the format and schedule for the submission of such data;
- Network connectivity of EV charging infrastructure; and

- Information on publicly available EV charging infrastructure locations, pricing, real-time availability and accessibility through mapping applications.

As directed, on June 9, the FHWA and the DOT issued a notice of proposed rulemaking to establish regulations that would set minimum standards and requirements for projects funded under the NEVI program, and projects for the construction of publicly accessible EV chargers using federal funds under Title 23 of the U.S. Code.

The proposed rule sets out various requirements falling under the above six areas, and sets forth detailed requirements concerning the operation and technological capability of publicly available chargers developed pursuant to the NEVI program.

In addition, the proposed rules address some of the most widely discussed issues by EV market participants over the last several months and years. For example, the proposed guidelines specify, among other things, the following:

- For direct-current fast chargers, or DCFCs, developed pursuant to NEVI, each charging station must contain a minimum of four charging ports and provide for the ability of simultaneous charging by multiple EVs.
- The minimum charging speed for DCFCs should be at least 150 kilowatts per port, and each port must be capable of charging at 150 kW simultaneously.
- The charging stations will be required to utilize the Combined Charging System port as a universal connector to accommodate a baseline of vehicles, as well as adapters to provide charging for all EV models.
- Stations must accept credit cards, and provide transparent pricing such that the price to charge must be stated upfront and cannot change during the charging session.
- Charging stations funded under the proposed rule will be required to be available for public use 24 hours a day, seven days a week, and on a year-round basis. The rule only allows for limited exceptions to this availability requirement.
- Charging stations are required to satisfy a newly established uptime requirement of 97% or greater, meaning that the charger's hardware and software are online and available for use, or are in use, and the charging port is dispensing electricity as designed.

## **Takeaways**

The proposals noted above are illustrative in nature. While they address some of the issues that industry participants have long expected, such as a requirement to accept credit card payments, they also propose requirements that industry participants have discussed with mixed views, such as an uptime requirement or a standardized connector.

The proposal appears to seek a balance between furthering the infrastructure law's and the administration's intent to develop a national network of publicly available chargers, while also doing so in a way that addresses some of the most threshold concerns of EV consumers relating to charging.

Of immediate impact, the proposed rules do introduce some timing issues for charge point operators or others looking to develop NEVI projects in the near term. Under the DOT's February guidance, funding recipients are obligated to comply with the mandatory standards that the DOT is directed to issue under the infrastructure law — i.e., these proposed standards.

However, given the timing of the proposed rule's issuance, it is uncertain whether the DOT can issue a final rule establishing mandatory standards prior to the date on which NEVI funding may first be issued.

This being the case, the timing of the DOT's proposed rules creates a circumstance whereby charging station developers must either choose to: (1) plan for projects based on proposed standards that could change prior to becoming final; or (2) wait until the DOT issues a final rule before proposing projects for NEVI funding, thereby running a risk that funding is awarded to other first-movers. How charging station owners and developers choose to proceed remains to be seen.

The FHWA and the DOT are requesting comments on the proposed rule before a final rule will be published. Comments are due to be received on or before Aug. 22.

---

*Levi McAllister is a partner and Maggie Curran is an associate at Morgan Lewis & Bockius LLP.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*