

# National Electric Vehicle Infrastructure (NEVI) Formula Program Q&A

## NEVI Formula Program Questions and Answers

Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the States in any way. This document is intended only to provide information regarding existing requirements under the law or agency policies.

### *Connectors*

#### **Question: Can North American Charging Standard (NACS) connectors be installed using NEVI Formula Program or Title 23 U.S.C. funds?**

##### *Answer:*

Yes. NACS connectors can be installed on existing or new Direct Current Fast Chargers (DCFCs) using NEVI Formula Program or other eligible title 23 U.S. C. funds. The National Electric Vehicle Infrastructure Standards and Requirements (see [23 CFR 680.106\(c\)](#)) allow for permanently attached non-proprietary connectors (such as NACS) to be provided on each charging port so long as the requirements of 23 CFR 680 are met, including that each DCFC charging port has at least one permanently attached Combined Charging System (CCS) Type 1 connector and is capable of charging a CCS-compliant vehicle.

#### **Question: Can NEVI Formula Program funds be used to purchase proprietary adaptors?**

##### *Answer:*

Yes, provided that the adapter is 1) directly or indirectly compatible with and ancillary to a permanently attached Combined Charging System (CCS) connector for DCFC ports, or to a permanently attached J1772 connector for AC Level 2 chargers; 2) approved by the charger manufacturer to ensure consistency, safety and reliability; 3) fully integrated into the charger such that it cannot be removed from the site; and 4) otherwise complies with the NEVI Formula Program under the Highway Infrastructure Program heading in Title VIII of division J of the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58) and [23 CFR 680](#). All EV infrastructure projects under NEVI must be open to the general public or to authorized commercial motor vehicle operators from more than one company in accordance with Paragraph (2) under the Highway Infrastructure Program heading in Title VIII of division J of BIL.

### *General Questions*

#### **Question: Which authorities govern the National Electric Vehicle Infrastructure (NEVI) Formula Program?**

##### *Answer:*

The NEVI Formula Program is authorized under Paragraph (2) under the Highway Infrastructure Program heading in Title VIII of division J of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58).

**Question: Is a State department of transportation (State DOT) required to have an approved Electric Vehicle (EV) Infrastructure Deployment Plan (Plan) before using NEVI Formula Program funds?**

*Answer:*

Yes. Each State DOT must annually submit a Plan/Plan Update document to the Joint Office of Energy and Transportation (Joint Office) describing how that State DOT intends to use funds distributed under the NEVI Formula Program as described in Paragraph (2) under the Highway Infrastructure Program heading in Title VIII of division J of BIL. This Plan/Plan Update for a fiscal year will be reviewed by the Joint Office and must be approved by the Federal Highway Administration (FHWA) before a State DOT can obligate NEVI Formula Program funds for any eligible purpose for such fiscal year. However, in accordance with 2 CFR part 200, reasonable and necessary staffing and activities related to the development of the Plan, including development of the Plan itself, are eligible for reimbursement as a direct cost.

**Question: When must the Plans be submitted to the Joint Office?**

*Answer:*

Each State DOT must submit their Plan for the upcoming federal fiscal year to the Joint Office not later than August 1 of the current fiscal year. Plans will need to be updated on an annual basis to reflect the State DOT funding Plans for that upcoming fiscal year.<sup>1</sup>

**Question: When can State DOTs expect approval of Plans? Will NEVI funds be available immediately upon approval?**

*Answer:*

The NEVI Formula Program funds will be available for State DOTs to obligate for eligible expenses upon the approval of their Plans by FHWA each year once those funds are made available in FMIS. FHWA will approve Plans or notify State DOTs if changes need to be made to their Plans not later than September 30 of the prior federal fiscal year.

