

**HEARING ON IMPLEMENTATION OF THE
INFRASTRUCTURE INVESTMENT
AND JOBS ACT AND THE INFLATION
REDUCTION ACT BY THE FEDERAL
HIGHWAY ADMINISTRATION**

HEARING
BEFORE THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED EIGHTEENTH CONGRESS
FIRST SESSION

JUNE 14, 2023

Printed for the use of the Committee on Environment and Public Works



Available via the World Wide Web: <http://www.govinfo.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED EIGHTEENTH CONGRESS
FIRST SESSION

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WEDNESDAY, JUNE 14, 2023

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m. in room 406, Dirksen Senate Office Building, Hon. Thomas R. Carper (chairman of the committee) presiding.

Present: Senators Carper, Capito, Cardin, Whitehouse, Merkley, Markey, Kelly, Fetterman, Cramer, Lummis, Sullivan, Ricketts.

**OPENING STATEMENT OF HON. THOMAS R. CARPER,
U. S. SENATOR FROM THE STATE OF DELAWARE**

Senator CARPER. With that, I am pleased to call this hearing to order. Welcome to all of our witnesses, welcome to our guests, especially thanks to Senator Capito and her colleagues for being here for this important hearing.

Today we are here to discuss the Federal Highway Administration's implementation of the Bipartisan Infrastructure Law and the Inflation Reduction Act. I am enormously proud, I know Senator Capito is as well, of the work that this committee did, literally providing the foundation for the Bipartisan Infrastructure Law.

People say to me, and I am sure they say to you, Senator Capito, when you travel back to West Virginia or around the Country, why can't you guys and gals just work together and get stuff done. As it turns out, in this committee, that is what we do. We reported out our parts of the Bipartisan Infrastructure legislation, unanimously, 20 to zip. Ten Democrats, ten Republicans. We are proud to have helped lay the foundation for what has turned out to be one of the biggest investments in the Nation's infrastructure ever and it started right here in this room.

I think we have made some history, and hopefully we will continue to make that history going forward.

Before we begin, I want to take just a moment to acknowledge the disaster that occurred this past weekend just north of Philadelphia. My wife and I live about five miles from the Pennsylvania line, so this was too close to home. There is a lot of work that has been going on, and I know our witness today, Shailen, has been up there for quite a time. We will hear a little bit about that as well.

On Sunday, a tanker truck carrying 8,500 gallons of gasoline caught fire on the off-ramp causing an overpass on I-95 literally to collapse as you have probably all seen on television. Administrator Bhatt has already been to the site of the crash a couple of times. He and his team are working to support State officials there as they restore mobility on this critical corridor for our Nation.

I-95 is really like our Nation's highway. It goes all the way from Maine all the way down to Florida. The amount of traffic on that which goes through my State is just incredible.

I want to thank our Administrator and the rest of his team at the Federal Highway Administration for the important work they are doing. We appreciate very much your being with us today.

It has been a little more than 2 years since this committee unanimously marked up the highway bill that would go on to serve as the foundation for the Bipartisan Infrastructure Law. When we did, we noted that it included historic funding for our Nation's highway programs. I also noted that it included the first-ever climate title in a bill of that nature.

In our highway bill, we created the Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation, otherwise known as the PROTECT, program. We did so with the intent of improving the resilience of our transportation systems and reducing our vulnerability to extreme weather.

We have all heard the old saying that an ounce of prevention is worth a pound of cure. That is certainly the case with investments in resilience. Building protective features and natural infrastructure helps keep transportation assets able to withstand disasters for years. The earlier those protections are in place, the greater the benefit will be.

With that in mind, I am pleased that the Federal Highway Administration is now accepting applications for the first round of PROTECT grants. It is my hope that the Federal Highway Administration works quickly to award these program funds and begins to improve the resilience of communities nationwide.

Our bill also created dedicated programs to develop electric vehicle or EV charging networks across our Country. It also included a 70 percent increase in funding for programs to build safe, accessible pedestrian and bicycle pathways across our Country.

In addition, our surface transportation bill authorized the Reconnecting Communities program. This was the first-ever Federal program to address the safety and pollution impacts of highways that have divided and hurt neighborhoods in many places across our Country.

Importantly, not only did our highway bill focus on the critical issues of climate, safety, and equity, but it did so in a lasting, bipartisan way. My colleagues have heard me say, and Shailen a million times, bipartisan solutions are lasting solutions. We are very proud that that is the approach we took with the Bipartisan Infrastructure bill.

During that markup 2 years ago, I also noted that the Infrastructure Bill alone was not enough to address climate change. Once we passed the Bipartisan Infrastructure Law, we got to work on legislation that eventually became the Inflation Reduction Act.

The Inflation Reduction Act authorized several new programs under the purview of the Federal Highway Administration. This included a program to reduce the industrial emissions from construction materials, as well as funding to facilitate efficient environmental review and permitting times. The Inflation Reduction Act also provided funds to mitigate air, noise, and water pollution and other impacts of highway infrastructure on disadvantaged communities.

Together, the Bipartisan Infrastructure Law and the Inflation Reduction Act represent the most significant investment in clean energy and transportation infrastructure, as well as equity and climate resilience in our Nation's history. Still, there is no shortage of work that remains to be done. There are key questions that the Federal Highway Administration must address around implementation, regulation, and guidance.

That is why I am delighted to welcome our friend, not just from Delaware, but a friend who has actually been Secretary of Transportation in Delaware and Colorado, he has worked with USDOT in any number of responsible positions to prepare him for this day. This is his first time before our committee since the Senate confirmed his nomination to be Administrator of the Federal Highway Administration by a voice vote in December 2022. We look forward to hearing your testimony today about the extensive work that you have led in the past 6 months or so.

As I noted, Congress provided the Federal Highway Administration with historic funding and the authorities necessary to revitalize highways across our Country. The agency must also use its regulatory authority to address ongoing needs.

One such need for regulation is to help reduce emissions from our transportation sector, which accounts for nearly 30 percent of our Nation's greenhouse gas emissions, the largest single source in our economy. It is my recollection 30 percent of our emissions come from cars, the vehicles, trucks that we drive. Cars are mobile sources. Another 25 percent comes from our power plants across the Country, and another roughly 25 percent comes from our manufacturing base, the manufacturing operations. The biggest of those three is our roads, highways and bridges.

Last July, the Federal Highway Administration proposed a rule that would require States and metropolitan areas to measure their performance on greenhouse gas emissions and set targets to reduce those emissions. Once finalized, this will be a critical tool to steer infrastructure investments toward better climate outcomes. I hope that the agency will move quickly to finalize that rule.

Finally, I would like to emphasize the importance of improving safety. Last year, nearly 43,000 people tragically lost their lives on our Nation's roads, the highest number in 16 years. I will say that again. Last year, nearly 43,000 people tragically lost their lives on our Nation's roads, the highest number in 16 years.

The U.S. Department of Transportation has taken an important step toward this goal by releasing its National Roadway Safety Strategy, which set a goal of zero fatalities for U.S. roads for the first time. Zero for the first time. Still, there is more work that the Federal Highway Administration can and should be doing to prioritize safety. That includes working with states and metropoli-

tan areas to plan streets that are safer for all users and choosing highway designs and roadway designs that do not encourage speeding and other unsafe behaviors.

With that, we look forward to hearing about the work that Administrator Bhatt has done and will continue to do to advance these priorities.

Before that, I want to turn to our Ranking Member, Senator Capito, whose leadership was critical to the passage of the infrastructure programs we are discussing today. Senator Capito, you are recognized for as long as you wish to speak.

**OPENING STATEMENT OF HON. SHELLEY MOORE CAPITO,
U.S. SENATOR FROM THE STATE OF WEST VIRGINIA**

Senator CAPITO. Thank you, Chairman Carper, for calling today's hearing, and your ongoing willingness to conduct oversight on the IIJA and the Inflation Reduction Act.

Administrator Bhatt, it is very good to see you. I know that you have been extremely busy here over the last several days. Since your confirmation you have maintained a very open line of communication with me and my staff. I want to express our appreciation for doing that.

I also want to thank your hardworking staff at the agency. I know they are working on a lot of different issues.

I would also like to acknowledge the tragic incident on I-95 in Philadelphia. The pictures are just overwhelming and I know you have been on the ground. I appreciate the responsiveness of Federal Highway Administration (FHWA) in providing assistance to the State of Pennsylvania. I know the investigation is underway and Congress will be provided more information when it is available.

I am very proud that this Committee, as the chairman said, developed the legislation that served as the foundation of the The Infrastructure Investment and Jobs Act (IIJA), and we did so together, bipartisan through regular order. I was proud to manage the bill on the floor with the chairman, and to attend the signing ceremony at the White House.

Unfortunately, our bipartisan product was jeopardized, this was before you got there, by FHWA's December 2021 policy memorandum. I want to thank you, Administrator Bhatt, for issuing a substantially revised policy memorandum that superseded the original one. I appreciate that you recognized the original memorandum diminished the bipartisan accomplishments of this Committee and contradicted the statutory text and clear intent of Congress.

When the IIJA was signed into law, we promised the American people that the legislation would deliver results by improving our Nation's core transportation infrastructure, and we are starting to see real tangible benefits of that investment. In negotiating the legislation, I prioritized the inclusion of a robust project delivery and process improvement title that included the codification of the One Federal Decision policy for surface transportation projects.

I look forward to receiving an update from you today on how the agency is implementing those provisions and others in the IIJA.

Proper implementation of the law is the only way to see the full benefits of the IIJA.

Now on to the inaptly named Inflation Reduction Act, which has not, and will not, reduce inflation. Following passage of the IIJA, the Administration embarked on a partisan exercise to pass what I believe are misguided policies through the budget reconciliation process.

That effort began with the introduction of the so-called Build Back Better legislation in 2021, and culminated with President Biden signing the IRA into law in August 2022. The original version of the reconciliation legislation included a provision that would have directed FHWA to establish a greenhouse gas emissions performance measure and associated targets.

I challenged that provision as violating the Byrd Rule of the Congressional Budget Act, and that provision was stripped from the legislation. That removal of language was the second time since I became Ranking Member of this committee that we have dealt with this policy. That was the second time that Congress directly rejected FHWA the authority to establish a greenhouse gas performance measure and associated targets.

Providing this authority to FHWA was also debated, and ultimately left out of the bipartisan IIJA. The Biden Administration, through your agency, is now attempting, and the chairman just talked about this, to impose a greenhouse gas emissions performance measure and associated targets on State departments of transportation and metropolitan planning organizations, without any authority from Congress. This rulemaking feels very similar to the December 2021 policy memorandum. Yet again, this Administration is trying to implement partisan policies they wish had been included the IIJA and the IRA through agency action.

I am hopeful that under your leadership this rulemaking for a greenhouse gas emissions performance measure and associated targets will not move forward.

On a related note, I also want to express my concern with a proposal that the President's Fiscal Year 2024 budget request has. The budget request included legislative language that would repurpose \$60 million in unobligated contract authority from the TIFIA program to the Active Transportation Infrastructure Investment Program. This is in the weeds but I know you understand what I am talking about. The IIJA did not provide contract authority for that program. It received an authorization but it is subject to appropriations.

This committee determines what programs receive contract authority and how much, not the Department. I hope this is not something that your agency plans to pursue, as once again, the committee has already made a decision here.

Finally, I want to raise an issue that is not directly related to either of the laws that we are discussing today, but may have a significant impact on how State DOTs manage their programs and their ability to move forward. I am referring to the \$3.5 billion discrepancy in contract authority between the two fiscal management systems, known as Fiscal Management Information System (FMIS) and Delphi. I appreciate that you brought this issue to my attention in January and look forward to receiving an update from you

on how the Department of Transportation (DOT) plans to resolve this discrepancy.

In summary, the topics of our hearing today starkly contrast the different outcomes in quality and durability. We get great quality and durability when the Senate pursues bipartisan legislation through regular order. We compare that to a partisan legislation through budget reconciliation process that I believe falls short.

Nevertheless, oversight of your implementation of these two laws is a critical function of this committee.

I would like to take one moment to say farewell to a much beloved and incredible member of our staff over here, the Republican staff at The Senate Environment and Public Works Committee (EPW). Lauren Baker will be leaving us. I do not know if it is today or tomorrow but way, way too soon. She really helped to shepherd the IJJA through our committee. She is an incredible resource. I know she will be successful where she goes.

Lauren, we will miss her and I know your department will miss her as well because of the great give and take that we have been able to have with her and through your department. Thank you for letting me bid Lauren a fond farewell.

Senator CARPER. Lauren, thank you for your work. One of the joys of working on this committee is working with our colleagues on the other side of the aisle. It is not just member to member, but staff as well. To Adam and Courtney and members of our respective staffs, thank you for that great spirit. You have heard of the trickle-down theory. When the leaders of a committee like this work together and reflect that kind of behavior, the staff picks up on it as well. It is a good thing for us.

Senator CAPITO. Lauren, stand up.

[Applause.]

Senator CARPER. Do you know where Lauren is going to go next?

Senator CAPITO. Private sector.

Senator CARPER. Okay. Before I turn it over to Shailen Bhatt for his testimony, I would note, when driving to the train station in Delaware this morning, I was listening to National Public Radio (NPR) news. They were giving some updates. They announced that with respect to the Inflation Reduction Act (IRA), people say, well, the IRA does not really help reduce inflation, but at the end of the day, on the morning news this morning we just learned that inflation continues to actually drop. I think the annualized number is down to 4 percent.

Last job creation number, the report out of the Department of Labor a few weeks ago, new jobs, 340,000 new jobs in the last month and our unemployment rate for our Country is still holding down around 3.5 percent, which is a pretty darned good number. It is not perfect, there are still things we can do better. It is not bad, where I come from, that is not bad.

Thank you, Senator Capito. We will now hear from our witness, Shailen Bhatt. Shailen pronounces his name Bhatt, but a lot of us in Delaware pronounce it Bhatt. He will answer to either one.

He is the Administrator of the Federal Highway Administration and was sworn into his current role on January 13th, 2023, after being unanimously confirmed by the Senate on December 8th of last year. As Administrator, Mr. Bhatt oversees an agency with

more than 2,700 employees, which includes staff who work in all 50 States, U.S. territories as well, and the District of Columbia, to carry out Federal Highway programs.

Welcome, Shailen. You may now proceed with your testimony.

**STATEMENT OF HON. SHAILEN BHATT, ADMINISTRATOR,
FEDERAL HIGHWAY ADMINISTRATION**

Mr. BHATT. Thank you, Chairman Carper and Ranking Member Capito, and members of the committee. Thank you for the opportunity to appear before you today to discuss implementation of the Infrastructure Investment and Jobs Act, otherwise known as the Bipartisan Infrastructure Law, and the Inflation Reduction Act.

These historic investments in our Nation's infrastructure add new opportunities to build a clean energy economy that creates good jobs and lowers costs for working families. When I appeared before this committee for my confirmation hearing, I noted that FHWA staff have been working tirelessly. I have hit the ground running since being confirmed. The dedication of FHWA staff in carrying out these laws and getting real results for the American public is inspiring.

I have always said that a transportation agency exists for two reasons, to save lives and to make people's lives better. This past Monday, I joined members of the Pennsylvania congressional delegation as well as the Pennsylvania Department of Transportation secretary in touring the site of the partial collapse in Philadelphia that occurred on Interstate 95 involving a truck fire which resulted in the tragic loss of life. The I-95 corridor is a vital connection for people and goods traveling along the east coast. FHWA has offered support and assistance to State and local officials to help them safely reopen this section of I-95 as quickly as possible. We are working diligently with our divisions in all surrounding States as well as with our sister agencies on emergency relief support and maximizing all best practices.

Having led the Delaware Department of Transportation through the I-495 bridge emergency in 2014, I am critically aware of how important an artery I-95 is for the State, region and Nation. Every day of closure will affect people and freight on this vital corridor. We are laser focused on working with our partners to get the road open as quickly as possible.

In addition to our commitment to safety, FHWA's work is guided by an initiative we refer to as DRIVEN for the 21st Century. There are six aspects of this initiative: delivery, resilience, innovation, values, equity, and our Nation. Each of the six aspects of the DRIVEN initiative guide our efforts to implement the many programs and funding opportunities authorized by the Bipartisan Infrastructure Law and the Inflation Reduction Act.

Delivery is the first aspect of DRIVEN. Thanks to these acts, we have the funding necessary to make major improvements in our transportation system. FHWA has taken numerous actions that will support implementation of projects that improve safety and people's lives, including distributing more than \$120 billion in highway formula funding to States and issuing notices of funding opportunity for approximately \$4.6 billion in available funds.

We are also administering nearly 900 awards totaling \$7.5 billion across nine discretionary programs. These are more than just numbers. These dollars mean projects that will improve both safety and people's lives.

FHWA has a longstanding practice of engaging with our stakeholders and providing technical assistance. We have placed an even greater emphasis on these efforts since the passage of the legislation. FHWA is committed to supporting our stakeholders and the State, tribal and local levels. We have specific efforts in place to provide training and technical assistance.

Resilience is an important part of building a modern transportation system, as it will help us keep our infrastructure strong and fulfill our most important duty: getting people where they need to go, and getting them there safely. FHWA has already made significant progress in carrying out many funding programs that are specifically targeted at addressing climate change, including distributing funding under the PROTECT formula program and carbon reduction program, and publishing a Notice of Funding Opportunity (NOFO) for the PROTECT discretionary grant program.

Innovation is essential for the future of transportation infrastructure. It will help us tackle a broad range of issues, such as improving safety, increasing the resilience of our infrastructure, and finding new ways to combat the climate crisis. The current round of FHWA's Every Day Counts program supports innovation specifically aimed at climate change concerns, safety, and equity.

While the tireless service of FHWA employees is evidenced by the quality of our transportation system, we are also responsible for the members of our agency. FHWA is committed to all of our core organizational values and caring for our staff. Equity is one of FHWA's primary values and drives every one of our programs, projects and initiatives. Not only do the Bipartisan Infrastructure Law and the Inflation Reduction Act include programs specifically intended to address equity issues, but the historic investment in our infrastructure will benefit those who find well-paid work rebuilding their communities.

Every aspect of FHWA's work is driven by the people and the Nation that we serve. We must create a transportation system that delivers for our economy and all of our people, while getting individuals and goods safely to their destination, a transportation system that literally unites us as Americans. DRIVEN will allow us to build results for both the U.S. transportation system and Americans as a whole.

Thank you again for the opportunity to appear before you today. I would be happy to answer any questions you may have.

[The prepared statement of Mr. Bhatt follows:]

Testimony of Shailen Bhatt
Administrator of the Federal Highway Administration
U.S. Department of Transportation
Before the Senate Committee on Environment and Public Works
June 14, 2023

Chairman Carper, Ranking Member Capito, and Members of the Committee, thank you for the opportunity to appear before you today to discuss implementation of the Infrastructure Investment and Jobs Act, otherwise known as the Bipartisan Infrastructure Law, and the Inflation Reduction Act.

The Bipartisan Infrastructure Law represents a once-in-a-generation investment in our Nation's infrastructure, competitiveness, communities, and resilience to climate change, and the Inflation Reduction Act provides historic investments and new opportunities to build a clean energy economy that creates good jobs and lowers costs for working families. The FHWA is working tirelessly to implement these laws so that we can deliver on the promise of these historic investments. Safety is the FHWA's number-one priority, and it underpins all of the work we do as we implement the Bipartisan Infrastructure Law and the Inflation Reduction Act. I have always said that a transportation agency exists for two reasons: to save lives and to make people's lives better. The National Highway Traffic Safety Administration estimates that 42,795 people died in motor vehicle traffic crashes in 2022. Almost 95 percent of people who die using our Nation's transportation networks are killed on our streets, roads, and highways. The Bipartisan Infrastructure Law provides resources to change this paradigm, and we are working to make these resources available to recipients as quickly as possible. At the FHWA, our mission is to deliver a world-class transportation system that advances safe, efficient, equitable, and sustainable mobility choices for all while strengthening our Nation's economy. Our mission begins and ends with safety. The FHWA is actively implementing the U.S. Department of Transportation's (DOT) National Roadway Safety Strategy and is committed to applying the Safe System Approach to reach our goal of zero roadway deaths and serious injuries. In addition to our commitment to safety, our work is guided by an initiative we refer to as "DRIVEN for the 21st Century." There are six aspects to this initiative: Delivery, Resilience, Innovation, Values, Equity, and our Nation. This initiative will help the FHWA accomplish the U.S. DOT's goal of delivering results and our work across the U.S. DOT's three major areas of effort: building good things well; running our operations well in the agency; and protecting the safety and wellbeing of everyone who interacts with our transportation system. Each of the six aspects of the DRIVEN initiative guide our efforts to implement the many programs and funding opportunities authorized by the Bipartisan Infrastructure Law and the Inflation Reduction Act.

DELIVERY

Delivery is the first aspect of DRIVEN, and it was inspired by Secretary Buttigieg, who noted that U.S. DOT's focus for 2023 is prioritizing delivery of results. Thanks to the Bipartisan Infrastructure Law and the Inflation Reduction Act, we have the funding necessary to make major improvements in our transportation system. The FHWA has been working diligently to implement this historic legislation, and we have taken numerous actions that will support implementation of projects that improve safety and people's lives.

Since the enactment of the Bipartisan Infrastructure Law, we have distributed more than \$120 billion in highway formula funding to States, including funding for bridges, electric vehicles, and to make our infrastructure more resilient to climate change. This funding includes money for programs like the **Highway Safety Improvement Program**, which is designed to achieve a significant reduction in traffic fatalities and serious injuries for all road users on all public roads, including non-State-owned roads and roads on Tribal lands. These Highway Safety Improvement Program funds supported more than 5,300 projects. HSIP funds improved 4,515 intersections and 69,075 miles of roadway. The FHWA has issued Notices of Funding Opportunity (NOFOs) for approximately \$4.6 billion in available funds under ten Bipartisan Infrastructure Law discretionary grant programs and we are administering nearly 900 awards (grants and cooperative agreements) totaling approximately \$7.5 billion across 9 discretionary programs, including the Office of the Secretary's **Safe Streets and Roads for All (SS4A) Grant Program** and the **Bridge Investment Program**. The SS4A Grant Program provides funding to develop the tools to help strengthen a community's approach to roadway safety and save lives. Diverse local, Tribal, and regional communities that differ dramatically in size and location will have greater access to Federal funds to improve road safety while helping to meet equity and climate challenges. Funding for the **Tribal Transportation Program Safety Fund** more than doubled in the Bipartisan Infrastructure Law. In February 2023, the FHWA announced the award of approximately \$21 million in FY 2022 Tribal Transportation Program Safety Fund funds to 70 Tribes for 93 projects that improve safety on Tribal lands. In April 2023, the FHWA issued a NOFO making up to \$111.85 million from FY 2022 and 2023 funding available for the **Wildlife Crossings Pilot Program**. The primary goals of this program are to save lives, prevent serious injuries, protect motorists and wildlife by reducing wildlife-vehicle collisions, and improve habitat connectivity for terrestrial and aquatic species.

These are more than just numbers. These dollars mean projects that will improve both safety and people's lives. The resources provided under the Bipartisan Infrastructure Law have already resulted in numerous projects receiving funding throughout the country. For example, in Delaware, a \$6 million FY 2022 Rebuilding American Infrastructure with Sustainability and Equity (RAISE) planning grant will fund the design of Route 9 through New Castle. The plan is to convert this arterial through a disadvantaged community using Complete Streets concepts. In West Virginia, \$1,887,240 in FY 2022 Safe Streets and Roads for All (SS4A) Action Plan Grants will assist rural and urban communities like Bluefield, Charleston, and Clarksburg among others across the State in improving roadway safety planning.

The FHWA is committed to helping deliver these projects faster. In April, as part of these efforts, we announced a Request for Information seeking suggestions from the public on how to best facilitate the FHWA's implementation of **Section 60505 of the Inflation Reduction Act: Environmental Review Implementation Funds**. Under this \$100 million program, the FHWA can provide funds to eligible entities to support environmental reviews of surface transportation projects. The FHWA may also use the funds to develop guidance, technical assistance, templates, training, or other tools to facilitate an efficient and effective environmental review process for surface transportation projects.

FHWA has long been a leader in accelerating the environmental review and permitting processes, and the Bipartisan Infrastructure Law offers more authorities to improve those processes that will advance surface transportation infrastructure and recognize benefits sooner. FHWA has taken numerous actions to accelerate the environmental review process. For example, U.S. DOT, in coordination with FHWA, completed a review of FHWA's categorical exclusions (CEs) and provided interagency partners with a list of four CEs and accompanying substantiation materials for their consideration. FHWA, the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA) also issued joint questions and answers, providing guidance regarding the changes the Bipartisan Infrastructure Law made in 23 U.S.C. 139 and 23 U.S.C. 138.

The success of the Bipartisan Infrastructure Law and Inflation Reduction Act programs depend, in part, on streamlined delivery of funding to recipients. To be responsive to the significant changes and opportunities afforded by these laws, the FHWA stood up a new, permanent team to oversee internal crosscutting grants-management matters that affect tracking, training, outreach, and more; we also implemented process reforms across our suite of Federal grant programs. We continue to refine our management of these programs to increase efficiency and transparency, thereby benefitting the Nation via the delivery of new projects.

The FHWA also recognizes that some of the most successful projects we have seen over the past few years have a focus on multimodalism, including sidewalks, bicycle facilities, multiuse trails, Complete Streets planning, and complete multimodal networks and connections. Multimodalism is an important element of a safer system because transportation safety is all-encompassing and includes all road users. The Bipartisan Infrastructure Law provides opportunities to improve safety for both those inside and outside of a vehicle. As we implement these programs, we need to address the national roadway fatality crisis by putting safety first for all road users.

The FHWA has taken numerous actions to improve safety for all road users, including recently releasing **new guidance to support bicycle, pedestrian, and micromobility projects**. In addition to describing the range of opportunities available under the Bipartisan Infrastructure Law to improve conditions for bicycling, walking, and shared micromobility, this guidance provides information on many pedestrian and bicycle funding opportunities and planning and design resources that State and local agencies can use to address safety and connectivity among multiple modes of travel.

The Bipartisan Infrastructure Law includes provisions that encourage State, Tribal, and local governments to develop Complete Streets standards or policies, as well as plans to prioritize Complete Streets projects. A Complete Street *is* safe—and *feels* safe—for all users. In January, the FHWA announced a **Complete Streets Waiver**: the FHWA will use a waiver of non-Federal match for certain funds that are used for Complete Streets planning activities. This waiver will help accelerate Complete Streets-related activities that can improve safety.

The FHWA has a longstanding practice of engaging with our stakeholders across the country, but we have placed an even greater emphasis on these efforts since the passage of the Bipartisan Infrastructure Law. From enactment of the Bipartisan Infrastructure Law through May 2023, the FHWA has participated in, led, and facilitated more than 1,000 engagements with interested stakeholders, including cities, counties, special-interest groups, Tribes, and other interested

parties. The Bipartisan Infrastructure Law creates more opportunities for local governments and other non-traditional entities to access funding, and the FHWA is working to support these nontraditional stakeholders as they build the capacity to take advantage of these opportunities. We also recently published a primer, *Federal Highway Administration: An Overview for our Stakeholders*, which is designed to provide stakeholders with an introduction to the FHWA and our work.

With so many new programs and opportunities under the Bipartisan Infrastructure Law and the Inflation Reduction Act, the FHWA understands that our stakeholders may need technical assistance as we work to implement this once-in-a-generation opportunity to tackle the most pressing challenges of our time and ready our transportation system for the future. The FHWA has a long-standing history of providing technical assistance, and is committed to supporting our stakeholders at the State, Tribal, and local levels. In order to support stakeholders as we work together to improve our transportation system, the FHWA published a customer-friendly, public-facing, “one-stop shop” **Bipartisan Infrastructure Law Implementation Website** that contains useful information for stakeholders, including program guidance and fact sheets. The FHWA plans to launch a similar website for Inflation Reduction Act implementation soon.

The FHWA continues to provide technical assistance through Federal-aid and Federal-lands division offices. The FHWA has specific efforts in place to provide training and technical assistance for local and rural road agencies through the **Local Technical Assistance Program (LTAP)**, and for Tribal communities through seven new **Tribal Technical Assistance Program (TTAP)** centers. Through the LTAP and TTAP programs, we delivered more than 6,000 trainings to more than 156,000 participants in FY 2022. To support potential applicants for the many funding opportunities available, the FHWA is hosting **informational webinars** for newly published NOFOs to help potential applicants gather additional information and ask specific questions about the funding opportunities. The FHWA is also hosting informational webinars geared towards nontraditional recipients, such as Tribes, to provide customized support for newly eligible entities.

The FHWA will continue to engage with our stakeholders as we work together to deliver transformational investments in infrastructure.

RESILIENCE

Resilience is an important part of building a modern transportation system, as it will help us keep our infrastructure strong and fulfill our most important duty: getting people where they need to go—and getting them there safely. The transportation sector is responsible for more greenhouse gas (GHG) emissions than any other sector of our economy, and thus transportation must be part of the solution to tackling the climate crisis. The Bipartisan Infrastructure Law is notably the first infrastructure law in U.S. history that has a section dedicated to the climate; it also offers new tools to make our infrastructure more resilient and to reduce GHG emissions from America’s transportation network.

The Bipartisan Infrastructure Law has several funding programs that are specifically targeted at addressing climate change, and the FHWA has already made significant progress in carrying out many of these programs. The Bipartisan Infrastructure Law establishes the **Promoting Resilient Operations for Transformative, Efficient, and Cost-saving Transportation (PROTECT)**

Formula program to increase the resilience of our transportation system. This is a key program that will provide \$7.3 billion of formula funding to States over 5 years. The FHWA distributed fiscal year (FY) 2022 and 2023 PROTECT Formula funds to States, providing more than \$2.8 billion in Federal funding.

In addition to the PROTECT Formula Program, the Bipartisan Infrastructure Law established the **PROTECT Discretionary Grant Program**, which supports four categories of projects: planning activities, resilience improvements, community resilience and evacuation routes, and at-risk coastal infrastructure. The Bipartisan Infrastructure Law provided \$1.4 billion over 5 years for this competitive grant program. In April of this year, the FHWA published a Notice of Funding Opportunity (NOFO) for the PROTECT Discretionary Grant Program, making up to \$848 million in funding for FY 2022 and 2023 available to make transportation infrastructure and service more resilient to climate change and extreme-weather events. The resources made available under the PROTECT Formula and Discretionary Grant Programs will serve the American public as we work to ensure that transportation infrastructure is ready to weather the climate crisis.

As the FHWA implements the new PROTECT programs under the Bipartisan Infrastructure Law, we remain committed to providing quick responses to meet the needs of States, local agencies, Federal Land Management Agencies, and Tribal governments when they are impacted by damages to infrastructure caused by natural disasters or catastrophic events. Under the FHWA's **Emergency Relief (ER) Program**, we are providing assistance to those communities affected by recent emergencies. Last month, we announced that the FHWA will provide \$749 million in ER Program funds to help 39 States, the District of Columbia, and Puerto Rico make repairs to roads and bridges damaged by storms, floods, wildfires, and other recent events.

In addition to providing unprecedented funding for electric vehicle (EV) charging, the Bipartisan Infrastructure Law includes more than \$6.4 billion for a new formula **Carbon Reduction Program** specifically designed to reduce transportation-related emissions. The FHWA distributed more than \$2.4 billion in FY 2022 and 2023 Federal funds for this program. The Bipartisan Infrastructure Law also established the **Reduction of Truck Emissions at Port Facilities Grant Program**, a new discretionary grant program aimed at funding projects that reduce port-related emissions from idling trucks. The Bipartisan Infrastructure Law provided \$400 million over 5 years for this program. In April, the FHWA published a NOFO for the program, making up to \$160 million in FY 2022 and 2023 funding available.

Together, the provisions in the Bipartisan Infrastructure Law will advance progress toward the Administration's goals of reducing greenhouse gas emissions and reaching net-zero emissions by 2050.

INNOVATION

Innovation is essential for the future of transportation infrastructure. It will help us tackle a broad range of issues, such as improving safety, increasing the resilience of our transportation infrastructure, and finding new ways to combat the climate crisis. The FHWA's Turner-Fairbank Highway Research Center coordinates and conducts an ambitious program of transportation research, developing technologies and innovations for highway use. The

increased research funding levels provided in the Bipartisan Infrastructure Law support further innovation through the FHWA's Research Program, which will produce the next generation of transportation innovations. FHWA research funding also supports the Department's **University Transportation Centers (UTC)** Program for which Secretary Buttigieg announced new five-year grants in February 2023. The UTC Program continues to be a valuable source of research and technology innovation, and of the future workforce of transportation.

Electric vehicles (EVs) are an excellent example of a new technology that has the potential to transform both our transportation landscape and our world, helping us to combat the climate crisis, create good-paying jobs, support sustainability, and work towards a more equitable transportation system. Electrification is also a global economic-leadership objective, and the Bipartisan Infrastructure Law makes the most transformative investment in EV charging in U.S. history.

The Bipartisan Infrastructure Law provides \$7.5 billion in Federal funding for the construction of publicly accessible EV chargers and alternative fueling infrastructure. The EV charging provisions in the Bipartisan Infrastructure Law will help us tackle the climate crisis and put us on a path to create a nationwide network of at least 500,000 public EV chargers by 2030. This will help ensure a convenient, affordable, reliable, and equitable charging experience for all users.

The **National Electric Vehicle Infrastructure (NEVI) Formula Program** will help States create a network of high-speed EV charging stations along designated Alternative Fuel Corridors, particularly along the Interstate Highway System. The FHWA distributed \$1.5 billion in FY 2022 and 2023 Federal funding for the NEVI Formula Program. In September 2022, the FHWA approved the first round of State plans under the program. We also published our Build America, Buy America implementation plan to ensure that our national charging network is Made in America, as well as minimum standards and requirements for EV charging infrastructure, ensuring safety and reliability. These standards include strong labor supports, such as requiring that all electrical work performed for federally funded chargers be performed by technicians who are certified through the Electric Vehicle Infrastructure Training Program or other appropriate registered apprenticeship program. And earlier this month we released updated NEVI Formula Program guidance and accompanying questions and answers. FHWA is working with the Joint Office of Energy and Transportation to have regular touchpoints with NEVI contacts in all 50 states plus the District of Columbia and Puerto Rico, and to provide technical assistance as needed. States now have the tools they need to implement this program.

The Bipartisan Infrastructure Law also established the **Charging and Fueling Infrastructure Discretionary Grant Program**, which provides \$2.5 billion over 5 years to strategically deploy publicly accessible EV charging and fueling infrastructure, including through corridor and community grants. In March, the FHWA published a notice of funding opportunity for the program that made up to \$700 million in FY 2022 and 2023 funding available to strategically deploy EV charging and other alternative fueling infrastructure projects in publicly accessible locations in urban and rural communities, as well as along designated Alternative Fuel Corridors. The Charging and Fueling Infrastructure program will facilitate broad public access to a national charging and alternative fuel infrastructure network while advancing job quality, workforce development, and workforce equity.

Innovation will help us tackle the climate crisis. The **Every Day Counts (EDC) Program** is a State-based model that identifies and rapidly deploys proven but underutilized innovations that make our transportation system adaptable, sustainable, equitable, and safer for all. The seventh round of the EDC Program (**EDC-7**) supports two innovations that are specifically aimed at climate-change concerns: (1) Integrating GHG Assessment and Reduction Targets in Transportation Planning, and (2) Environmental Product Declarations (EPDs) for Sustainable Project Delivery. The FHWA will leverage EPDs for Sustainable Project Delivery and the FHWA Climate Challenge “Quantifying Emissions of Sustainable Pavements” to provide education and technical assistance regarding implementing the quantification of low-carbon materials under the Inflation Reduction Act’s **Low Carbon Transportation Materials Grants Program**. The FHWA is working expeditiously to establish this new \$2 billion program.

Innovation is also a key tool to improving safety, as new technologies have the potential to save and change lives. EDC-7 includes two important safety initiatives: (1) Nighttime Visibility for Safety, which promotes traffic control devices and properly designed lighting to improve safety for all users, and (2) Next-Generation Traffic Incident Management, which promotes emerging technologies such as emergency vehicle lighting and queue warning solutions.

In May, the FHWA announced more than \$52 million in grants for eight States from the **Advanced Transportation Technology and Innovation (ATTAIN) Program**. The ATTAIN Program promotes advanced technologies to improve safety and reduce travel times for drivers and transit riders that can serve as national examples of innovation to improve access to transportation for all communities. The FHWA supported evaluation of the first round of **Strengthening Mobility and Revolutionizing Transportation (SMART) Grants**, announced in March 2023, funding \$94 million in grants across 33 States for 59 projects. SMART Grants allow public sector agencies to conduct demonstration projects focused on advanced smart community technologies and systems. The FHWA’s Intelligent Transportation Systems Joint Program Office launched the **Smart Community Resource Center** to connect States, Tribal governments, and local communities with resources that can be used to develop intelligent transportation systems and smart community transportation programs.

Innovation will allow us to integrate other modes of transportation into our roadway system, supporting not only private and commercial vehicles, but also pedestrians, cyclists, transit users, and people who use mobility-on-demand technologies. While we have engineered increased safety into our infrastructure and vehicles, it is critical that we harness technology to help realize our goal of zero fatalities on U.S. roads.

VALUES

The FHWA serves the American public, and we are focused on ensuring that we are equipped to provide important program coordination and support as the FHWA implements the numerous programs authorized under the Bipartisan Infrastructure Law and the Inflation Reduction Act. Since the enactment of the Bipartisan Infrastructure Law, the FHWA has received approval to hire 248 new positions based on the results of an agency-wide assessment. Hiring for these positions has been underway since FY 2022, and these positions will provide support for FHWA headquarters, program, and field offices. To date, the FHWA has surpassed FY 2022 and 2023 Bipartisan Infrastructure Law hiring goals. Through May of this year, the FHWA hired 103

Bipartisan Infrastructure Law-funded positions, surpassing the goal of 100 hires by the end of this fiscal year.