**Question: New EV charging stations should be spaced 50 miles apart and within one mile of the Interstate exit or highway. Can States request exceptions from these requirements?**

*Answer:*

Yes, although exceptions will be granted under limited circumstances on a case-by-case basis. A State DOT may submit a request for discretionary exceptions from the requirement that charging infrastructure is installed every 50 miles along designated Alternative Fuel Corridor highway and within 1 travel mile of the designated Alternative Fuel Corridor highway. A template for requesting such discretionary exceptions has been developed and is available on the Joint Office of Energy and Transportation website at <https://driveelectric.gov/technical-assistance/>. Discretionary exceptions against the 50-mile and 1-mile criteria may be considered for reasons related to grid capacity, geography, equity, and extraordinary cost, as explained further in the instructions for the discretionary exception template.

Exception requests may be submitted as a separate attachment to the Plan and States are encouraged to submit any exception requests along with the submittal of their Plan updates. Submissions received outside of this timeframe will be reviewed within 90 days or in a timeframe that would not delay the State's progress. Greater scrutiny will be applied to larger deviations from the distance requirements.

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<sup>1</sup>For further information, see NEVI Formula Program Guidance [https://www.fhwa.dot.gov/environment/alternative\\_fuel\\_corridors/nominations/90d\\_nevi\\_formula\\_program\\_guidance.pdf](https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/nominations/90d_nevi_formula_program_guidance.pdf)

**Question: Is there technical assistance available for State DOTs to develop their Plans?**

*Answer:*

Yes. State DOTs are encouraged to work directly with the Joint Office during Plan development and remedy any issues with their Plans before submitting their final Plans. Technical assistance provided by the Joint Office is intended to help Plans comply with all program requirements and guidance. To access technical assistance, visit <https://driveelectric.gov/contact/>.

**Question: Can the State DOTs delegate the planning or implementation to other State agencies?**

*Answer:*

Yes. However, consistent with Title 23, United States Code, the State DOT is ultimately responsible for the NEVI Formula Program requirements, including any applicable Title 23 requirements, and will need to transmit the Plan to the Joint Office. This would not preclude a formalized relationship between other State agencies and the State DOT to administer the program and develop the Plan, as long as the State DOT retains the assumed responsibilities of the Secretary in accordance with 23 U.S.C. 106 and the FHWA/State DOT stewardship and oversight agreement. If a State DOT is planning to delegate planning or implementation to other State Agencies, consultation with FHWA division offices regarding specific requirements for the administration of programs under Title 23 is strongly recommended.

**Question: Where can the NEVI Formula Program funds be spent?**

*Answer:*

In general, NEVI Formula Program funds should be used for the acquisition and installation of electric vehicle charging infrastructure to serve as a catalyst for the further deployment of such infrastructure.

The FHWA has established a national network of alternative fueling and charging infrastructure along National Highway System (NHS) corridors called Alternative Fuel Corridors (AFCs) and the NEVI Formula Program funds can be spent along those AFCs that are designated for EV charging. Projects along Interstates should be prioritized during the first years of the program in order to create a reliable national network of EV charging stations. Designations of these AFCs are made through an annual nomination process released through a Request for Nominations. For more information on AFCs see:

[https://www.fhwa.dot.gov/environment/alternative\\_fuel\\_corridors/](https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/).

Note that the category of designation within the AFC program (Corridor Ready or Corridor Pending) has no bearing on eligibility for NEVI Formula Program use – all designated AFCs are eligible corridors for NEVI Formula Program projects. The NEVI Formula Program funds can be utilized to upgrade or add additional infrastructure on designated corridors.

**Question: What if currently designated AFC corridors contain EV charging stations that do not match the requirements of the NEVI Formula Program?**

*Answer:*

State DOTs are encouraged to upgrade existing EV charging stations along designated AFCs to meet the criteria in the NEVI Formula Program Guidance and other Federal requirements (to include [23 CFR 680](#)). NEVI funds can be used for such upgrades.

**Question: Can a charging station be constructed in phases with fewer than the minimum number of ports installed initially, and the remainder installed at a later time?**

*Answer:*

No. 23 CFR 680.106(b) requires a minimum of four ports at each station and these four ports must be available at the time of project close-out. States should strive to make four ports available when the station is operational and opened for public use.

**Question: Can a charging station be “split” with some of the required ports provided at one site and the others provided at another nearby site?**

*Answer:*

No. As per 23 CFR 680.106(b) each charging station must have at least four network-connected charging ports and be capable of simultaneously charging at least four EVs.

**Question: Can NEVI Formula Program funding be used outside of designated AFCs?**

*Answer:*

NEVI Formula Program funding cannot be used outside of designated AFCs until the Secretary of Transportation certifies that the designated corridors in a given State are fully built out as per Paragraph (2) under the Highway Infrastructure Program heading in Title VIII of division J of BIL.

**Question: What is a fully built-out State?**

*Answer:*

See Section V-C of the [NEVI Formula Program Guidance](#).

**Question: Can NEVI Formula Program funding be used for EV infrastructure on Federal lands?**

*Answer:*

Yes. Prior to certification as a fully built-out State, State DOTs may elect to partner with Federal land management agencies within their State and fund EV infrastructure as long as the AFC includes the location and the Federal lands facility complies with the AFC proximity requirement (e.g., location within one mile off an exit) or the location receives an exception from the proximity requirements. After the State has determined and the Secretary of Transportation has certified that the State’s designated AFCs for electric vehicles are fully built out, NEVI Formula Program funding may be used on any public road or in other publicly accessible locations, including those found on Federal lands.

**Question: Do Title 23 requirements apply to NEVI Formula Program projects?**

*Answer:*

Yes. All applicable requirements under chapter 1 of Title 23, U.S.C., and 2 CFR part 200 apply to the administration of these funds. Also, before funds are obligated, projects must be included on the relevant Statewide Transportation Improvement Program/Transportation Improvement Program (STIP/TIP) and long-range plans in accordance with 23 CFR part 450. For planning activities funded with NEVI Formula Program funds, State DOTs have the option of including the projects in the STIP/TIP or the State Planning and Research Work Programs/Unified Planning Work Program. Also, State DOTs must comply with all State and Federal environmental requirements, including the National Environmental Policy Act (NEPA) and with Title VI. As discussed below in the section on Permitting and Environmental Review, most EV charging stations will be eligible for a “categorical exclusion” (CE) under NEPA.

**Question: Does Title VI of the Civil Rights Act of 1964 Apply to NEVI Formula Program projects?**

*Answer:*

Yes. Title VI of the Civil Rights Act of 1964 prohibits discrimination based upon race, color, and national origin, providing that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” The Civil Rights Restoration Act of 1987 amended Title VI to provide that “programs” or “programs and activities” means “all of the operations of” any department, agency, or instrumentality of a state or local government, any part of which is extended federal assistance.

**Question: Do American with Disabilities Act (ADA) and Section 504 requirements apply to NEVI Formula Program projects?**

*Answer:*

Yes. EV charging stations must comply with ADA and Section 504 requirements and be accessible to and usable by individuals with disabilities, including those using wheelchairs or other assistive equipment. Key considerations include safety and ease of use. Specifically, designs for EV charging stations should ensure adequate space for exiting and entering the vehicle, unobstructed access to the EV charging stations, free movement around the EV charging stations and connection point on the vehicle, and clear paths and close proximity to any building entrances. The existing ADA standards address many aspects of accessibility for buildings and sites applicable to EV charging stations but do not specifically address EV charging stations. To address this gap, in July 2022, the U.S. Access Board issued [Design Recommendations for Accessible Electric Vehicle Charging Stations](#). FHWA recommends that charging stations be designed and constructed according to the Access Board’s Recommendations to demonstrate ADA compliance and optimize usability for persons with disabilities.

**Question: Can State DOTs contract with a private entity to install, maintain, and/or operate EV charging stations?**

*Answer:*

Yes. See Section II-D-of the NEVI Formula Program Guidance for more details on contracting with private entities. Funds made available under the NEVI Formula Program may be used to contract with a private entity for acquisition, installation, and operation and maintenance of publicly accessible EV charging infrastructure and the private entity may pay the non-Federal share of the cost of a project. However, even when a private entity has such a contract, under Title 23, U.S.C., the State DOT remains responsible for compliance with the NEVI Formula Program requirements and any applicable Title 23 requirements.