FHWA employees have worked tirelessly and faithfully to implement the Bipartisan Infrastructure Law and the Inflation Reduction Act. While that service is evidenced by the quality of the U.S. transportation system—of which we are stewards—we are also responsible for the members of our agency. The FHWA is committed to all of our **core organizational values: Public Service, Integrity, Family and Work/Life Balance, Respect, Personal Development, Diversity, and Collaboration**. The FHWA is a leader within the Federal Government when it comes to mental-health awareness, supporting staff with a variety of initiatives aimed at increasing overall employee wellbeing. For example, the FHWA offers quarterly wellness webinars that provide a variety of self-help tools and resources for staff to better care for themselves and those around them. Additionally, the FHWA provides in-depth training opportunities for its employees and offers further resources, tools, and strategies for managing individual wellness.

The FHWA is committed to caring for our staff and creating a workplace where they feel physically and psychologically safe, which empowers them to create a safer transportation system for our Nation.

EQUITY

Equity is one of the FHWA's primary values and drives every one of our programs, projects, and initiatives. We have the ability to reduce inequities in and around our transportation system by expanding affordable access to transportation and related jobs, removing barriers that might prevent individuals or communities from accessing transportation, encouraging wealth creation, empowering communities, and ensuring that equity considerations for disadvantaged and underserved communities are integrated into the planning, development, and implementation of all transportation investments. Transportation should be done *with* people, not *to* them. The FHWA understands that we should ensure that we are listening to communities and taking their needs and desires into account.

The burdens of our transportation network, including traffic fatalities, air pollution, and absence of connected networks, are disproportionately borne by underserved populations as a result of historic disinvestment and exclusion from transportation decision-making processes. Through the **Complete Streets Implementation Strategy**, the FHWA is supporting the planning, implementation, and evaluation of equitable streets and networks that prioritize safety, comfort, and connectivity for all people who use the street network. Implementing Complete Streets equitably includes identifying underserved communities, recognizing their varying transportation needs, and prioritizing the creation of safe, connected networks. In addition to being an Equity Strategy, Complete Streets is a Safety Strategy. By recognizing that streets and networks should prioritize the needs of *all* users, not only vehicle throughput, Complete Streets prioritize safety for all users at every part of the transportation process. Complete Streets is also a Climate Strategy, as Complete Streets Implementation will help to routinely provide the safe infrastructure that is fundamental to encouraging more use of low and zero carbon modes.

The Bipartisan Infrastructure Law includes grant programs specifically intended to address equity issues, such as the **Reconnecting Communities Pilot Program**, a first-of-its-kind effort

to reconnect communities that are cut off from opportunities and burdened by past transportation-infrastructure decisions. Earlier this year, the Department announced a historic \$185 million in grant awards for 45 projects under this program. These awards will fund construction and planning for transformative community-led solutions, including capping Interstates with parks, filling in sunken highways to reclaim the land for housing, converting inhospitable transportation facilities to tree-lined Complete Streets, and creating new crossings through public transportation, bridges, tunnels, and trails. The FHWA is funding or administering projects that reconnect communities through many of our grant programs, not just the Reconnecting Communities Program, and many FHWA-administered grant programs include equity considerations as part of their qualifying or selection criteria. In addition, the FHWA provides tools to grant applicants to assist them in addressing equity in their grant submittals.

The Inflation Reduction Act established a new **Neighborhood Access and Equity Grant Program** that will support neighborhood equity, safety, and affordable transportation access through competitive grants. The Inflation Reduction Act provided more than \$3.2 billion for this program. A NOFO for this program is expected to be released this summer.

The historic investments in our infrastructure under the Bipartisan Infrastructure Law and the Inflation Reduction Act will not only benefit those who use transportation infrastructure, but will also extend to those who find well-paid work rebuilding their communities. As part of this year's Every Day Counts Program, the FHWA chose an equity-based innovation to improve the participation of Disadvantaged Business Enterprises on design-build contracting, a procurement practice often used on the United States' largest and highest-profile projects.

The FHWA also recently announced new resources under the Bipartisan Infrastructure Law that will create economic opportunities and open the door to wealth creation for disadvantaged entrepreneurs and workers in communities across the country. These include new guidance to support State investments in workforce development, training, and education, as well as \$10 million in Disadvantaged Business Enterprise Supportive Services Funding to support small businesses owned by minorities, women, and other socially and economically disadvantaged individuals.

Extending benefits to community members when constructing projects helps create wealth while making our roads safer. The Bipartisan Infrastructure Law and the Inflation Reduction Act provide an opportunity to create transformation through transportation.

NATION

Every aspect of the FHWA's work is driven by the people and the Nation we serve. There are no democratic roads or republican bridges—transportation binds us all together, which is why we must work with each other to support the common good. Roads should be accessible and equitable for all users, not just people in cars, people who do not use mobility aids, or people from wealthy neighborhoods. Our country emerged triumphant in the 20th Century due in no small part to our investment in our world-class transportation system. As we embark upon the largest-ever investment in that system, it is important to remember that if the United States is to continue to be a dominant world power throughout the 21st Century, we must once again make our transportation system the envy of the world. That means we must create a system that delivers for our economy and **all** of our people, including workers and communities, while

getting individuals and goods safely to their destinations. A transportation system that literally unites us as Americans.

In addition to getting people where they need to go, our transportation system must also accommodate freight vehicles and the military. It is essential that we ensure the infrastructure that supported our success in the 20th Century remains an asset. The world sees our infrastructure as a symbol of our strength, and the N in DRIVEN reminds us that we must continue to support the Strategic Highway Network (STRAHNET), which is critical to the Department of Defense's domestic operations.

The FHWA is working to update and expand our transportation system so that it can continue to support all road users, including freight trucks. For example, the FHWA announced four Bridge Investment Program Large Bridge Grant Awards in January 2023. These awards will retrofit California's Golden Gate Bridge; repair the Gold Star Memorial Bridge in Connecticut, which supported 5 million tons of freight in 2014 alone; rehabilitate four bascule bridges in Illinois, helping them to accommodate multimodal transportation and ensure communities on either side of the river remain connected while allowing barges and ships to continue to use the river; and support the Brent-Spence Bridge in Kentucky and Ohio, which transports 3 percent of the Nation's GDP per year. These investments are part of President Biden's broader Investing in America strategy, which is bringing economic opportunity, jobs, and investments across America. Since the President took office, private companies have announced over \$470 billion in private sector manufacturing investments, and over the last 18 months, the Administration has awarded over \$220 billion in funding from the Bipartisan Infrastructure Law aimed at repairing roads and bridges, delivering clean water, deploying high-speed internet, and building out clean energy transportation infrastructure.

The FHWA is committed to working collaboratively with States, cities, local governments, Tribes, and others to make the most of the once-in-a-generation opportunity provided by the Bipartisan Infrastructure Law and the Inflation Reduction Act to invest in the future of our transportation system. Such investments will have a positive impact for generations to come.

CONCLUSION

As I noted earlier, U.S. DOT's focus for 2023 is prioritizing delivery of results. The DRIVEN initiative will help to guide our efforts across U.S. DOT's three major areas of effort: building good things well; running our operations well in the agency; and protecting the safety and wellbeing of everyone who interacts with our transportation system, as we implement the many programs and funding opportunities created by the Bipartisan Infrastructure Law and the Inflation Reduction Act. DRIVEN will allow us to deliver results for both the U.S. transportation system and Americans as a whole.

Thank you again for giving me an opportunity to appear before you today. I look forward to continuing to work with every Member of this Committee to deliver on the promise of the Bipartisan Infrastructure Law and the Inflation Reduction Act for the American people. I would be happy to answer any questions you may have.

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Senate Committee on Environment and Public Works
Hearing Entitled, "Implementation of the Infrastructure Investment and Jobs Act and the
Inflation Reduction Act by the Federal Highway Administration"
June 14, 2023
Questions for the Record for The Honorable Shailen Bhatt

Chairman Carper:

1. The Transportation sector is the largest contributor to greenhouse gas emissions in the US economy. However, the emissions associated with producing the materials to build roadways are not considered a part of the transportation sector, but rather are counted as industrial sector emissions. Emissions from that sector, which currently represent 23% of the US emissions, have been growing faster since 2000 than emissions in any other sector. The Inflation Reduction Act (IRA) created a program to help reduce those industrial sector emissions from building roadways by providing incentives to use lower emission steel, concrete, and other materials. Reducing emissions associated with roadbuilding is a critical component of addressing climate change.
 - a. With that urgency in mind, what progress has been made in implementing the Low-Carbon Transportation Materials Program?

FHWA has convened an agency-wide implementation team that is working diligently to stand up the program as expeditiously as possible. IRA section 60506 requires the Environmental Protection Agency (EPA) to identify which materials and products have a substantially lower level of embodied GHG emissions compared to similar materials or products. On December 22, 2022, the EPA released an Interim Determination that describes a process by which materials and products could be identified. FHWA is working quickly to identify how the EPA's Interim Determination may be implemented in conjunction with existing Title 23 requirements for eligible projects (Federal-aid highways, Tribal transportation facilities, Federal lands transportation facilities, and Federal lands access transportation facilities). FHWA has participated in industry-led meetings with relevant data-holding organizations to understand how to adequately identify industry averages and documentation that demonstrates the carbon footprint of an eligible material or product. FHWA will continue outreach to stakeholders and the public. These stakeholders are receiving technical assistance through FHWA's Climate Challenge and the FHWA's Every Day Counts initiative, helping to prepare for this upcoming funding opportunity.

- b. What is the timeline for obligating the funding that has been made available?

By the end of 2023, FHWA plans to establish the program and include mechanisms to effectively identify recipients and distribute funding.

- c. How do you anticipate that funding from this program will shift State DOT procurement practices toward lower emission material choices?

We have a tremendous opportunity to leverage existing FHWA efforts to encourage the use of lower emission transportation materials with this program. However, specifying and accepting materials based on the quantification of environmental impacts such as Global Warming Potential is a new process to many State DOTs and will require adequate time and resources. By reimbursing costs and incentivizing the use of new lower emission materials, State DOTs and other eligible entities will have the means to incorporate low carbon procurement practices into their programs which can last well beyond the life of the IRA and can be implemented on a broader scale.

2. The Infrastructure Investment and Jobs Act included the first ever wildlife crossings title in a transportation bill. This Committee and the Congress recognized the importance of remedying habitat fragmentation caused by transportation infrastructure, as well as addressing the very real human safety implications of wildlife-vehicle collisions. The Federal Highway Administration has an opportunity to leverage private dollars and the expertise of stakeholders, States, and other Federal agencies that have been at the forefront of investment and innovation in wildlife crossings.

- a. How is the Federal Highway Administration working with the wildlife conservation community, foundations, Tribes, and States – to implement this title and ensure that the Federal government is maximizing its impact?

FHWA worked with wildlife conservation groups, foundations, Tribes, and other relevant Federal, State, and local stakeholders to advertise and solicit input on development of the Wildlife Crossings Pilot Program (WCPP) which issued its first Notice of Funding Opportunity (NOFO) on April 6, 2023. FHWA is also working with these stakeholders to develop guidance, metrics, and best practices regarding wildlife crossings and habitat connectivity as required by the BIL. This outreach has included meetings with Federal Land Management Agencies (FLMAs); speaking and presenting at multiple American Association of State Highway and Transportation Officials (AASHTO) subcommittee meetings, the Northeast Transportation and Wildlife Conference in September 2022, the Transportation Research Board Annual Meeting in January 2023, the Corridors, Connectivity, and the Crossings Conference in May; hosting a workshop and poster session at the International Conference on Ecology and Transportation in June; and participating in a Tribal workshop with the Native American Fish and Wildlife Society in June. FHWA is committed to continuing its robust consultation with the transportation and wildlife conservation community to maximize the impact of the WCPP and other activities established under the BIL.

- b. I understand that the Federal Highway Administration was concerned about engaging Federal land management agencies in standing up the wildlife crossings program because they are eligible grant recipients. But, the program could benefit from their considerable expertise in wildlife biology and ecology. Going forward, will the Federal Highway Administration find creative ways to incorporate the expertise of these Federal land management agencies in administration of the program?

While FHWA was limited in its ability to directly consult with FLMAs on development of the WCPP because they are eligible recipients, FHWA worked diligently to incorporate feedback received from Federal conservation agencies to the maximum extent permissible. FHWA agrees that these agencies' expertise in wildlife biology and ecology provides important benefits to the program. FHWA is committed to working with FLMAs and capturing their expertise and feedback to inform on-going program activities, such as our best practices study.

- 3. I understand that the Federal Highway Administration anticipates funding 15-50 proposals through the wildlife crossings program, with a range of \$200,000 to \$20 million per project.

- a. Is this estimate accurate?

Yes. This was FHWA's estimate when issuing the WCPP NOFO; however, FHWA may make awards outside of this range if necessary based on the number and quality of applications received and the availability of funding.

- b. Recognizing that construction of major wildlife crossing projects can cost upwards of \$100 million per project, how is the Federal Highway Administration balancing the importance of funding multiple worthy projects with the need to provide sufficient resources to fully complete larger projects?

This is the first NOFO issued for the WCPP, and FHWA anticipates diverse applications proposing various activities for numerous projects competing for a limited amount of funding. As this is a pilot program, FHWA is providing maximum flexibility for applicants to compete for funds under the criteria FHWA established in the NOFO.

- c. How is the Federal Highway Administration working to leverage other available funding sources for wildlife crossings – in the Bipartisan Infrastructure Law and otherwise?

FHWA will maximize the impact of the Federal funds by giving preference to projects in the grant program that leverage investments from non-Federal contributions to the project, including projects from public-private partnerships as a secondary criterion for discretionary grants. In addition, all projects are required to provide non-Federal matching funds, which will leverage other available funds.

FHWA has been working with stakeholders to educate the transportation and wildlife conservation communities about the various transportation programs that can be utilized to fund crossings. FHWA has also included language in other NOFOs identifying the need to address terrestrial and aquatic connectivity, such as for the National Culvert Removal, Replacement, and Restoration grant program; the Bridge Investment Program; and the Promoting Resilient Operations for Transformative, Efficient, and Cost Saving Transportation (PROTECT) grant program.

4. I appreciate the commitment you made during the hearing to working expeditiously to get the Federal System Funding Alternative Advisory Board set up and to have results from the National Motor-Vehicle Per-mile User Fee pilot available in time for the reauthorization of the current 5 year authorization.

- a. What steps have been taken to date to establish the Advisory Board and the National Pilot?

FHWA is working to develop the Charter to establish the Federal System Funding Alternative Advisory Board and a Federal Register notice to solicit nominations to the Advisory Board, to assist with development and implementation of the National Motor Vehicle Per Mile User Fee Pilot Program. There is also work underway to design the framework for a National Pilot implementation plan.

FHWA is coordinating with the U.S. Department of the Treasury to identify technology options for collecting motor vehicle per-mile user fees from volunteer pilot participants, ensuring revenue collected under the pilot is deposited in the Highway Trust Fund, and issuing payments to volunteer participants.

FHWA is also developing, and anticipates issuing, a notice of funding opportunity for the Strategic Innovation for Revenue Collection (SIRC) Program in 2023.

- b. What additional actions do you anticipate will be needed to establish the Advisory Board and the National Pilot?

The Department will need to approve the Federal System Funding Alternative Advisory Board Charter and publish a Federal Register Notice soliciting nominations for Advisory Board members. FHWA will work with DOT leadership to select Advisory Board members. FHWA will continue coordinating with the U.S. Department of the Treasury to identify collection options. FHWA anticipates

needing to conduct public outreach regarding a national motor vehicle per-mile user fee, including distributing information related to the pilot program.

In accordance with BIL section 13002(b), the National Pilot will be established in coordination with the Secretary of the Treasury and consistent with the recommendations of the Advisory Board.

- c. What is the approximate timeline for each of those actions?

FHWA is working expeditiously to establish the Advisory Board and the National Pilot. FHWA anticipates issuing a notice of funding opportunity under the SIRC program, as established in Section 13001, in 2023. The Secretary, in coordination with the Secretary of the Treasury and the Advisory Board, will submit recommendations and a report in accordance with BIL section 13001.

Senator Sanders:

1. Based on the Vermont Agency of Transportation's calculations, the Department of Transportation's accounting error risks up to \$17 million in pre-Infrastructure Investment and Jobs Act funding in the State, including project delays and potential cancellations. Furthermore, Vermont may be limited in its request during August's obligation limitation redistribution due to this error. Can you commit to providing States flexibility to manage the writedowns across pre-IIJA funding codes at their discretion?

DOT continues to work on reconciling the balances between FHWA's Fiscal Management Information System (FMIS) and the Department's official accounting system of record, Delphi. On July 11, 2023, DOT issued an update on the FMIS/Delphi discrepancy. The excess contract authority discrepancy has been reduced from \$3.5 billion to less than \$1.0 billion and over \$12 million of pre-IIJA contract authority has been made available to the State of Vermont.

- a. Can you commit to working with States to maximize their asks for the August redistribution in light of the writedowns to pre-IIJA funding?

Yes, FHWA is committed to working with the States to maximize their asks for August Redistribution. FHWA has been closely working with State DOTs for months to help them prepare for August redistribution this summer. In addition, the reduction of the FMIS/Delphi discrepancy announced July 11, 2023, allowed the majority of the impacted pre-IIJA funding to be made available for obligation providing additional flexibility to the States to maximize their August Redistribution requests.

Senator Padilla:

1. Under current regulations, the Department of Transportation (DOT) is allowed to begin to claw back Emergency Relief funding for highway and public transit projects if those projects do not initiate construction by the end of the second fiscal year following the year in which the disaster occurred. While States can apply for extensions provided in one-year increments for delays “caused by the need for extensive environmental evaluation, litigation, or complex right-of-way acquisition,” the Federal Highway Administration (FHWA), under previous leadership, has denied such requests for a number of projects. For example, in 2019 FHWA denied 66 out of 73 requests for one-year extensions from the California Department of Transportation. As we face increasingly severe natural disasters and extreme weather, I believe that States and communities deserve to have a reasonable period of time to carry out the significant and often complex projects necessary to repair or reconstruct transportation assets after a disaster occurs. That is why I previously sent a letter to DOT and FHWA urging them to update their guidance and provide States with greater flexibility by extending this deadline. However, it has been nearly a year since I sent that letter, and I have yet to receive a formal response. I also raised this issue with you during your confirmation hearing last year, and while I appreciate your written response, I would like to follow up given this issue remains unresolved. Will you commit to working with DOT to update existing regulations to extend this deadline and provide important flexibility to States in the aftermath of natural disasters?

Emergency Relief (ER) funds are intended to address emergencies due to a natural disaster or a catastrophic failure. FHWA’s regulations at Title 23, Code of Federal Regulations (CFR), Part 668, require that:

ER projects shall be promptly constructed. Any project that has not advanced to the construction obligation stage by the end of the second fiscal year following the disaster occurrence will not be advanced unless suitable justification to warrant retention is furnished to the FHWA. (23 CFR 668.105(h))

The FHWA ER manual explains the time extension request process for delayed projects:

Justification for such delay and request for time extension must be submitted to the FHWA Division Administrator for approval. Time extensions are granted in one-year increments. Such delays may be caused by the need for extensive environmental evaluation, litigation, or complex right-of-way acquisition. In certain situations, the delay of permanent work may be as much as two to three years. Permanent restoration work, for example, could be deferred to permit study of a serious slide condition, thereby allowing sufficient time to adequately design a permanent correction.