**Question: For toll roads on the Interstate System that were constructed without Federal financial assistance made available under Title 23, U.S.C., does the use of NEVI Formula Program funds to construct EV charging stations federalize the toll road for purposes of Interstate access and the toll revenue use restrictions under 23 U.S.C. 129(a)(3)?**

*Answer:*

Yes, but only if the construction of the EV charging station with NEVI Formula Program Funds is located within the Interstate right-of-way (ROW). If the construction of the EV charging station is located outside of the Interstate ROW and access is provided from another public road, then such toll road on the Interstate System is not federalized for purposes of 23 U.S.C. 129(a)(3). Two typical scenarios where this question arises are discussed below:

*Scenario #1:* If the automotive service station or commercial establishment, such as an Interstate rest area, is “grandfathered” because it existed prior to January 1, 1960, and NEVI funds are used to install EV chargers at the establishment, then fees may be charged for the use of the chargers because the construction of EV chargers doesn’t remove the grandfathered status.

*Scenario #2:* If the establishment is on a section of Interstate where Federal funds have never been used, as opposed to a grandfathered establishment described in scenario #1, and the State uses NEVI funds to install EV chargers at that establishment, then the State can no longer charge fees because that section of Interstate is now “federalized”. There may be some very limited circumstances<sup>2</sup> where an EV project could be considered a non-construction project that would not cause the road to be federalized; however, the details of the project would have to be discussed and approved by FHWA.

The key point is that the “construction” versus “non-construction” distinction only impacts scenario #2. Because EV charger installation is typically considered “construction”, the installation of EV chargers “federalizes” the establishment, triggering the prohibition on commercial activity and preventing the charging of fees. That is not the case in Scenario #1.

### **Question: What is a “commercial motor vehicle”?**

*Answer:*

The definition of “commercial motor vehicle” found at [23 CFR 658.5](#) is the most appropriate definition to use in relation to the NEVI Program.

### **Question: Do Buy America requirements apply to the NEVI Formula Program?**

*Answer:*

Yes. Buy America applies to the obligation of NEVI Formula Program funds. On February 21, 2023, the Federal Highway Administration published a [Federal Register notice](#) that released the Build America, Buy America implementation plan for EV charging equipment involving Title 23 funds, providing a transition period for companies to onshore their supply chains. The plan was effective starting on March 23, 2023.

## *Eligible Expenditures*

### **Question: What construction costs are eligible for reimbursement under the NEVI Formula Program?**

*Answer:*

All construction costs for NEVI Formula Program projects, as defined under 23 U.S.C. 101(a)(4), are eligible so long as they are directly related to the charging of an electric vehicle (EV). These costs must be allowable, allocable, and reasonable in accordance with 23 CFR part 200. To be considered directly related to the charging of vehicles, the item must be a necessary component in the EV charging station, be a necessary component to connect the EV charging station to the electricity source (or to supply power from the electricity source), provide eligible signage to direct EVs to the charging station, or provide information to EV users about use of the charging stations. This includes costs of new public EV charging stations, as well as upgrades to existing EV charging stations.

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<sup>2</sup> See [Information: Procurement and Authorization of Federal-Aid Operational Improvements \(Non-Construction Projects\)](#)

**Question: Are costs for on-site renewable energy generation and storage considered directly related to the charging of EV, and therefore eligible for reimbursement?**

*Answer:*

Yes, provided that the renewable energy generation or storage only transfers power to and from the EV charging station. Costs for planning, permitting, acquisition, and installation of on-site distributed energy resource (DER) equipment (e.g., solar arrays, stationary batteries) that are directly related to the charging of a vehicle are eligible for reimbursement. These costs should only be considered if they will lead to lower costs to consumers, greater EV charging station reliability, and if they do not substantially increase the timeline for completing an EV charging station project. States should consult with Public Utility Commissions and electric utilities to understand regulations and policies restricting the use of DERs at EV charging stations, as well as incentive programs. States are encouraged to consider the magnitude of these costs and explore whether costs could be covered by electric utilities or other programs other than the NEVI Formula Program. The Joint Office of Energy and Transportation is available to help States better understand and assess the inclusion of DERs at EV charging station locations.

**Question: Can NEVI Formula Program funds be used for transformers and other on-site electrical equipment that is necessary to provide power to EV charging stations?**

*Answer:*

Yes. Costs to acquire and install on-site electric service equipment (e.g., power meter, transformer, switch gear) are eligible. However, State DOTs are encouraged to consider the magnitude of these costs and explore whether they could be covered by electric utilities or other programs rather than the NEVI Formula Program.

**Question: Can NEVI Formula Program funds be used for electric grid equipment and upgrades?**

*Answer:*

Yes. Costs to acquire and install on-site electric service equipment (e.g., power meter, transformer, switch gear) are eligible. Costs for minor grid upgrades are also eligible, provided the work is necessitated solely by the construction or upgrading of the EV charging station and participation in the upgrade does not exceed the allocable cost of the minimum upgrades needed to match the planned power requirements of the EV charging station. A minor grid upgrade is defined as the work necessary to connect a charging station to the electric grid distribution network; for example, extending power lines or upgrading existing power lines several miles. Finally, major grid upgrades, such as longer line extensions or upgrades, improvements to offsite power generation, bulk power transmission, or substations are ineligible.

State DOTs are encouraged to consider the magnitude of these costs and explore whether they could be covered by the electric utility or programs other than the NEVI Formula Program so as to minimize use of NEVI Formula funds for grid upgrades where possible. See the *Utility Planning* section below for additional information.

States are also encouraged to consult with the FHWA and the Joint Office of Energy and Transportation to determine if an exception to charging station siting requirements may be warranted or if there are additional viable alternatives.

**Question: Are repairs, upgrades, or replacement of existing EV charging stations eligible costs?**

*Answer:*

Yes, NEVI Formula Program funds may be used to repair, upgrade, or replace existing EV charging equipment (i.e., charging stations that were installed prior to the NEVI Formula Program) to meet NEVI Formula Program minimum standards and requirements at [23 CFR 680](#). State DOTs are encouraged to consider other programs that may provide funding for these upgrade costs that could be used in conjunction with NEVI Formula Program funds in an effort to focus the majority of NEVI funds on maximizing the number of new EV charging stations.

**Question: Can NEVI Formula Program funds be used to update existing EV charging stations to meet Americans with Disabilities Act (ADA) requirements?**

*Answer:*

Yes. In the design/update of EV charging stations, States should consider the [Design Recommendations for Accessible Electric Vehicle Charging Stations](#) published by the U.S. Access Board.

**Question: Can NEVI Formula Program funds be used to support EV charging workforce development activities?**

*Answer:*

Yes. Workforce development activities for NEVI Formula Program projects are eligible so long as they are directly related to the charging of an electric vehicle. These costs must be allowable, allocable, and reasonable in accordance with 2 CFR part 200. Also note that States are required to comply with the qualified technician requirements in [23 CFR 680.106\(j\)](#). Workforce development activities funded by the NEVI Formula Program should contribute to the State's compliance with these requirements.

**Question: Can NEVI funds be used for pre-construction costs associated with environmental review and preliminary engineering?**

*Answer:*

Yes. As with other activities funded under Title 23, U.S.C., funds can be used for drafting environmental documents and studies, preliminary engineering, and related work. NEVI funds cannot be used for final design and construction for site installations until the NEPA review is completed.

**Question: Can NEVI Formula Program funds be used to install, operate, and maintain EV charging stations for medium- and heavy-duty vehicles?**

*Answer:*

Yes, NEVI formula program funds can be used for light, medium, and heavy-duty electric vehicle charging infrastructure projects that meet NEVI program requirements. All EV infrastructure projects under NEVI must be open to the general public or to authorized commercial motor vehicle operators from more than one company in accordance with Paragraph (2) under the Highway Infrastructure Program heading in Title VIII of division J of BIL.

**Question: Can NEVI Formula Program funds be used to install, operate, and maintain charging stations for electrified micromobility devices such as electric bicycles and electric scooters?**

*Answer:*

No. NEVI Formula Program funds are restricted to projects that are directly related to EV charging infrastructure that is open to the public or to authorized commercial motor vehicle operators from more



than one company.<sup>3</sup> According to 23 CFR § 680.104, an Electric Vehicle (EV) is defined as a “motor vehicle that is either partially or fully powered on electric power received from an external power source.” For the purposes of this regulation, this definition does not include golf carts, electric bicycles, or other micromobility devices.”