As noted in the spring regulatory agenda, FHWA will be conducting a rulemaking (2125-AG01) to amend the ER program regulations to, among other things, consider ways to improve program delivery effectiveness and efficiency. During the rulemaking process, the public will have an opportunity to comment on existing and proposed requirements to promptly construct ER repairs.

- a. Under your leadership, how often has FHWA denied extension requests for the use of Emergency Relief funds?

FHWA provides oversight to recipients of ER funding to ensure that work approved under the ER program is advanced and completed in a timely fashion. Decisions to approve or deny time extension requests are delegated to FHWA's Division Offices, which have longstanding relationships with their respective partner agencies at the State, local, Tribal, and territorial levels. FHWA Headquarters does not track the overall number of denied extension requests. These decisions are made within each State by FHWA Division Offices on a case by case basis. FHWA is committed to working with all ER funding recipients to finalize projects as much as FHWA can within the constraints of the law and while still maintaining appropriate oversight of taxpayer dollars.

- b. Is there anything preventing a future Administrator from arbitrarily denying these requests with increased frequency?

FHWA administers the Emergency Relief Program in accordance with relevant statutes, regulations, and guidance, which include criteria for allowable extensions and a process for approvals.

Senator Fetterman:

1. I know FHWA received thousands of comments regarding the draft of the 11th edition, and I sent a letter to you last month expressing concerns and requesting more information. I hope to get a response to those questions soon, but would like to ask an additional question: while the MUTCD does state that engineers may exercise professional discretion, my office has heard repeatedly that this allowance is not sufficient to enable actual implementation of innovative designs that would improve safety. Instead, they have shared that clearer guidelines regarding innovative design models (for cycling infrastructure, for one example) and explicit statements from FHWA are needed if we want to see any change in practice. Do you disagree with this characterization? If not, how will the MUTCD and other FHWA policies adjust to reflect engineers' concerns?

FHWA received your recent letter and is preparing a response to those specific concerns. As required by the Bipartisan Infrastructure Law, FHWA is working on finalizing the 11th edition, which will address comments on these and other issues to the extent possible. After a roadway or facility is designed and constructed, in accordance with Federal, State, and local design guidelines, the MUTCD provides the national standards for all traffic control devices for transportation agencies to use in order to inform road users on how to navigate that infrastructure. With respect to professional discretion, the decision to use a particular device at a particular location is predicated on either an engineering study or the application of engineering judgment.

The MUTCD also incorporates a robust experimentation component as technology produces changes in the highway, vehicle, and road user proficiency. Transportation

agencies may request experimental status for novel concepts. Under the 2009 edition of the MUTCD, FHWA has approved nearly 200 such experiments for new devices or applications, where each experiment is essentially its own research project. Approval under the MUTCD experimentation allows transportation agencies to comply with Federal regulations. More importantly, experimentation under the MUTCD ensures that the traveling public is not exposed to unfamiliar, untested traffic control devices that could compromise safety. FHWA is developing experimentation guidelines separate from the MUTCD to assist agencies and practitioners in developing experiments to assess novel traffic control devices or applications. The guidelines will provide more detail on the experimentation process and distill varying aspects of experimental research plans by the different types of treatments being evaluated. In this way, the guidelines will offer practitioners and agencies more information about the range of opportunities that the MUTCD provides to address different conditions and contexts for a variety of road users.

FHWA has also produced a wealth of guidance in support of innovative design models to improve pedestrian and bicycling infrastructure. Examples include *Achieving Multimodal Networks: Applying Design Flexibility and Reducing Conflicts*; *Bikeway Selection Guide*; *Incorporating On-Road Bicycle Networks into Resurfacing Projects*; *Small Town and Rural Multimodal Networks*; and the *Separated Bike Lane Planning and Design Guide*. See https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/. FHWA has launched a Complete Streets initiative (<https://highways.dot.gov/complete-streets>) focused on supporting transportation agencies to plan, develop and operate equitable streets and networks that prioritize safety, comfort and connectivity to destinations for all people who use the street network. FHWA also published a Request for Information (<https://www.federalregister.gov/documents/2023/02/03/2023-02285/improving-road-safety-for-all-users-on-federal-aid-projects>) to inform efforts to develop road designs for all users that can reduce motor vehicle-related crashes, pedestrian and bicyclist risk, and encourage walking and bicycling for transportation by incorporating well-designed multimodal infrastructure. FHWA is reviewing the responses received. And, we recently updated guidance to FHWA Division Offices regarding the review of State procedures or design criteria for the geometric design of resurfacing, restoration, and rehabilitation (RRR) projects on the National Highway System, including freeways, when submitted for FHWA approval in accordance with 23 CFR 625.4(a)(3). The guidance encourages the application of a complete streets design model on roadways where adjacent land use suggests that trips could be served by varied modes. See <https://www.fhwa.dot.gov/design/rrrguidance230301.pdf>. These efforts all support engineering innovation in design.

2. The Public Rights-of-Way Accessibility Guidelines set standards for accessibility in sidewalks, crosswalks, and other rights-of-way, ensuring that all Americans can safely navigate their communities. The guidelines have been in draft form since 2013, and my office has heard from transportation and disability policy experts that roads are being knowingly built out of compliance with PROWAG. I wrote Secretary Buttigieg and Attorney General Merrick Garland to request information regarding the timeline for finalizing PROWAG, and can reiterate some of my questions here. What is the timeline for DOT and DOJ to finalize PROWAG?

The Secretary received your letter and recently provided responses to your questions, outlining the U.S. Department of Transportation's (DOT) approach to Americans with Disabilities Act (ADA) compliance. FHWA and DOT share your sense of urgency for seeing the PROWAG adopted as federal standards under both the ADA and section 504 of the Rehabilitation Act of 1973 (Section 504). Achieving this outcome is among the Disability Policy Priorities DOT adopted in July 2022, and DOT has been working diligently with the U.S. Access Board (Access Board) and the U.S. Department of Justice (DOJ) since April 2021 to complete the rulemaking steps necessary to see the PROWAG adopted as ADA and Section 504 standards. The ADA directs the Access Board to develop minimum facility accessibility guidelines and requires DOJ and DOT to adopt standards that are consistent with the minimum guidelines. As such, the Access Board must issue its final PROWAG rule establishing minimum accessibility guidelines for pedestrian facilities in the public right-of-way before DOT and DOJ can proceed to adopt standards that are consistent with those guidelines. The Access Board, at its March 2023 meeting, voted to send a final PROWAG rule package to the Office of Management and Budget for interagency review and the Board issued a final rule on August 8, 2023. Based on this action, DOT has begun to work internally on developing a Notice of Proposed Rulemaking (NPRM) to adopt the final PROWAG into DOT's ADA regulations. The Department has included this rulemaking on its regulatory agenda (2105-AF05) and anticipates issuing its NPRM next year.

- a. How will FHWA ensure compliance with PROWAG as discretionary grants continue to flow out of the department?

FHWA is committed to delivering resources, guidance, technical assistance, and, where necessary, enforcement action to ensure that progress toward equal opportunity to move about independently and safely on the Nation's pedestrian infrastructure is realized. Although final PROWAG standards have not yet been adopted, public entities are still required to comply with the ADA's general requirement that their facilities be accessible to and usable by individuals with disabilities. FHWA provides ongoing stewardship and oversight to its recipients and provides guidance and technical assistance to ensure that ADA requirements are understood and implemented.

At the same time, FHWA enforces compliance with the ADA by fielding and investigating complaints from community members and ensuring that corrective action is taken where noncompliance is found. When FHWA investigates a complaint, it not only addresses the specific issue raised by the complainant but takes the opportunity to ensure that the responding agency is meeting its programmatic ADA responsibilities, such as designating an ADA coordinator, establishing its own public complaint procedures, providing public notice of accessibility rights, conducting a self-evaluation of the agency's pedestrian facilities for ADA compliance, and developing a plan for correcting noncompliant facilities over time. In addition, FHWA conducts compliance reviews of State DOTs' ADA programs.

The Federal-aid highway program has long provided resources that recipients may use to improve the accessibility of their pedestrian facilities. The Bipartisan Infrastructure Law increases the amount of funding available under existing programs and creates several new programs where accessibility improvements are eligible for funding, such as the Safe Streets and Roads for All Program and the Reconnecting Communities Pilot Program. Compliance with the ADA is emphasized as a requirement for grant award in the Notices of Funding Opportunities for these and other discretionary grants.

- b. How will FHWA work with DOJ and Secretary Buttigieg work with States to ensure that existing transition plans and design standards are made compliant with PROWAG?

FHWA collaborates with the Secretary and DOJ to ensure the accessibility of pedestrian facilities in the public right-of-way. ADA Transition Plan implementation is a critical responsibility for FHWA and for every public entity subject to the ADA across the country. FHWA has worked directly with each State Department of Transportation to improve their transition plans for pedestrian facilities in the public right-of-way. Many of those States have independently adopted the U.S. Access Board's 2011 proposed PROWAG into their design standards. Until DOT and DOJ adopt the PROWAG as standards, public entities have some flexibility on how they choose to comply with the ADA's general requirements to ensure that their pedestrian facilities are accessible to and usable by individuals with disabilities. When the PROWAG becomes an enforceable standard, FHWA will provide ongoing technical assistance, training, and enforcement to ensure that public entities adopt those standards.

3. The Safe Streets for All grant program has been an exemplary use of IIJA funds to help communities address particular unsafe corridors. How many applications have been submitted for Action Plan Awards compared to Implementation grants? Has one seen more interest than the other?

DOT made 474 Safe Streets and Roads for All (SS4A) 2022 Action Plan Grant awards totaling \$223 million, and almost all Action Plan Grant applications in fiscal year (FY) 2022 were funded (exceptions include ineligible applicants, those who withdrew, etc.). This was well below the 40 percent set-aside (\$400 million) for Action Plan development and associated planning activities. The FY 2023 Notice of Funding Opportunity closed on July 10, 2023, and funding requests for the 40 percent set-aside are again undersubscribed.

In contrast, the funding requests for Implementation Grants have far exceeded the available funding to implement projects and strategies. In FY 2022, DOT received over 200 Implementation Grant applications requesting more than \$2 billion for \$580 million in available funds to implement projects. DOT was only able to make 37 Implementation Grant awards with the available funding. The Department expects the Implementation Grant funding amount requested to increase substantially in future years as grant

recipients who are currently developing Action Plans finish their plans and apply to implement projects and strategies. At the same time, DOT anticipates a smaller pool of eligible applicants without Action Plans in future grant years. As a result, the number of eligible applicants for Action Plan development is likely to decline over FY 2024-FY 2026. For these reasons, the 40 percent set-aside will likely limit the amount of SS4A funds that can be awarded over FY 2022-2026, potentially leaving a significant amount of funding unable to be awarded. There is a clear demand for Implementation Grant funding from applicants.

Senator Ricketts:

1. I know that the \$3.5 billion dollar highway funding accounting discrepancy is something that you have and continue to work through and I thank you for your continued efforts to fix this issue. Without reconciling this discrepancy, there is no question that our localities in Nebraska will feel impact. During my time as Governor, I worked hard with my State to get our spend down dollars low. This allows our State to compete for more contract obligation under August Redistribution, which allows us to expedite more projects. As you work towards a solution, how will you ensure that State DOTs will not be penalized for this USDOT accounting discrepancy?

DOT is committed to working closely with State DOTs to minimize the impact of the accounting discrepancy. For example, FHWA is working collaboratively with the States to prevent any pre-BIL funding from lapsing later this year while the reconciliation effort continues. In addition, the reduction of the FMIS/Delphi discrepancy from \$3.5 billion to less than \$1.0 billion announced July 11, 2023, allowed the majority of the impacted pre-BIL funding to be made available for obligation providing additional flexibility to the States to maximize their August Redistribution requests. Over \$38 million of pre-BIL contract authority has been made available to the State of Nebraska.

Senator CARPER. Great. Thanks for that testimony.

I am going to start our questions by asking you about the recent disaster that took place just north of us in Pennsylvania on I-95 near Philadelphia. I know from our conversations that you spent a fair amount of time there in the days since then.

I understand the Governor Shapiro is making an announcement literally in real time as we are gathered here today and that you might be in a position to comment on what he is saying a little bit later in our hearing. I look forward to that.

To start off, could you please talk with us this morning about the role that the Federal Highway Administration will play in coordinating with State and local agencies to respond to the bridge collapse and restore the movement of goods and people around the Philadelphia region while this bridge is being rebuilt?

Mr. BHATT. Thank you, Chairman Carper. As you and the Ranking Member mentioned, FHWA staff have been working tirelessly on BIL. I just want to highlight that. In addition to standing up this law, which has been a lot of effort, we also have to deal with the business of keeping the Federal highway system up and running.

I want to highlight for the committee that on Sunday, when the calls started coming in, we had dozens of Federal Highway staff here in D.C. and Pennsylvania just on calls all day long and I just want to thank them for their efforts. I showed up in Philly on Sunday, met with PennDOT. Secretary Carroll has been doing an amazing job of marshaling the people there. They have all the experts they need.

We are acutely aware of the impacts that this closure is having not just on the city of Philadelphia or the State of Pennsylvania but the region and the Nation. Secretary Buttigieg went to visit yesterday and got a briefing. The President has asked for daily briefings on this project.

Every lever that we can pull is being pulled. We released "quick release" funds last night for \$3 million for the State of Pennsylvania and the bulk of these costs will be covered by the ER program.'

Senator CARPER. All right, thank you. Just as a followup, are there any initial takeaways that we can learn from this disaster that might help prevent similar disasters in the future?

Mr. BHATT. Senator, I think you are keenly aware of this, and members of the committee, just how critical our transportation system is. I think sometimes we take it for granted that it just operates and then when something like this happens, it becomes very apparent why these investments are so important, why this infrastructure is so important.

I would say, I think it will be important to wait for the NTSB investigation into the cause, and learn any lessons that we can. I feel, having been in a lot of those meetings over the weekend and into yesterday that truly, when you just have all of these engineers trying to solve a problem and you have all the experts in the room, there is just an amazing energy and unified focus. You would not be able to tell who were Democrats and who were Republicans in the room there. I think that is emblematic of infrastructure solutions.

Senator CARPER. That is great. Thank you.

My second question, then I will yield to Senator Capito, deals with the VMT pilot, vehicle miles traveled pilot. For more than a decade, Federal fuel tax revenues have not kept up, as you know, with transportation investment needs. A dozen States have used Federal funds to study vehicle miles traveled fees. Those pilots are showing some success, as you know.

The Bipartisan Infrastructure Law directs USDOT to create an advisory board on funding alternatives and to undertake a national study of vehicle miles traveled (VMT) fees. The goal of that work is to produce meaningful data that would provide timely input for the next reauthorization bill. Given that deadline it is essential that the work begin, and begin quickly.

Unfortunately, neither the advisory board nor the national study have been established yet. My question is, what is the timeline for the Federal Highway Administration setting up the advisory board and getting the national study underway?

Mr. BHATT. Thank you, Senator. I am aware of your interest in this particular program dating back to when I was the Secretary in Delaware, and was part of the Mileage Based User Fee Alliance.

Senator CARPER. I am not a Johnny-come-lately on this issue.

Mr. BHATT. Yes and in Colorado, when I was Vice Chair of the Western Road Usage Charge Consortium. We are going to work expeditiously to get the advisory committee set up and will make sure that we get this important data for the committee as we look to reauthorize the program.

Senator CARPER. Great. Thank you. That is good to hear, music to my ears. Thanks so much. Senator Capito.

Senator CAPITO. Thank you. In my opening statement I talked about the debate that we had over the Greenhouse Gas Emissions Performance measure and targets that we have rejected it here in the Congress, and you are pursuing a measure that would achieve this through rulemaking.

What is your response to what I said in my opening statement? What authority do you have to be moving in this direction, do you believe you have?

Mr. BHATT. Thank you, Ranking Member Capito. Before I address that question, I would also like to echo your comments about Lauren. We will miss her grace and professional knowledge.

My reaction to your comments is, I hear you, and I heard you during my confirmation hearing about your concerns about the GHG piece. From the authority perspective, obviously we have lawyers at Federal Highways who will examine that, lawyers at USDOT.

I believe MAP-21 did provide authority to measure the performance of the transportation system. I think we are in an open rulemaking right now; we have received 40,000 comments from folks. Before we move forward in that rulemaking, we would want to understand all those public comments.

Senator CAPITO. I probably need a little more clarity on what authority. We will follow back up with you on that.

Let's go to the FMIS and Delphi discrepancy that is definitely in the weeds but very impactful for many States, including the smaller States. We had asked about this, how are you going to address

this. The quote that came back was, "Once the task force has completed its review, USDOT and FHWA will determine the type of adjustment required and the applicable authority." Seems like we need the authority before we can make the decision.

Where are you on this issue and where is the task force work?

Mr. BHATT. Thank you, Senator, thank you, Ranking Member. Specifically on the FMIS-Delphi issue, as soon as I became aware of that, we have been in close contact with the States. We did establish a task force. I think they are diligently working through all of the potential impacts here.

When you have an issue of a \$3.5 billion discrepancy, we want to make sure that we have looked at every angle here. I am hopeful that we will be able to provide you a little bit more detail soon. My update here would be that we are working toward getting a resolution as quickly as we can.

Senator CAPITO. Okay. Would that be by the end of summer or end of the year?

Mr. BHATT. I would say as quickly as possible, definitely this year. Some of this involves other coordination, but we will continue to be in close contact.

Senator CAPITO. Okay. It looks like I am over my time by 3 minutes, but I do not feel like I have been that long.

[Laughter.]

Senator CAPITO. I am going to ask one more question.

Mr. BHATT. It feels long to me, but that is Okay.

[Laughter.]

Senator CAPITO.

[Presiding.] Okay, that is pretty good. In January, NTSB Chair Homendy raised concerns about the safety impacts of electric vehicles on our roadways. Looking into this, the realization that these vehicles weigh a heck of a lot more than gasoline vehicles do. We reached out to FHWA to ask how you are planning to look at this from the future safety of our roadways. I am sure it is going to have impacts on not just the bridge safety, guardrails, and also impacts.

Our response from them, from you, was that while FHWA does not currently have any research planned on how the weight and weight distribution of EVs may impact guardrails, bridge safety, and the longevity of the highway, safety is No. 1 priority, we know that, safety is No. 1, why does the agency not have planned research in this area as we are being pushed in this area to move toward the EVs?

Mr. BHATT. Thank you, Ranking Member, for that question. I will double check where we are in terms of research. Size and weight is something that we take a look at, particularly with regard to bridges and the performance of guardrail is obviously something that we would want to understand the impacts.

Just as a personal example, I have a minivan that has an electric battery. I would want to again verify, but I feel like it is in the same weight range. Particularly as freight some of these Class 8 haulers become electrified, that is something.

I will be happy to come back for you and get you some specifics around our research.

Senator CAPITO. Thank you. This issue was raised by our State DOT, that they are concerned about what kind of impacts this could have on highway safety. We will followup with that. Thank you.

Senator CARDIN. Administrator Bhatt, first off, welcome. It is nice to have you here. This past week, the Maryland Federal congressional Delegation had our annual meeting with Governor Moore. He was here with his cabinet, with Secretary Wiedefeld. They were very optimistic and very thankful for the support they have gotten from the Federal Government in the new programs.

The Governor specifically mentioned the concerns of communities that have been adversely impacted from transportation programs in the use of our funds. In order to deal with that we had our Re-connecting Communities that is being implemented.

He also indicated that as we build new transportation programs, we need to be more sensitive to community needs. Part of the Infrastructure Bill was a significant increase in the Transportation Alternative Program, 10 percent of the formula funding. Can you share with us how you are administering that program to make sure the intent of Congress to help communities deal with transportation challenges under the Transportation Alternative Program is being implemented?

Mr. BHATT. Thank you, Senator Cardin. We have heard from communities across the Nation, including in Maryland, how excited they are about the opportunity to transform their communities. I will give you one very specific example. When it comes to Complete Streets, which are an important part of active transportation and transportation alternatives, as an example, we have waived the local match on planning requirements around Complete Streets for communities who want to be able to access these funds but may not have the local match or the planning expertise in-house. That is one example.

I think Transportation Alternatives is a very important program, one that I have deployed in Delaware and Colorado and am happy to provide further details to your office.

Senator CARDIN. Thank you. One of the areas we are looking at is how we can deal with traffic safety, including the use of Transportation Alternative Program funding. I have introduced legislation, working legislation, that would honor Sarah Langencamp, who was a distinguished Foreign Service officer and a constituent who was killed while riding her bike in Bethesda. The legislation is being authored to allow a more liberal use of our funds for highway and traffic safety, including the TAP program.

We see the increased numbers of safety episodes, injuries and deaths on our highways. Tell me the urgency of your efforts to deal with traffic safety?

Mr. BHATT. Sir, I remember when I became the Director of the Colorado DOT, we had 484 fatalities. When I left 3 years later, we were over 714, a 10 percent increase year over year, the vast majority among vulnerable road users. For me as the steward of the Federal Highway Administration and our role there, I take every one of those fatalities incredibly seriously.

We want to make sure that safety is out there and available for people who want to take alternatives like biking, like walking. It is an imperative for me as the Federal Highway Administrator.

Senator CARDIN. One of the challenges we have in multi-modalism, which is a way in which we can really improve safety as well as convenience and more efficient highway and transportation system, is to encourage more multi-modalism. We have that in our State. The challenges I that we have stovepipe funding in many cases, so it is hard to coordinate a multi-modal forum.

Tell me the efforts you are making in order to encourage that type of transportation cooperation which is in the best interest of our communities.

Mr. BHATT. Senator, thank you for that question. I think this is a primary focus for Secretary Buttigieg at USDOT, bringing an all-of-DOT approach. We want to make sure that as communities are reaching out, whether it is Federal Highway funds or FTA funds or rail funds, as an example with Reconnecting Communities, that we are looking at it through a multi-modal lens so that the solutions that come out are the best ones for those communities and not a federally prescribed approach.

Senator CARDIN.

[Presiding.] Thank you, Senator Cramer.

Senator CRAMER. Thank you, Senator Cardin, and thank you, Senator Capito, for this very good and important hearing.

Mr. Administrator, thanks for being here. I am going to drill down a little more, I am going to go back to Senator Capito's concerns about the proposed rule. Not only the lack of authority, I believe there is a lack of authority even to do it, but also in the practicality of it.

First, on the authority side before I get to why it is not going to work in North Dakota or other places that are not going to require commuter buses or subways. In the Inflation Reduction Act, it dedicated \$27 billion for a Green Bank, something that the EPA withdrew almost immediately after getting the authority to do it. They created instead this sort of group slush fund for grants.

Now, there is nothing new in the law that expressly prohibits such a thing, and this has been the tradition of decades of administrations, Republican and Democrat alike, to take the absence of a prohibition in a law that authorizes certain things as a license to do whatever is not prohibited.

I want to speak to two really big recent Supreme Court cases that are using the major questions doctrine, stating emphatically that agencies do not have authority that is not given them in law. That, of course, the first one being *West Virginia v. EPA*, and the other one being the WOTUS Rule. Now they are going to take up maybe a Chevron issue. We will see how that turns out. I think it is becoming increasingly clear that the bureaucracy is not a fourth branch of government, or policymakers.

First of all, what is your sense of the actual authority to do these things? Second, again I want to stress that it is impractical in places, rural places, especially, we just are not going to build subways in North Dakota to get people to their farm. I would hope, if this is going to proceed, I would rather have you withdraw, like you wisely did with the previous memorandum, but short of that,

I hope there is consideration for the uniqueness or the different qualities of different places across our very diverse Country.

Mr. BHATT. Senator, I thank you for that question and statement. I would frame this, you had a two-part piece there. On the legal authority, I am not a lawyer, but I start virtually all my meetings within Federal Highways as, we will follow the law. We have lawyers on staff. I take that very seriously.

I do not want to opine as a lawyer. I will follow the direction that our lawyers give us on following the law very clearly.

I hear you on the impacts particularly for rural States and others around this piece, not likely to build a subway around Devil's Lake. I would simply say here on this piece that this Bipartisan Infrastructure Law did have a climate change title in it. From a performance management perspective, when I was in Delaware, it was hard to get folks to talk about performance management, bridge conditions, pavement conditions.

I think what we are trying to look at here is not sort of penalizing States for their greenhouse gas emissions, but just get them to begin tracking greenhouse gas emissions. If 30 percent of our GHG is coming from the transportation sector, this is the piece of it. Maybe it is not a subway, but maybe it is alternative fuels, other things, electric vehicles, other ways to drive that down.

I know it has become a very political hot button issue here, but as with most of my efforts, I try to focus on the, here is what we are trying to get to, and we will follow the law, but not to be punitive but more from a tracking perspective.

Senator CRAMER. I appreciate that, but I also, on this particular topic, for example, while here is a title that relates to the basic issue, we discussed this specific issue and decided not to do it. In other words, there is not a lot of ambiguity about the intent of the Congress in this legislation.

Again, your lawyers will duke that out or they will find some way around it eventually. Short of the Supreme Court weighing in specifically on a lawsuit down the road, this is so far not a rule, so we do not want to get too far ahead of ourselves.

I think we have to consider that if we are going to be this sort of general with our authorities at the administrative level, the next administration might be of a different persuasion and take that slush fund at the EPA and say, hey, let's build a wall with solar panels at the southern border. It seems extreme, and it probably is. There is a lot of less extreme examples that I could probably come up with that I think Democrats would find objectionable for good reason.

With that, I appreciate your hanging in there with the law. I always dismiss the lawyers after I get their advice before I make big decisions. Thank you.

Senator CAPITO.

[Presiding.] Senator Whitehouse?

Senator WHITEHOUSE. Thank you very much. Thank you, Mr. Bhatt, for being here.

I would offer a different view than my distinguished Republican friends. I think that if Congress specifically authorizes you to do something, then that is good and you have a clear direction from Congress. If Congress fails to specifically authorize you to do some-

thing, then what you referred to as your innate executive authorities, and if Congress wishes, it could forbid you to pursue those inherent executive administrative authorities which they have done with things like Republican-driven efforts to prevent the IRS from policing political dark money.

There are examples of doing that. I do not think it is correct to say that when Congress considers a specific authorization and then does not pass it, that failure is a lawful restriction on your ability to do what you need to do using your innate administrative powers.

As a State which has a coastline, which we believe is going to intrude quite far on our current seaside and bayside boundaries, predictably in the years ahead, we are looking at very significant changes to the actual map of Rhode Island. Dealing with climate change responsibly is a deadly serious matter for my State. I would strongly encourage you to pursue your greenhouse gas performance measures to the full extent of your executive authorities. It matters to States like mine that you get this right.

Whatever pressure there is to the contrary, please remember those of us who are highly vulnerable to the effects of climate change, to the ocean acidification, the ocean warming, to the sea level rise, to the coastal erosion, to the air quality effects, all of that. I offer that as a contrary view to what Congress intended by not specifically authorizing you.

The Bridge Investment Program, is that going to get another round of funding? Are you going to have another round of applications?

Mr. BHATT. Thank you, Senator. Yes, bridge investment, there will be another round that comes out, I believe, this summer.

Senator WHITEHOUSE. What is the timing for that more specifically, if you know?

Mr. BHATT. More specifically, other than this summer?

Senator WHITEHOUSE. Yes. Do you have a date or a month?

Mr. BHATT. July or August.

Senator WHITEHOUSE. Some time in July or August?

Mr. BHATT. Yes.

Senator WHITEHOUSE. Okay, so you will be accepting applications during that period for that second round?

Mr. BHATT. Yes, sir.

Senator WHITEHOUSE. Okay, good to know. Thank you for that.

I think that is all I have. Let me recognize Cory Baba from Newport, who is with us. Good to have a Rhode Islander in the house. I look forward to working with you, to support you in every way possible on the emissions dangers and having proper information in order to assess and address those dangers appropriately. There are many, many, many Americans who are counting on you to make the right decision, not the one that the fossil fuel industry wants. Thank you.

Senator CAPITO. Senator Merkley. We are waiting for Senator Ricketts, but we will go with Senator Merkley. There is so much going on, so we are going to have a lot of in and out here.

Senator MERKLEY. Thank you very much. I appreciate your testimony and your work.

A couple of questions. I want to start with the issue that has been brought up in my State. Oregon is in the Cascadia subduction

zone. There is a lot of preparation for essential infrastructure to survive the big one, if you will. We have been told by the Department of Transportation that they do not consider the need for seismic resiliency as relevant to a number of their grant pool applications.

That certainly is a concern. We are working to rebuild one of our bridges to make sure that there is at least one bridge that survives.

Can you speak a little bit to why seismic resiliency is not considered a factor for you all in a number of these grant programs?

Mr. BHATT. Thank you, Senator, and am always made aware when I travel to the west coast and in these seismic zones the difference in bridge piers, and the size of those piers as compared to non-seismic activity.

I would want to double check on that. I know that the Golden Gate large bridge investment that was made for \$400 million was a seismic retrofit for the Golden Gate Bridge. That was a critical piece of that funding. I would want to double check where we stood on that.

Senator MERKLEY. Okay. I would love to followup with you in regard to the specific project and the concern that is relevant to the multi-modal project discretionary grants, the bridge investment program, and the RAISE grant program. A bridge may be functional now, but if we do not have any bridges that survive a quake, then addressing the emergency at that time is a real challenge, and thus trying to responsibly reinforce key infrastructure.

I want to turn next to a project that really began with Lamar Alexander of Tennessee, who served here previously. They developed a program in his home State where along the highways they did pollinator plots and had different clubs maintaining different pollinator plots. Our highways create an enormous opportunity to address the pollinator Armageddon. We have lost massive numbers of butterflies and bees along our highways.

One of the species that catches the public attention is the Western Monarch. The Western Monarch went from a high of about 10 million 40 years ago down to as low as 2,000 butterflies two winters ago. It has had a couple good years, then we had the huge storms over the winter in Southern California back this late winter, early spring this year. Another huge hit.

That pollinator butterfly travels four generations to go north, one generation to go back south to California. Nobody sees Monarchs in Oregon anymore. They think they see them, and they are actually seeing the yellowtail butterfly. It is not orange, but it is yellow, so hey, close enough, maybe I saw a Monarch.

[Laughter.]

Senator MERKLEY. The bigger issue is that we could really have clubs sponsor plots of land along our north-south corridors, just as Tennessee did along their highways. We got this bill, the Pollinator-Friendly Practices on Roadsides and Highways Act into the Bipartisan Infrastructure Law. You all have not stood it up yet.

It is really an opportunity for folks to directly participate in establishing plots along these major corridors that would assist with all kinds of species. I mentioned the Monarchs, and people think milkweed. Yes, milkweed is essential for the female butterflies to

lay their eggs, but the adult butterflies need the pollinator flowers, just like other pollinators do. It would help whole lot.

Are you familiar with this program? Can you tell me how the stand-up is going?

Mr. BHATT. Thank you, Senator. I remember when I was the Secretary in Delaware, we had a bee truck overturn on I-95. Millions of bees, and just trying to make sure that we were able to get that to a successful ending, because of the importance of pollinators.

I would want to double check and come back to you exactly where we are in standing up that program. I hear you on the importance of ensuring that from an agriculture perspective and just from our national environment, those pollinators are critical.

Senator MERKLEY. You can imagine hundreds of clubs saying, just like they adopt a mile of highway now to keep it clean, saying yes, we want to go seed pollinator nectar-producing flowers and milkweed and contribute to a major opportunity to use the sides of our highways that are otherwise just not contributing much, but there is a perfect possible connection.

Finally, I want to encourage the work to roll out the EV charging stations. I think the model for this program is that it has to be as easy to charge up as it is to fuel up. If you have driven an electric vehicle any distance, you are probably aware that is often not the case because of the great complexity of the different charging technologies that are out there by different companies. I really pushed the Department of Transportation to have a national standard, so it is as simple to charge up as it is to fuel up.

How do you see that program going?

Mr. BHATT. Thank you, Senator. Obviously, the President has set a goal of 500,000 chargers. I agree with you, if we are going to be successful with the EV rollout for the American public that they do need to be able to charge as easily as they are able to fill up.

I think I would give the committee credit for the investments that are being made through the Bipartisan Infrastructure Law. We are actually seeing the market moving now with the big announcement between Tesla, Ford, GM, and lots of other companies now looking to move that standard. I think that is a very positive outcome and hopefully one where we will continue to see consolidation.

Senator MERKLEY. Thank you very much. Thanks, Mr. Chairman.

Senator CARPER.

[Presiding.] Before I turn to Senator Ricketts, I apologize for being out of the room. We have hearings going on in other committees. In the Homeland Security Committee on which I serve they are actually business and votes. They need to drag me in there every now and then. I apologize for leaving.

While I was out of the room there was some discussion, and I just want to make a comment if I can. In my absence, I would have said something else if I had been here.

There was a fair amount of discussion on the greenhouse gas performance measure and the fact that the Bipartisan Infrastructure Law did not amend the performance measure section of the law in order to require a greenhouse gas measure. I would note that my own recollection is that our committee actually did consider a pro-

vision that would require a stringent greenhouse gas performance measure while also exempting half the States in the Nation from that measure.

We declined to include that language in favor of retaining the existing authority to set performance measures for environmental sustainability which include greenhouse gas emissions. That authority was created by Moving Ahead for Progress in the 21st Century Act (MAP-21) in 2012. I am glad that the Federal Highway Administration is still using that authority. Thank you.

All right, let me yield now to Senator Ricketts for his questions. Go ahead, Senator Ricketts. Thanks for joining us.

Senator RICKETTS. Thank you, Chairman Carper, Ranking Member Capito.

Senator CARPER. Thank you for being such a faithful attendee.

Senator RICKETTS. No problem. My pleasure. I told you I love this committee.

Senator CARPER. We do, too.

[Laughter.]

Senator RICKETTS. My first question, Administrator Bhatt, first of all, I do want to thank your team for the relationship with the Nebraska Department of Transportation. Prior to me, I was Governor, got sworn in in 2015, and prior to that, I think it was a pretty poor relationship between our Department of Transportation and the Federal Highway Administration.

Your team has really helped repair that, and I know that my first director, Kyle Schneweis, through John Selmer, now Vicki Kramer, appreciate the working relationship. Thank you very much for continuing to build upon that relationship. It is very important that we continue to work very closely between the Federal Highway Administration and the State departments of transportation. I really appreciate that.

I also reiterate what Senator Capito said about making sure that our agencies take legislation that we pass and faithfully execute that legislation in the way that Congress intended it to be implemented.

With that, I would like to jump into the Infrastructure and Jobs Act and talk a little bit about the August redistribution. I believe for Fiscal Year 2022 the August redistribution jumped up to \$6.2 billion. I think with the Infrastructure Investment and Jobs Act we can expect to see that August redistribution continue to climb.

However, as you know, there is a very limited amount of time then with which departments of transportation, specifically the Nebraska Department of Transportation in my case, can take that, get that money back and redeploy it efficiently and effectively. As that number becomes larger, that is going to become an increasing challenge. We want to make sure obviously those dollars are spent effectively.

What do you see with regard to that August redistribution? How can we make that process one where State departments of transportation will be able to have access to that money and be able to use it in a way that it is not going to be inefficient?

Mr. BHATT. Thank you, Senator, and yes, your first director that worked for you had a much more challenging last name than mine to pronounce.

[Laughter.]

Senator RICKETTS. And spell, too.

Mr. BHATT. Kyle is a great friend and grateful that we are rebuilding that relationship in Nebraska.

You raised a very important issue, Senator, the August redistribution. In addition to the FMIS Delphi issue, when I came in in January, one of the first things we did was sit down with AASHTO at the TRB meeting in January to say, listen, we were at \$6.2 billion last year, we are going to be higher. We generally notify States in July of the impending August redistribution numbers. We have been in close contact with the States since basically March saying, this is coming, please get ready, what can we do to help you, what flexibilities can we get through?

Our goal is, and I know the AASHTO goal and even within communities within those States is to make sure that all that ObLim does get used. That is one of our very primary focuses the next few weeks.

Senator RICKETTS. Are there additional flexibilities or specific flexibilities that you have in mind to be able to give State DOTs so that they can again employ these dollars? Essentially, does it get bigger, in a more effective way?

Mr. BHATT. Senator, thank you for that. Yes, what I say, and this is always very important for me, I say we have to follow the law, let us follow the law, absolutely follow the law, but for each of our division administrators, when you are working with all of those States, whether it is West Virginia, Delaware, Nebraska, if the State has a creative idea that says, hey, we might be able to apply some of this ObLim on a project here, and they have contract authority, we want to work. Then going forward, I think this is something that because of the size of the Bipartisan Infrastructure Law if the August redistribution is going to be at this level, it might be something we might want to look at for a legislative fix going forward.

Senator RICKETTS. Okay, fair enough, thank you.

Also in relation to the IIJA, you have these discretionary grants. One of the things I am hearing from folks in my home State is about the process, especially if you think about some of the smaller localities that may not be able to apply for some of these grants, the challenge of getting through the application process, what sort of resources do you have or do you think you can do for some of these localities to make it easier specifically navigating like the BIL launchpad for example. I have heard of some challenges with that. Again, especially for smaller communities.

What can you do to provide extra resources or make the process easier for those communities to be able to apply for these discretionary grants?

Mr. BHATT. Thank you, Senator. You know, I think what we want to make sure is that for all of these communities, whether they are large State DOTs or cities or smaller communities, we want to get them an award and then also get them across the finish line with a successful project. We have LTAB, Local Technical Assistance Program, Tribal Technical Assistance Program. We have set up websites. The Secretary's office is very engaged.

If there are specific communities you would like us to reach out to, we would be happy to do that.

Senator RICKETTS. Great. Thank you very much. I appreciate that offer.

With that, Mr. Chairman, I will turn the time back over to you.

Senator CARPER. Thanks so much.

Senator Markey has arrived. Senator Markey, you are recognized.

Senator MARKEY. Thank you so much, Mr. Chairman.

Ambassador Bhatt, it is good to see you again. I want to come back to our favorite subject, the Cape Cod bridges, and the need to ensure that now that they are 9 months older than the last time you testified, that they are in even more desperate need of replacement. If a severe storm were to strike Cape Code, I am extremely worried that the bridges will become a bottleneck for residents and visitors seeking to evacuate, creating a very severe safety risk.

Can you reaffirm your commitment to working with me to replace the Cape Cod bridges?

Mr. BHATT. Thank you, Senator. Just as in my confirmation hearing, now I know them as the Bourne and Sagamore bridges, not just the Cape Cod bridges. After Brent Spence, these are probably the bridge projects that I have heard quite a bit about, and absolutely, this is a priority focus for our Administration. I am happy to continue to work with you on it.

Senator MARKEY. It is just so important. It is the only Way off Cape Cod. When that storm comes, and it is coming, evacuation will be catastrophic for those bridges out there.

The highways and roads of the past splintered and displaced communities. As we drive into our clean energy future, we can't greenlight more inequality. We have to put those injustices in the rearview mirror. In cities like Philadelphia, Chicago, and New York, the majority white census tracts are more likely to have electric vehicle charging stations.

We are reckoning with that in Massachusetts and Boston. Most EV charging infrastructure is located in the seaport, Fenway, Beacon Hill, but neighborhoods like Roxbury, Dorchester, and Charlestown have limited to no options. That is why last Congress I introduced the Community Vehicle Charging Act, which would invest in EV charging infrastructure in environmental justice communities. Intentional and equitable deployment of electric vehicle charging must be a priority in the Bipartisan Infrastructure Law implementation. One way that Boston is increasing access is by deploying chargers in city-owned parking lots in low-income and Black and Brown communities.

Administrator Bhatt, how does the charging and fueling infrastructure discretionary community charging program help cities and States to tackle this conundrum, making sure that the charging stations are in those inner-city communities?

Mr. BHATT. Thank you, Senator Markey. The significant investments in electric vehicles that this committee put forward in the Bipartisan Infrastructure Law, we are working with States on their (National Electric Vehicle Infrastructure) NEVI programs and ensuring that they are adhering to the standards that we have put in place.

Charging and Fueling Infrastructure (CFI) actually just closed the discretionary grant program on June 13th. We are anticipating opening all of those applications. That is a critical lens for us to make sure that we not only have the interstates covered, but also all of our communities, and the very communities that you mentioned in your comments.

Senator MARKEY. Great. Thank you so much. It is very, very important.

Do you think mobile charging has a role to play in the charging and fuel infrastructure program as well, particularly to provide resilience to charging systems in case of emergency?

Mr. BHATT. Thank you, Senator. Yes, I think that this is a very exciting time in this nascent industry. It is one that I think the President is very clear he wants America to lead in. We are going to look at an all-of-the-above approach to make sure this transition is successful.

Senator MARKEY. Yes, and technical assistance is going to be very important for front-line communities to be able to apply for the Bipartisan Infrastructure Bill programs and for the Inflation Reduction Act programs. Is the Federal Highway Administration supporting communities so that they can make the most of these funding opportunities in front-line communities?

Mr. BHATT. Thank you, Senator. Yes. I think what is both a blessing and a new burden is the fact that while we have traditionally worked with State DOTs to administer this program, there are many, many direct recipients. Again, as I said before, we want to make them successful in getting an award and also cutting a ribbon on that project.

Senator MARKEY. Thank you. Finally, I was proud to secure \$45 million in the 2023 Omnibus for my Active Transportation Infrastructure Investment program, which promotes walking and biking infrastructure and supports active transportation networks that allow people to safely travel without a car, and those active transportation networks reduce transportation emissions, increase mobility. Now that the program is officially funded, the Federal Highway Administration needs to deploy those funds as quickly as possible.

Can you commit to swiftly implementing my Active Transportation Infrastructure Investment program?

Mr. BHATT. Yes, Senator. I think everyone within Federal Highways knows that I am a huge supporter of active transportation.

Senator MARKEY. Thank you. Senator Sullivan and I, we partnered on that. It is just amazing how much Alaska and Greater Boston have in common.

[Laughter.]

Senator MARKEY. In that partnership we can just see a future that works for everyone. Thank you.

Senator CARPER. You see, Shailen, Markey and Sullivan, Massachusetts and Alaska, it is a marriage made in heaven.

[Laughter.]

Senator CARPER. Senator Sullivan, you are on.

Senator SULLIVAN. Mr. Chairman, I am over here kind of cracking up, because Senator Markey was mentioning his bill. I was just

going to say it is really our bill. He is the lead, but I think I was your lead Republican cosponsor on that.

Senator MARKEY. I saved that, I thought I did a good job of digging out of the hole I was in. No?

[Laughter.]

Senator SULLIVAN. Thank you. Administrator, you are seeing some very important bipartisanship here. I do want you to spend all that \$45 million from our bill, particularly there is a project outside of Anchorage called Moose Loop. If you can take a hard look at Moose Loop, this has a great potential. It is right up the alley of what Senator Markey was talking about.

That is my first issue I wanted to raise with you. Have you heard of Moose Loop yet?

Mr. BHATT. I have now, sir.

Senator SULLIVAN. Okay, now you have.

Senator MARKEY. In the Boston public guidance, we have "make way for the ducklings." Not moose, but—

[Laughter.]

Senator SULLIVAN. It is the same concept. These may be a little bit bigger animals.

Thank you, Senator Markey. In all seriousness, it was great legislation. I was very honored to cosponsor it. I think it is going to benefit a lot of people across the Country. We will send you information on Moose Loop.

Let me get back to another issue that relates to Alaska, Administrator. We still have to get you up there, right?

Mr. BHATT. It is on my list, probably more summer than winter, but we will do Moose Loop together.

Senator SULLIVAN. We can do that, for sure. That is a good idea.

I want to talk about another part of the Infrastructure Bill, I did vote for the Infrastructure Bill, which is the PROTECT program. That is about resiliency. Alaska has more coastline than the rest of the lower 48 States combined. When you talk about resiliency for coastal America, we are over 50 percent of it for the whole Country.

You might remember, it did not make a lot of press back here, but last fall, the west coast of Alaska was hit by a typhoon, Typhoon Merbok, a very big storm that did a lot of damage. Our State DOT has been working with FEMA and your agency on faster ways to complete the repairs to the damaged infrastructure that took place after this typhoon.

I am wondering, what are you doing to implement the PROTECT program particularly in the coastal communities in America, but in my State, given like I said that we constitute over 50 percent of all the coastline in America?

Mr. BHATT. Thank you, Senator Sullivan. I think whether it is a typhoon hitting Alaska or flooding in Kentucky and West Virginia, there is just no shortage of weather events that are testing the resiliency of our system. I remember being in Juneau a couple of years ago for the WASHTO events and hearing about some of the impacts of sea level rise and climate change there.

I was just recently at the Western Association of State Highway and Transportation Official (WASHTO) event and met with the Alaska director of DOT, talking about the very unique coastal aspects and needs.

Senator SULLIVAN. Good.

Mr. BHATT. Specifically, with PROTECT, we have distributed the funds to the States through the formula program and have also launched the discretionary programs. I am happy to visit with you if there are any discretionary opportunities. I share your concern and the importance for that program.

Senator SULLIVAN. Okay, good. Let me mention another topic that I know you and I have talked a lot about. Senator Capito has been leading the charge on it here in the Senate. That of course is the ever-endless goal of so many of us, including a lot of my Democratic colleagues on permitting reform. We have a system that is just dysfunctional, that it takes forever to get projects, whether roads or ports or bridges or mines, or energy projects off the ground. It hurts the Country, hurts workers and it is self-inflicted.

The Infrastructure Bill has some decent permitting reforms we negotiated here actually in this committee. Not enough in my view. Then so did the debt ceiling agreement. I have two parts to my question.

One is, what are you doing to implement those? Very bipartisan, we want to keep them going. Certain groups in America do not like it, but they are definitely in the minority.

Second, with regard to permitting, one of the most egregious things that I have seen that really, really kind of is starting to put us in the world of Venezuela and banana republics is, and I have seen it a lot in this Administration, particularly as it relates to Alaska, we had a number of projects that went through final EISs six, 7 years, millions of dollars. Got record of decisions from the previous administration, professional, Federal employees doing that.

This Administration, the Biden Administration, has come back and is looking at all these records of decision on infrastructure, on roads, in Alaska saying, you know, you did not consult enough. We are going to reverse that. Literally opening up records of decisions that are 4 years old. I mean, this is just nuts.

Any views on both of these issues relating to permitting in general? Then reopening records of decision that are 4 years old. I mean, that is not the rule of law. It is not America, but the Biden Administration is doing a lot to my State, and it is outrageous.

Mr. BHATT. Thank you, Senator, for the question. I would say on the first part, having been a State DOT secretary in two States, I have anxiously awaited a record of decision or a finding of no significant impacts. As a project delivery person, coming from the private sector, before I took this job, I am always resolutely focused on the critical path, how can we deliver these projects on time and on budget.

From a Federal Highways perspective, recognizing that we are not a permitting agency, we are the ones who are actually going to our sister agencies who do issue the permits. However, we do have great relationships with Army Corps, Fish and Wildlife. I think we are trying to leverage those relationships to try to get the important reforms put in place.

In terms of opening records of decision, I would love to visit with you offline about that. As I say, we want to follow the law, and that is my commitment, that we will do that.

Senator SULLIVAN. Thank you. Thank you, Mr. Chairman.

Senator CARPER. Thank you, Senator Sullivan.

Senator Fetterman, you are next. You are recognized, please proceed. Welcome. Thanks for coming.

Senator FETTERMAN. Thank you, Mr. Chairman.

Senator CARPER. We had earlier today some comments about the tragic accident on I-95. If you want to make any comments with respect to that, feel free. You are recognized.

Senator FETTERMAN. The I-95, obviously you are pretty much preoccupied with I-95. I certainly am too. We know it is a major artery, not just for Pennsylvania, but for the east coast. A lot of Pennsylvanians are worried that delays in repairs will bring it to a standstill.

I am glad to see last night you were so quick to get \$3 million to the emergency relief, the funds got out so quickly. Just personally, it seemed \$3 million was not enough. It seems like it is going to be a lot more expensive than that. I get the sense, President Biden, I was standing next to a collapsed bridge in western Pennsylvania, and things moved on very quickly and got it down. I am confident that the same is going to happen in east Pennsylvania as well.

Right now, you have an incredible asset in Southeastern Pennsylvania Transportation Authority (SEPTA), that is the regional rail and subway lines that I think could be a game changer. SEPTA still needs support to expand temporary capacity to ease congestion on the roads.

My question to you, Administrator, could you provide emergency relief on other funds, so that your agency could help SEPTA's temporary operating costs to make transit a viable alternative for local travel? Will you commit to working with the Secretary to get the SEPTA support in the next few weeks?

Mr. BHATT. Thank you, Senator. I know how important this project is. Chairman Carper had reached out to me on Sunday, and I know had connected us. I know you are very engaged on this.

Specifically to the \$3 million on the quick release, all of the costs of this will be borne through the emergency relief program. The \$3 million is sort of a down payment. It is about a 10 percent estimate of what they think they are going to need. If that number goes up, we will provide more funding. That was the reason for the \$3 million.

Specifically on SEPTA, I was with Leslie Richards, who is the general manager of SEPTA, yesterday. Secretary Buttigieg was briefed on that. We again, back to this concept of following the law, Federal Highway ER funds specifically relate to added capacity on SEPTA. We are working to stand that up. Secretary Buttigieg has also asked us to look at what FTA provisions they may have. SEPTA is a critical link here for that corridor.

Senator FETTERMAN. Yes. While I am here, I also want to talk about the Federal Government's dragging its feet in implementing expert advice and making streets safer as well. I reached out twice to express my concerns about the actions your agency should be

taking to make streets safe, and frustration at the delays I have been witnessing with some key guidelines.

When can we expect that these actions will be finalized and will you commit to working with my office to address the concerns that I have raised?

Mr. BHATT. Thank you, Senator. I think Secretary Buttigieg is very clear that safety is our No. 1 priority. As part of the National Roadway Safety Strategy, safe streets, safe design, safer speeds, these are all things that we talk about incessantly within Federal Highways. I can followup with your staff around any concerns you may have raised, so that we can more quickly deploy safety in our system.

Senator FETTERMAN. Thank you. I look forward to your response to my other question. Thank you very much, Administrator.

Mr. BHATT. Thank you, sir.

Senator FETTERMAN. I cede my balance to the chair.

Senator CARPER. The chair is happy to have it.

We will turn to the issue of I-95 a little bit later in the hearing. Thank you, Senator Fetterman.

Senator Lummis, you are next. Following you is Senator Kelly.

Senator LUMMIS. Thank you, Mr. Chairman.

First of all, truck parking. I have a bill with Senator Kelly called the Truck Parking Safety Improvement Act, where we are going to authorize some additional funding to your agency to address the backlog. As we continue to debate that bill, I am interested to hear what work you are doing now on this issue.

Mr. BHATT. Thank you, Senator Lummis. I remember when I was Colorado DOT director, we would get the closure notices for I-80 often. We would start reaching out to our commercial vehicle partners to let them know they did not need to come up, we tried to stop them before they got up and got stacked up too much. This is a critical issue for us.

I would say this is an eligibility that we have extended through our formula funds. There are even discretionary grants that have been awarded that involve truck parking. I know this is something that myself and Secretary Buttigieg are supportive of.

Senator LUMMIS. Thank you. We just had an absolutely outrageous winter in Wyoming this year. Road closures were extremely common. I think they are bound to continue to be, so you know the challenges of that high plains environment.

I want to switch to the Inflation Reduction Act a little bit, a few questions about that. Last year, I had major concerns regarding the program that the IRA created called the Neighborhood Access and Equity Grant program. My concerns there are I do not want it just to be a way to funnel taxpayer dollars to urban areas and neglect rural areas.

Can you give me some assurance that that is not happening? Or do you have some information about how that money is going out? How is it being awarded?

Mr. BHATT. Thank you, Senator Lummis. Obviously for any of the discretionary programs, we will issue a notice of funding opportunity that has great detail and prescribes how we award the funding. I am quite certain we have examples of rural communities that

have received funds. I would be happy to followup with you directly after the hearing.

Senator LUMMIS. Super. I will look forward to that.

I want to touch on some issues that were also discussed by Senator Sullivan. The environmental review system is effectively broken. It really affects highway dollars, because of the massive increase in inflation in the construction industry. It exceeds inflation in other areas of our economy. Delays in construction are hugely costly.

I have introduced a bill, it is called the Interactive Federal Review Act. It is to test interactive cloud-based platforms that are estimated to shorten the time spent reviewing the documents for large projects by as much as half.

Have you had a chance to look at this idea? Do you believe a step like that could help expedite project delivery?

Mr. BHATT. Senator Lummis, thank you for that comment and that work. I was in the private sector before I came to this role. Digital delivery, digital tools for construction and bringing all of that, digital NEPA process I think are something that are very exciting. I am happy to work with your office on that.

Just on the inflation piece, I was in a global transportation role. I would say inflation is a huge issue in America for our transportation projects, but inflation was also an issue in the Middle East around transportation projects, in the U.K., in Asia. There is sort of a global issue with commodities now. I wanted to highlight that, that it is a challenge we are dealing with globally, not just here in the U.S.

Senator LUMMIS. Good point. I want to run another thing by you that also deals with these types of delays. Congress updated the categorical exclusion in the IIJA for projects with limited Federal funding, \$6 million. Now that inflation has made a \$6 million contribution of Federal funds to a project, such a small contribution that you can not effectively use categorical exclusions, I am inclined to want to raise the CatEx amount to like \$12 million, double it, so that it can be meaningfully used instead of being almost irrelevant.

Do you have any comments on that?

Mr. BHATT. Thank you, Senator. I am happy to work with your staff to evaluate what that right number would be. We want to be able to use a CE whenever possible. I think your notes on inflation, I am very focused on project delivery. If we can deliver these projects on time, it is going to help on the inflation issue as well.

Senator LUMMIS. Can I ask one more question about that? In your experience, what advantages does it give a project to qualify for a categorical exclusion?

Mr. BHATT. From my experience, if you can get a CE, then you are not looking at doing the higher levels of environmental review, but that is always correlated with the impacts to a project. If it is a major bridge project that has water impacts and it potentially some travel impacts or other issues, that is where you are going to start to add time in review, because there are just greater impacts for a project.

Senator LUMMIS. The structural integrity of the project has to be evaluated regardless of whether you have a CatEx or not.

Mr. BHATT. Thank you, Senator. Structural design elements would be different than the environmental impacts of a project.

Senator LUMMIS. Thank you very much. Thanks, Mr. Chairman.

Senator CARPER. Senator Lummis, thanks as always for joining us.

Senator Kelly, good morning.

Senator KELLY. Thank you. Good morning, Mr. Chairman. Thank you.

Administrator Bhatt, thanks again for being here. It is great to see you. I want to start by discussing a project to widen InterState 10, which goes through Arizona, goes all the way across the Country, in fact, but the area between Phoenix and Tucson is a problem. Every single day, there is an accident that backs up this stretch of highway for hours.

It is because there are portions of this highway that are just two lanes in each direction. It is a major safety issue.

It is also worth noting that this stretch of roadway that I am talking about is within the Gila River Indian Community. Yet the infrastructure does not currently exist to adequately connect the community to this critical transportation corridor.

Fortunately, the Arizona Department of Transportation, the Gila River Indian Community, the local leaders from throughout Maricopa, Pinal and Pima Counties in the State of Arizona have come together to support a comprehensive plan to add an extra lane to the interState in each direction, and add several critical interchanges to improve connectivity for the Gila River Indian Community.

To date, the State of Arizona and the Maricopa Association of Governments have committed more than \$850 million in State and local transportation funding to complete this project. It is a lot of money. We are hoping to make up the remainder of the funding with either an Infrastructure for Rebuilding America (INFRA) or a Mega grant this year.

Administrator Bhatt, can you provide any indication of when you expect the notice of funding opportunity for the INFRA and Mega grants?

Mr. BHATT. Thank you, Senator Kelly. I am very aware both of the importance of that interState to those communities, Phoenix and Tucson, and also as a vital freight corridor for the United States. I am happy to be in contact with Director Toth as well, if that would be helpful. I will give you specifics, but we have so many of these NOFOs that are coming out, but again, I believe that would be one that would be coming out in the summer time-frame as well.

Senator KELLY. Okay, some time in the summer. Can you get back to us with a specific date, back to my office?

Mr. BHATT. Absolutely, sir.

Senator KELLY. Thank you. As you know, we applied for one of the Mega grants last year for this specific project. We did not receive it. After that decision, I heard concerns from some in Arizona that the project was not selected in favor of some multimodal projects. I know you cannot comment on a specific project. Can you speak more broadly about whether projects to expand interstates,

especially in fast-growing States like Arizona, could be competitive for a future Mega or an INFRA grant award?

Mr. BHATT. Thank you, Senator. I think that what we always want to make sure is that, I think we think that States and locals are the ones who make the best decisions about their transportation needs. We are happy to work with those communities.

On Mega, I think we are probably weeks, not months away on Mega.

Senator KELLY. Is there any reason why adding additional lanes to an interstate would not qualify for a Mega grant?

Mr. BHATT. I know there are some of the carbon reduction program grants that specifically forbid it. There is nothing expressly in the law that would prevent capacity under some of these programs.

Senator KELLY. Okay. Last year, there were nine Mega grants awarded, I think that was the number. None of these projects, we took a look at them closely, none of them appeared to be located on tribal land or meaningfully served tribal communities. Can you speak to the work that Federal Highways is doing to ensure that tribal communities are able to apply for and be competitive for grant funding opportunities like the Mega and INFRA grants?

Mr. BHATT. Thank you, Senator. I worked closely with the Ute Mountain Ute Tribe in Colorado when I was the director there. I am aware of sometimes the unique circumstances. We have a tribal technical assistance program that we work directly with tribes to help them apply and I am happy to connect with your office to provide more details.

Senator KELLY. Helping them apply, does that also help them be competitive?

Mr. BHATT. I believe those two would be synonymous, but I want to just double check.

Senator KELLY. All right, thank you.

Thank you, Mr. Chairman.

Senator CARPER. Thank you, Senator Kelly. Senator Capito?

Senator CAPITO. Yes, thank you.

I wanted to go back to one of the questions that I had asked you about the safety on EVs. We talked about the weight limits, so my crack staff got me this from NTSB head Homendy, who was quoted as saying the Ford's F-150 Lightning EV pickup is 2,000 to 3,000 pounds heavier than the same model's combustion version. The Mustang Mach-E electric SUV and the Volvo EC40EV, she said, are about 33 percent heavier than their gasoline counterparts. This is an issue.

I would just encourage you at the Department, among all your other things, to look as this increases in a number of EVs what it is going to do to our safety impacts on the highway. I think it will have an impact. We know weight has an impact on damages.

I want to ask about Buy America. I am understanding that there are inconsistencies with the implementation of Buy America-Build America provisions that we put into the IIJA. It has kind of got a patchwork of State implementation challenges, causing some confusion.

FHWA will play a major role in the Buy America waiver process. If not handled, this could bring some of our projects to a halt. I am

hearing Buy America on all kinds of different issues, and it goes back to the supply issues that Senator Lummis was talking about.

Can you talk about the waiver process at FHWA and how you are preparing for the influx of requests that are going to be coming in the future as this market tightens?

Mr. BHATT. Thank you, Ranking Member. Yes, your crack staff, I am sure provides you with a lot of information.

I would say very specifically on the Buy America, when I hear the President speak, I think I hear him talking about the transformational aspects of the law and building projects and improving our infrastructure. With equal passion, I hear the President talk about rebuilding the economy and ensuring that these are good-paying American jobs and these products are built here.

As we are rebuilding our industrial capacity around some of these projects that are being reshored now, and we are getting battery plants built here, there is going to be a tension between getting projects built quickly and then getting those projects made with products that are made here in America.

So we are just going to have to find a way to thread this needle of ensuring that we are getting projects done quickly and then finding appropriate waivers to make that happen, but making sure that we are also rebuilding the industrial capacity.

Senator CAPITO. Are you finding any larger influx of requests for waivers?

Mr. BHATT. Ranking Member, I would have to go back and double check, but generally, yes, we are hearing—

Senator CAPITO. Do you have the mechanisms set up to be able to address that growing challenge within the Department?

Mr. BHATT. Every waiver request that would come in, we have a process for evaluating.

Senator CAPITO. You do?

Mr. BHATT. Yes.

Senator CAPITO. Let me ask about One Federal Decision. I have been touting that as a way to streamline and obviously, it was in the debt bill that we just passed for other projects. There is concern, I think.

Has this been implemented enough to really make a difference? Are you seeing more streamlined implementation on these projects? You would know, coming from the State sector, whether it is moving faster. How many projects are on track to achieve that 2-year goal for the EISs? Are you utilizing the provision that requires one environmental document?

Talk about One Federal Decision, your implementation and some of these specifics that I have mentioned.

Mr. BHATT. Thank you, Ranking Member. I would say, as somebody with a project delivery background, I appreciate these efforts to just get greater clarity and accelerate project delivery. I am happy to come back with very specific lists of projects that we are implementing some of these reviews on. I would say that for all of these major projects, these are big forwarding issues, I think this is one of the issues where Mitch Landrieu, who works directly for the President on project delivery, is constantly saying, how can we get these agencies to work together better.

I would say we have great awareness and great cooperation with the resource agencies. Right now it is just a matter of getting through some of the processes so we can get to these decisions more quickly.

Senator CAPITO. Are you seeing the end result here yet of this One Federal Decision?

Mr. BHATT. I would say that I personally can think of examples where we are actively engaging with resource agencies proactively. We are talking about the timelines that have been established. I have been in the role for 6 months, so I do not know if I can say I have a project that went from start to finish in that 2-year timeframe.

Senator CAPITO. Okay, so we need to keep following up on that. Then last, you testified that FHWA is administering nearly 900 awards, and this sort of follows onto that One Federal Decision. I guess we could followup with you and your staff more specifically, how many of those awards actually have project grant agreements in place? Are we getting to the end point here? You have a lot going on. We understand that. Are the awards being made in a timely fashion to satisfy you? We are hearing some blowback on that.

Mr. BHATT. Thank you, Ranking Member. We are working very closely with any of the award recipients to make sure that there is a grant agreement in place, that we are going to get them successfully. Some of these programs have construction timeframes around obligation, or getting money obligated within timeframes. We want to make sure. I am happy to provide you and your staff with any timelines and updates on projects.

Senator CAPITO. Yes, we would like some specific data on that following up on your opening statement. Thank you for being here, and thank you for everything that you are doing. I appreciate it.

Senator CARPER. Thanks, Senator Capito.

I have a couple of questions, then right at the end I am going to return to I-95 and any last thoughts you have, especially in the wake of what I think the Governor of Pennsylvania announced earlier today.

First, a question dealing with EV charging standards. This week, Ford and General Motors announced that they will rely on Tesla's charging technology for their electric vehicles as well. Since those three companies together represent I think about 75 percent of the EV sales in the U.S., this indicates some industry consolidation around the North American charging stations, or NACs.

Federal Highway Administration rules will require companies seeking EV charging grants from the Bipartisan Infrastructure Law to use an alternate standard via a combined charging system, or CCS. How does the existence of multiple industry standards affect the build-out of EV charging infrastructure? What is the FHWA's role in facilitating convergence around a single standard? Sort of a corollary to that is, additionally, if a single charging technology emerges as an industry standard, how will the Federal Highway Administration make sure that it is open, accessible, and reliable for all EVs?

Mr. BHATT. Thank you, Chairman Carper. I think a couple of things. I think that the public should recognize that the coalescing

of Ford, Tesla, and GM, kind of a new big three on EVs, is in no small part due to the investments that have been made in the Bipartisan Infrastructure Law and President Biden's focus on this. It is great to see the private sector coming together and working to get a standard. I think that is part of our challenge as we are rolling out this new program, as we are making live decisions and the world is moving and evolving as we move forward. As somebody who has an electric vehicle that has a CCS charger, I want to make sure I am able to charge it.

I think one of the things that we are reassured by is that there are adapters that are available. If for some reason the industry moves in a certain direction, this is not like a very finite, like you either have to choose one or the other right now. We are excited to see industry coming together and we will work with our public sector partners to make sure we are in concert as much as possible.

Senator CARPER. Good. As an electric vehicle owner, I feel the same sentiment that you have just expressed.

Climate title roll-out, the threat of climate change means we must urgently reduce greenhouse gas emissions. We are trying to do that and just as urgently ensure that our transportation systems are resilient to the inevitable increase in natural disasters that are already being witnessed across the Country.

I strongly supported the inclusion of an historic climate title in the Bipartisan Infrastructure Law, including discretionary grants to build out EV charging in communities and to increase resilience.

I am somewhat concerned that these discretionary grant programs have been slow to be implemented, and that no funds, I am told no funds have been awarded yet. Does Federal Highway Administration have the staff resources it needs to promptly begin awarding grants and meet the urgency of the moment in implementing the climate title?

Mr. BHATT. Thank you, Chairman Carper. One of the things I have been very focused on is turning awards into projects since I have come here. I know that Secretary Buttigieg is also very focused on this. I will just give you one very specific example. On CFI, we had initially had a deadline in May for those communities to submit their applications because we got a lot of requests for more time, because these communities wanted to be successful in applying, we actually extended the deadline to June 13th.

Some of it is us, there are a lot of new programs, Federal Highways—

Senator CARPER. That was yesterday. Just yesterday.

Mr. BHATT. Yes. There is a lot going on. Yes, yesterday was the deadline there but again, I can not stress this enough. I think Federal Highway staff, since this law was enacted, have been working around the clock to get all of these programs stood up. We will continue to work like that but it is a balance of, we want to move swiftly but also thoughtfully to get to successful outcomes.

Senator CARPER. I think you have in part answered this question, but I am going to ask it anyway. How is Federal Highway Administration working with States to ensure that States prioritize investments in EV charging infrastructure?

Mr. BHATT. Thank you, Chairman Carper. Yes, I think we have a robust discussion with our State partners around National Elec-

tric Vehicle Infrastructure (NEVI), approving their plans, looking at some of the exceptions that they have asked for as they look to stand up these alternative fuel corridors. I think just like when the interState system was built, we want to make sure that this EV network is one that Americans can go coast to coast, community to community, without fear of not being able to charge.

Senator CARPER. Good. Bus rapid transit, I remember the first time I heard of this program, I thought, that is a clever idea. I wish I had come up with that. The bus rapid transit systems provide, as you know, fast, and in many cases reliable high quality public transportation routes. They are being adopted, I am happy to see, in cities across the Country and offer a way to connect in part suburbs to job centers, and to expand access to rail networks, among other things.

The Bipartisan Infrastructure Law provides new eligibility for States to use formula dollars to build bus rapid transit systems. I think this may have been raised when I was out of the room attending my other markup and business meeting in my other committee. I missed this, but how is Federal Highway Administration providing information to States about the opportunities to build bus rapid transit systems? A corollary to that, in general, how is Federal Highway Administration coordinating with the Federal Transit Administration to facilitate multi-modal investments?

Mr. BHATT. Thank you, Chairman Carper. When I was Delaware Secretary, we also ran DTC, so I am very familiar with transit operations. I would say that from a Federal Highway perspective, we are constantly making States aware, and I think States are aware of their eligibility for flexing highway dollars for transit. We work very closely, Nuria and I, the FTA Administrator, are often in close communication with the Secretary's office.

I think we are bringing a multimodal approach more so than any other Department of Transportation has had that focus.

Senator CARPER. All right, thank you. We talked earlier about the alarmingly high number of pedestrians who are dying in this Country. I think the fatality level has reached its highest level in decades, maybe 40 years or so. Those fatalities increased during the pandemic, because despite an overall decrease in driving, people just drove less, but we saw and continue to see an increase.

The Bipartisan Infrastructure Law invests, as you know, heavily in safety, particularly for pedestrians, for bicyclists and other vulnerable road users. It also directs USDOT to reconsider some of the manuals and procedures that govern road design.

USDOT has also released its safety strategy that recognizes the danger that high speeds and overbuilt road designs pose to vulnerable road users. How has the USDOT safety strategy informed Federal Highway Administration in the Administration's implementation of the Bipartisan Infrastructure Law? Is Federal Highway Administration reconsidering design guides and procedures to discourage higher speeds?

Mr. BHATT. Thank you, Chairman Carper. I think that Secretary Buttigieg often speaks about his focus on safety. The National Roadway Safety Strategy incorporates safer design, safer speeds into this. I think as the Federal Highway Administrator, what I often tell our folks and our State partners is, we need to differen-

tiate our interState system from where those interstates become arterials and those arterials become city streets.

I spoke at NACTO earlier this year and we really want to partner with communities who want to enact lower speed limits in these cities. I think what we are learning globally is that the cities that get the best outcomes and the safest cities are the ones where people feel safe to walk and bike. We want to make sure that we are not just thinking about moving cars and trucks, but we are creating these places where people feel safe to be active in their transportation.

Senator CARPER. All right, thank you. I have just been handed a notice that if I want to ask questions at the Finance Committee hearing that is going on right now, I need to wrap this up.

Before we do that, the Governor of Pennsylvania, Governor Shapiro, made some announcements this morning that I think are relevant to the discussion we are having today. If you could share with us just briefly what he announced, and your reaction to what he has announced, I would appreciate it.

Mr. BHATT. Thank you, Chairman Carper. Yes, I have been in the hearing so I am not sure specifically what he announced. It was my understanding that he was going to detail the timeline for the expected repair. I think that we were thinking it might be several months. I think PennDOT has come up with an expedited plan. I was part of those discussions yesterday.

I think it is going to be an innovative fix that will get us to a resolution much quicker and restore traffic on I-95, which is crippling that region right now. I am really grateful for the innovation of PennDOT and the cooperation of Philadelphia and our regional partners in the Federal Highway Administration.

Senator CARPER. Great. Any questions that you have not been asked that you would like to be asked?

Mr. BHATT. I have several, sir, but I want you to get to your Finance Committee.

Senator CARPER. My staff will appreciate that.

I just want to say what a joy it has been to sit here today and to hear from you and to hear your responses to questions that have been asked. For the other people in the room who may not know this, I was given the opportunity to suggest folks to the newly elected President a couple of years ago, people to serve in his Administration. Shailen Bhatt was one of the people I was especially pleased to recommend.

Sitting here listening to you today respond to questions in a forthright and frank and knowledgeable way makes me very happy. To your family who are sharing you with all of us across the Country, give your wife and your two girls, tell them that we appreciate their sharing their husband and dad with the rest of us.

Let's see here. Some boilerplate that I have to mention. In closing, I want to thank our witness, Administrator Shailen Bhatt, for his time and testimony today. As we have heard today, the Federal Highway Administration faces no shortage of important work as it continues to implement the critical programs that are authorized and funded by the Bipartisan Infrastructure Law and in part by the Inflation Reduction Act.

We thank you for your willingness to serve, to lead the Federal Highway Administration at this pivotal time for rebuilding America's transportation infrastructure. We ask that you convey to the team that you lead across the Country our thanks, bipartisan thanks for the good work that is being done.

Everything I do, I know I can do better. I think the same is true for Federal Highway Administration. What does it say in the Constitution? In order to form a more perfect union, in the preamble. We are never going to be perfect, but that is our goal, and we will continue to strive to do that. We appreciate the spirit in which you lead this agency. Thank you.

Senators are going to be allowed to submit written questions for the record through the close of business on Wednesday, June 28th. We will compile those questions, that is 2 weeks from today, we will compile those questions, send them to the Federal Highway Administration and ask that they be responded to by you and your team by Wednesday, July 12th.

With that, this hearing is adjourned. Thank you so much.
[Whereupon, at 12:04 p.m., the hearing was adjourned.]



ADVOCATES
FOR HIGHWAY
& AUTO SAFETY

June 13, 2022

The Honorable Thomas R. Carper, Chair
The Honorable Shelley Moore Capito, Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Chairman Carper and Ranking Member Capito:

Thank you for holding tomorrow's hearing, "Implementation of the Infrastructure Investment and Jobs Act and the Inflation Reduction Act by the Federal Highway Administration." With deaths and injuries on our Nation's roads at historically high levels, the safety advances included in the law by this Committee must be implemented by the U.S. Department of Transportation (DOT) in a comprehensive and expeditious manner. Advocates for Highway and Auto Safety (Advocates) respectfully requests this letter be included in the hearing record.

Motor Vehicle Crashes are a Devastating and Costly Public Health Crisis Which Demands Immediate Action

On average, 118 people were killed every day on roads in the U.S. in 2021,¹ totaling nearly 43,000 fatalities for the year. An additional 2.5 million people were injured.² This represents a 27 percent increase in deaths in just a decade.³ Early projections for 2022 show traffic fatalities remain high.⁴ Certain road users experienced notable numbers of deaths. Pedestrian fatalities increased 13 percent, and bicyclist deaths were up two percent from 2020 to 2021.⁵ Large truck crashes killed nearly 5,800 people in 2021.⁶ Conservatively, the annual economic cost of motor vehicle crashes is approximately \$340 billion (2019 dollars).⁷ This means that every person living in the U.S. essentially pays an annual "crash tax" of over \$1,000. Moreover, the total value of societal harm from motor vehicle crashes in 2019 was nearly \$1.4 trillion.⁸

¹ Overview of Motor Vehicle Traffic Crashes in 2021, NHTSA, Apr. 2023, DOT HS 813 435. (Overview 2021).

² Overview 2021.

³ Traffic Safety Facts 2020: A Compilation of Motor Vehicle Crash Data, NHTSA, Oct. 2022, DOT HS 813 375, (Annual Report 2020); and Overview 2021; [comparing 2012 to 2021].

⁴ Traffic Safety Facts: Crash Stats, Early Estimate of Motor Vehicle Traffic Fatalities in 2022, NHTSA, Apr. 2023, DOT HS 813 428. (Early Estimates 2022).

⁵ Overview 2021.

⁶ Overview 2021.

⁷ The Economic and Societal Impact of Motor Vehicle Crashes, 2019, NHTSA, Dec. 2022, DOT HS 813 403. (Economic and Societal Impact 2019).

⁸ Economic and Societal Impact 2019.

The Infrastructure Investment and Jobs Act (IIJA) Must be Implemented with Expediency and Thoroughness

Fortunately, commonsense solutions were advanced by this Committee during the consideration of the IIJA.⁹ While vehicle safety technology does not fall into the Committee's jurisdiction, the Safe System Approach is incorporated in the IIJA and undertakes a holistic method to improve safety in the roadway environment. Vehicle safety technology and roadway infrastructure improvements designed to upgrade safety have great potential to complement each other and collaboratively save lives. For example, the IIJA authorizes safety upgrades to the Highway Safety Improvement Program (HSIP) that will help to protect vulnerable road users, such as infrastructure features that calm traffic and reduce vehicle speeds as well as includes provisions requiring automatic emergency braking (AEB) for passenger motor vehicles and large trucks.¹⁰ According to the Insurance Institute for Highway Safety (IIHS), AEB has the capability to reduce car front-to-rear crashes with injuries by 56 percent and large truck front-to-rear crashes by 41 percent.¹¹ The ripple effect of these crash reductions is wide-ranging and includes less damage to infrastructure, less congestion caused by crashes, and less expenditure of first responder resources, among others. While Advocates applauds the National Highway Traffic Safety Administration (NHTSA) for recently issuing a Notice of Proposed Rulemaking (NPRM) which includes a requirement that the car AEB system detects pedestrians to fulfill this mandate, the agency must promptly issue a comprehensive final rule and advance a comprehensive truck AEB NPRM and other required rules to save lives and meet the deadlines set by Congress, at a minimum.¹² Advocates looks forward to working with the Committee and the U.S. DOT to optimize safety outcomes in a robust and equitable manner.

Advocates remains deeply concerned about the agency's backlog of overdue rulemakings and imminent deadlines for IIJA rules¹³ especially considering the lack of a confirmed Administrator. Except for the brief tenure of Dr. Steven Cliff between May and September 2022, NHTSA has been without a confirmed Administrator since 2017. In addition, several senior positions within the agency are vacant. NHTSA's mission "to save lives, prevent injuries, and reduce economic costs due to road traffic crashes, through education, research, safety standards, and enforcement" cannot effectively be accomplished as needed without proper staff and an Administrator. Together with other stakeholders, Advocates has urged the Biden Administration to take swift action to nominate a qualified Administrator.¹⁴

Experimental Autonomous Driving Technology Remains Unproven

Several serious crashes involving cars equipped with autonomous driving technology, which is unregulated, have already occurred. Many have been subject to investigation by the National Transportation Safety Board (NTSB) and NHTSA which have and will continue to identify safety deficiencies, determine contributing causes, and recommend government and industry

⁹ Pub. L. 117-58 (2021).

¹⁰ Pub. L. 117-58, § 24208 (2021).

¹¹ IIHS, Real World Benefits of Crash Avoidance Technologies (Dec. 2020).

¹² See: <https://www.nhtsa.gov/press-releases/automatic-emergency-braking-proposed-rule>.

¹³ See: <https://saferoads.org/2021/06/28/117th-congress-infrastructure-investment-and-jobs-act/>; See also attached list of overdue rulemakings.

¹⁴ Letter to President Joe Biden from leading traffic safety organizations (Jun. 6, 2023). Available at: <https://saferoads.org/wp-content/uploads/2023/06/Safety-Groups-Letter-Biden-NHTSA-Admin-June62023Final.pdf>

actions to prevent future deadly incidents. In fact, just a few days ago, *The Washington Post* reported that according to NHTSA data, there have been 17 fatal incidents, five serious injuries and 736 crashes involving Teslas in Autopilot mode since 2019.¹⁵ According to data collected from July 2021 to April 2023 by Standing General Order (SGO) 2021-1 requiring manufacturers report to the agency certain crashes involving vehicles equipped with automated driving systems (ADS) or SAE Level 2 ADAS, there have been 281 crashes involving ADS and 916 with ADAS (including 21 resulting in a fatality).¹⁶

In addition, several San Francisco transportation agencies recently submitted comments to the California Public Utilities Commission detailing numerous dangerous incidents involving AVs operating in the city.¹⁷ These events include:

- Interfering with emergency response operations including 18 incidents documented by the San Francisco Fire Department in which AVs put firefighters and the public at risk.
- Making planned and unplanned stops in travel lanes that have interfered with transit service and blocked traffic.
- Intrusions into construction zones where City employees were working.
- Obstructions caused by AVs having to interpret and respond to human traffic control officers.
- Erratic driving.¹⁸

These incidents are also on the rise. The agencies indicate that in 2023 reported monthly incidents involving AVs have increased six-fold.¹⁹ In fact, last week an AV blocked San Francisco police from responding to a shooting.²⁰

What San Francisco has been experiencing must not be replicated across the Nation by continuing to allow for the proliferation of AVs without any federal safety regulations for driverless systems. Many promises have been touted about AVs bringing reductions in motor vehicle crashes and resultant deaths and injuries, lowering traffic congestion and vehicle emissions, expanding mobility and accessibility, improving efficiency, and creating more equitable transportation options and opportunities. However, as Transportation Secretary Buttigieg acknowledged, these outcomes are far from certain.²¹

¹⁵ Faiz Siddiqui and Jeremy B. Merrill, 17 fatalities, 736 crashes: The shocking toll of Tesla's Autopilot, *Wash. Post* (Jun. 10, 2023).

¹⁶ Standing General Order on Crash Reporting: For incidents involving ADS and Level 2 ADAS; NHTSA, available at <https://www.nhtsa.gov/laws-regulations/standing-general-order-crash-reporting>, last accessed May 1, 2023.

¹⁷ San Francisco Comments to the Draft Resolution Approving Authorization for Waymo Autonomous Vehicle Passenger Service Phase I Driverless Deployment Program, R.12-12-011 (May 31, 2023). Available at: <chrome-extension://efaidnbmninhpcajpgclefndmkaj/https://sfstandard.com/wp-content/uploads/2023/06/SF-Comments-on-Waymo.pdf>

¹⁸ *Id.* at pgs. 9-11.

¹⁹ *Id.* at p. 3.

²⁰ Self-driving car blocks police responding to San Francisco shooting, *KTVU* (Jun. 11, 2023). Available at: <https://www.ktvu.com/news/self-driving-car-blocks-police-responding-to-san-francisco-shooting>

²¹ Nilay Patel and Andrew J. Hawkins, Pete Buttigieg is Racing to Keep Up with Self Driving Cars, *The Verge* (Jan. 6, 2022).

In sharp contrast to what is happening in the U.S., other countries are taking a more calculated, careful and cautious approach to the development of AVs.²² Often-repeated claims about the U.S. “falling behind” other countries in the “race” for AVs are simply not true. For example:

- China continues to require permits or restricts operations of AVs on its roads to only those areas approved by the authorities.²³
- Germany continues to require permits, approvals, and limits areas of operation for AVs.²⁴
- In Japan, the introduction of Level 4 vehicles will be controlled and limited to specific, lightly populated areas.²⁵
- Even the latest United Nations Economic Commission for Europe (UNECE) regulations will limit operations to restrict risks and oversee approval through testing and other requirements.²⁶

In sum, no country is selling fully automated vehicles for unfettered use to the public and by many accounts, none will be for a significant amount of time.²⁷ According to the most recent KPMG analysis, the U.S. ranks fourth in the world for AV readiness, while China is at number twenty. While the U.S. is not behind other countries in allowing AVs to go to market, we are behind in establishing comprehensive regulations to ensure public safety will not be jeopardized or diminished. As Dr. Missy Cummings, Professor, George Mason University, College of Engineering and Computing, noted during a briefing convened by Advocates in March 2023:

I was a military officer; I spent three years on the Defense Innovation Board advising the Secretary of Defense. China is a real threat, a real problem that we have to address from a national security perspective. What it [China] is not is a threat to our commercialization of autonomous vehicles. And any insistence that it actually takes away from the emphasis that we need to place on national security. So, what I would really like everyone to do is back off the China fear mongering. China is not beating us to the commercialization of autonomous vehicles...²⁸

Advocates and numerous stakeholders developed the “[AV Tenets](#),” policy positions which should be a foundational part of any AV policy. It has four main, commonsense categories including: 1) prioritizing safety of all road users; 2) guaranteeing accessibility and equity; 3) preserving consumer and worker rights; and, 4) ensuring local control and sustainable transportation. The AV Tenets are supported by a coalition of more than 60 groups and are

²² Autonomous vehicles: cross jurisdictional regulatory perspectives update, Oct. 7, 2022.

²³ China drafts rules on use of self-driving vehicles for public transport; Aug. 8, 2022, Reuters; and Baidue bags China’s first fully driverless robotaxi licenses, Aug. 7, Reuters. Real driverless cars are now legal in Shenzhen, China’s tech hub, Jul. 25, 2022, TechCrunch+.

²⁴ Germany completes legal framework for autonomous driving | Federal Cabinet approves new ordinance, Apr. 2022, Malterer, M.

²⁵ Japan to open roads to autonomous vehicles in 2023, Nov. 28, 2022, Wessling, B., The RobotReport.

²⁶ New rules to improve road safety and enable fully driverless vehicles in the EU, Jul. 6, 2022, UNECE.

²⁷ Lawrence Ulrich, Driverless Still a Long Way From Humanless, N.Y. Times (Jun. 20, 2019); Level 5 possible but “way in the future”, says VW-Ford AV boss, Motoring (Jun. 29, 2019).

²⁸ Advocates for Highway and Auto Safety, Virtual Capitol Hill Briefing: Expert Panel on Autonomous Vehicle Safety (Mar. 7, 2023). See: <https://saferoads.org/briefing-expert-panel-on-autonomous-vehicle-av-safety-3-7-23-public/>

based on expert analysis, real-world experience and public opinion. Requiring that AVs meet minimum standards, including for cyber security, and that operations are subject to adequate oversight, including a comprehensive database accessible by vehicle identification number (VIN) with basic safety information, will save lives and boost consumer confidence in this burgeoning technology. Further, the IIJA directed the Federal Highway Administration (FHWA) to conduct a study on the impacts of AVs and to report to Congress. That report should have been presented to this Committee and the House Transportation and Infrastructure Committee one year after the enactment of the IIJA and is now overdue.

A Caravan public opinion [survey](#) commissioned by Advocates in February 2023 showed Americans across the country and across generations are concerned with driverless cars and trucks on our roadways. In fact, four out five respondents reported being concerned about sharing the roads with driverless cars. In addition, while there is widespread concern about the use and deployment of driverless vehicles, 64 percent of those polled feel that their concerns could be adequately addressed by minimum government safety requirements.²⁹

Since enactment of the IIJA, Advocates has been urging DOT to meet its deadlines and exceed its directives for advanced driver assistance systems (ADAS) including AEB. The current void of regulations for ADAS renders all road users at preventable risk to danger and avoidable damage to the infrastructure an ongoing threat. Furthermore, these technologies are some of the essential building blocks for the potential of AVs in the future and can save lives now. Therefore, it's especially crucial that they are regulated and perform safely.

We laud the Committee for holding this oversight hearing to ensure that DOT meets its mission to ensure the safest transportation system in the world. Road safety infrastructure upgrades coupled with proven vehicle safety technology will be a game changer. Advocates looks forward to continuing to work with you to improve safety on our Nation's roadways.

Sincerely,



Catherine Chase, President

cc: Members of the U.S. Senate Committee on Environment and Public Works

Encls: Unified List of Regulations Delayed and At Risk of Delay June 2023

²⁹ Online CARAVAN Survey (Feb. 2023). See: <https://saferoads.org/wp-content/uploads/2023/03/Advocates-Caravan-AV-Poll-Report-pdf>



OVERDUE & AT-RISK SAFETY REGULATIONS

Statutory deadlines to issue final rules are in **red**.
All dates provided by agency for rulemaking actions are per the Fall 2022 Semi-Annual Regulatory Agenda.

National Highway Traffic Safety Administration (NHTSA)

- **Rear Seat Belt Reminders (DUE – October 1, 2015)**
 - Advocates and Public Citizen filed Petition for Rulemaking on November 21, 2007.
 - NHTSA issued Request for Comments on Petition on June 29, 2010.
 - Mandated in MAP-21 (Sec. 31503).
 - Final Rule to be issued 3 years from date of enactment – October 1, 2015.
 - NHTSA granted Petition and issued ANPRM on September 27, 2019.
 - NHTSA estimated that a NPRM would be issued in January 2023.
 - NPRM currently under review at OIRA.
- **Upgrade FMVSS No. 213 for Improved Child Occupant Protection (DUE – October 1, 2016)**
 - Mandated in MAP-21 (Sec. 31501(b)).
 - Congressional deadline for issuance of Final Rule – October 1, 2016.
 - NHTSA estimated that a Final Rule would be issued in December 2022.
- **Improved Child LATCH Restraint System (DUE – October 1, 2015)**
 - Mandated in MAP-21 (Sec. 31502).
 - Final Rule to be issued 3 years from date of enactment – October 1, 2015.
 - NHTSA issued NPRM on January 23, 2015.
 - NHTSA estimated that a Final Rule would be issued in March 2023.
- **Crash Avoidance Technologies on Vehicle Label (DUE – December 4, 2016)**
 - Mandated in FAST Act (Sec. 24322).
 - Congressional deadline for issuance of Final Rule – December 4, 2016.
 - NHTSA estimates that a NPRM will be issued in 2023.
- **Motorcoach Anti-Ejection Countermeasures (DUE – October 1, 2014)**
 - Mandated in MAP-21 (Sec. 32703(b)(2)).
 - Congressional deadline for issuance of Final Rule – October 1, 2014.
 - Final Rule requiring seat belts on intercity buses issued in November 2013.
 - NPRM issued regarding emergency exits, window retention and release and glazing for portals on May 6, 2016.
 - NHTSA estimates that a Final Rule will be issued in March 2023.
- **Notification of Vehicle Safety Recalls Via E-mail (DUE – August 29, 2016)**
 - Mandated in FAST Act (Sec. 24104).
 - Congressional deadline for issuance of Final Rule – August 29, 2016.
 - NHTSA issued NPRM on September 1, 2016.
 - NHTSA estimated that a Supplemental NPRM would be issued in March 2023.
- **Corporate Responsibility For NHTSA Reports (DUE – December 4, 2016)**
 - Mandated in FAST Act (Sec. 24112).
 - NHTSA estimated that a NPRM would be issued in April 2023.

June 2023

- **Retention of Safety Records by Manufacturers (DUE – June 4, 2017)**
 - Mandated in FAST Act (Sec. 24403).
 - Congressional deadline for issuance of Final Rule – June 4, 2017.
 - NHTSA issued NPRM on May 15, 2019.
 - NHTSA estimated that a Supplemental NPRM would be issued in February 2023.

Joint NHTSA/FMCSA Rulemakings

- **Heavy Vehicle Speed Limiters**
 - Grant of Petition for Rulemaking – Mar. 18, 2011.
 - NPRM was issued on August 26, 2016.
 - FMCSA issued ANSPRM on May 4, 2022
 - FMCSA estimates that Supplemental NPRM will be issued in June 2023.

Federal Motor Carrier Safety Administration (FMCSA)

- **New Entrant Assurance Process Proficiency Exam (DUE – April 1, 2014)**
 - Congress originally sought action in § 210 of the 1999 MCSIA.
 - FMCSA published an ANPRM in 2009.
 - MAP-21 (Sec. 32101(b)) requires a final rule be issued in 18 months – by April 1, 2014.
 - Appears on Long Term Actions List. Date for next regulatory action is undetermined.

Rulemakings Withdrawn

- **Mandatory Event Data Recorder Requirements**
 - NHTSA initiated rulemaking on Feb. 22, 2011.
 - NPRM issued on Dec. 13, 2012.
 - Rulemaking withdrawn February 8, 2019.
- **State Inspection of Passenger Carrying Vehicles**
 - Mandated in MAP-21 (Sec. 32710).
 - Requires FMCSA complete rulemaking to consider requiring states to annually inspect passenger carrying vehicles.
 - ANPRM published in April 2016.
 - Rulemaking withdrawn May 1, 2017.
 - RFC on withdrawal issued on May 10, 2022.
- **Carrier Safety Fitness Determinations**
 - Rulemaking was initiated on June 21, 2007.
 - Intended FMCSA to revise carrier safety ratings procedures in light of adoption of the CSA Program.
 - NPRM issued on January 21, 2016.
 - Rulemaking withdrawn March 23, 2017.
- **Evaluation of Drivers for Obstructive Sleep Apnea (OSA)**
 - FMCSA was considering regulatory actions that address the safety risks associated with drivers afflicted with non-treated OSA.
 - ANPRM was issued on March 10, 2016.
 - Rulemaking withdrawn August 8, 2017.



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June 13, 2023

The Honorable Tom Carper
Chairman
Environment and Public Works Committee
Washington, D.C. 20510

The Honorable Shelley Moore Capito
Ranking Member
Environment and Public Works Committee
Washington, D.C. 20510

Dear Chairman Carper and Ranking Member Capito:

The Portland Cement Association (PCA) appreciates the opportunity to submit a statement for the record for today's hearing *Implementation of the Infrastructure Investment and Jobs Act and the Inflation Reduction Act by the Federal Highway Administration*. The cement industry continues to work closely with the Federal Highway Administration (FHWA) on the implementation of these two laws.

Portland cement is the primary ingredient in concrete. Portland cement acts as the bonding agent in concrete, similar to the role of flour in cake mix. As an essential construction material and a basic component of our nation's infrastructure, portland cement is utilized in virtually all FHWA funded projects, including highways, bridges, mass transit, sidewalks, and bike lanes. Concrete construction is critical to building durable and resilient infrastructure. This, in turn, reduces the long-term maintenance and repair costs of transportation assets.

We expect the demand for cement to increase as states and municipalities implement the infrastructure projects funded in large part by the Infrastructure Invest and Jobs Act (IIJA). For example, based on PCA's Market Intelligence forecasts, the investments made by the IIJA will result in 46 million metric tons of cement, which is a significant increase in consumption. Not only will these projects use cement to build critical infrastructure, but they will also help improve the efficient and cost-effective movement of cement to market.

We commend the attention IIJA places on improving the resilience of our transportation infrastructure assets. Specifically, we appreciate the IIJA authorized the PROTECT program to help states invest in projects focused on improving the resilience of our transportation assets and added resilience as project eligibility to several of the core highway programs to address the challenges caused by a changing climate.

The cement industry is working to reduce its carbon footprint, and working with our members, PCA developed a *Roadmap to Carbon Neutrality*. One of the key policy focuses in the nearer term is on advancing the use of lower-carbon cements, including blended cements and portland-limestone cement. According to U.S. Geological Survey data, nearly 25 percent of all the cements consumed in the United States in 2022 were lower-carbon cements, up from less than five percent just two years ago. In 2021, approximately 31.1 million metric tons of cement were used for the construction or repair of roadways. If roadway construction has been completed using portland-limestone cement, PCA estimates 1.567 million metric tons of carbon dioxide emissions would be avoided.

For these reasons, we support the \$2 billion in funding for the Low-Carbon Transportation Materials Grants included in the Inflation Reduction Act seeking to increase to use of lower-carbon building materials, including blended and portland-limestone cement, by recipients of federal-aid highway funding. As FHWA works to implement this funding included in the Inflation Reduction Act, it is important to recognize that in the case of concrete, there are a broad range of performance requirements that the concrete must satisfy to achieve the necessary strength, durability, and resilience over the project's full life-cycle. Different concrete mixtures are developed and optimized for different performance requirements, ensuring the concrete is fit for the purpose. It is important to recognize that not only are each of these different types of infrastructure projects built with different concrete (and cement) mixtures but in many cases, multiple mixtures are used on the same project. For example, a highway project will likely have one mix designed for the pavement, another for barrier walls, and another for sections of pavement that must gain strength faster to allow it to reopen quickly to traffic. Different concrete mixtures may, as a result, have different global-warming potentials but a concrete mix with a higher global warming potential may be necessary for a specific application. For these reasons, we believe it is important for the FHWA to take these differences in concrete (and cement) mixtures into consideration as it develops the implementation guidelines for the Low-Carbon Transportation Materials Grants.

As the FHWA is seeking to reduce the carbon footprint of transportation projects, it is important to take into consideration the full life-cycle of that particular asset. Measuring a material's ability to reduce excess fuel consumption and its carbonation potential will help FHWA in its goal of reducing the Carbon impact of transportation projects. Additionally, it is important to consider the durability and resilience of construction materials, especially with the growth of climate-related disasters.

Finally, as the FHWA provides information on compliance with Build America, Buy America, it is important to accurately reflect what was included in the underlying legislation. In the case of concrete, it is made by combining cement, cementitious materials, aggregates, and water. Section 70917(c)(1) of the Infrastructure Investment and Jobs Act limits the definition of construction materials subject to Buy America to not include cement and cementitious materials, aggregates such as stone, sand, and gravel, or aggregate binding agents or additives. Further, Section 70917(c)(2) prohibits the same construction materials from being included as "inputs" in "all manufacturing processes" that produce "construction materials." For these reasons, we were concerned when FHWA released a Question-and-Answer document related to Build America, Buy America and failed to make clear that concrete used in FHWA funded projects, from roadways and bridges to culverts and pipes, have to be Buy America compliant as is the legislative intent of both sections 70917(c)(1) and 70917(c)(2) of the IIA.

We appreciate the Committee's continued oversight of the implementation of these two important pieces of legislation, and PCA looks forward to continuing to work with FHWA in their implementation. If you have any further questions, please feel free to contact Sean O'Neill, PCA's Senior Vice President of Government Affairs, at (703) 321-6792 or sonell@cement.org.

Sincerely,



Sean O'Neill
Senior Vice President, Government Affairs