### **Question: Can NEVI Formula Program funds be used to comply with data reporting requirements in 23 CFR 680?**

*Answer:*

Yes. NEVI Formula Program funds can be used for data submittal requirements under 23 CFR 680.112 for NEVI-funded chargers.

### *Operation and Maintenance Costs*

### **Question: Are EV charging station operation and maintenance costs eligible reimbursements under the NEVI Formula Program?**

*Answer:*

Yes, when used for EV charging infrastructure acquired or installed under the NEVI Formula Program. The following operating costs are eligible, although only for up to five years after the charging station is commissioned:

- Charging equipment lease fees, in the case that an EV charging station operator opts to lease rather than purchase charging equipment.
- Cellular network fees, internet service fees, or other similar fees necessary to provide communications between EV charging stations and charging network providers.
- Hardware and software maintenance and repair costs, including service agreements with third-party contractors and charging equipment manufacturers or warrantors.
- Other operating costs that are necessary and directly related to the charging of vehicles.

After five years, operating costs are no longer eligible reimbursements under the NEVI Formula Program. State DOTs are encouraged to prioritize uses of NEVI Formula Program funds for operation and maintenance costs at EV charging station locations that may have lower utilization (particularly in the near term) but are still necessary to ensure a contiguous, national network.

### *Program Administration Costs*

### **Question: What program administration costs are eligible for reimbursement under the NEVI Formula Program?**

*Answer:*

General program administration costs are not eligible, however NEVI Formula Program funds can be used for program administration projects that are directly related to EV charging infrastructure that is open to the public or to authorized commercial motor vehicle operators from more than one company. Where administrative costs are an eligible expense, direct and indirect cost allocation for reimbursement must follow 2 CFR part 200.

### **Question: Can NEVI Formula Program funds be used for general NEVI program administration and staffing?**

*Answer:*

No. General program administration costs, including staffing costs, without the use of an approved indirect cost rate are not eligible costs for reimbursement under the NEVI Formula Program. Use of funds

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<sup>3</sup> Paragraph (2) under the Highway Infrastructure Program heading in Title VIII of division J of BIL.

for program administration are restricted to those projects that are directly related to EV charging infrastructure that is open to the public or to authorized commercial motor vehicle operators from more than one company.

**Question: Are costs incurred by the State DOTs to develop their Plans an eligible expense under the NEVI Formula Program?**

*Answer:*

Yes. However, NEVI funds are not available for obligation for a particular fiscal year until after a Plan has been submitted and is approved by FHWA. States can use prior year NEVI funds to cover these costs. State DOTs can also create an agreement with FHWA for Advance Construction (AC) prior to getting the NEVI obligation approved for the cost of the Plan and then request conversion of the AC project to obligate NEVI Formula Program funds and seek reimbursement for eligible costs. Any costs incurred by a State DOT prior to the AC authorization would not be eligible for reimbursement. State DOTs should be aware that Plans progressed under non-NEVI funds would not be eligible for later conversion to NEVI Formula Program funds.

**Question: Are there any limitations on program income or revenue from EV charging stations that are funded under the NEVI Formula Program?**

*Answer:*

Yes, see [23 CFR 680.106\(m\)](#). Per 2 CFR 200.307, any income or revenue received during the period of performance (POP) shall be deducted from the total allowable costs of Federal funds used on the project to determine the net allowable costs, at the Federal share applied.

### *Right of Way*

**Question: If NEVI Formula Program funds are used to build EV chargers on private property, must States acquire property rights on that private property?**

*Answer:*

States must have adequate property rights to construct, operate, and maintain these EV charging stations on private property, regardless of the type of instrument used to convey those rights. These projects are considered construction projects, so Title 23 requirements do apply, which includes ensuring that adequate property interests are acquired. (see [23 CFR 1.23](#))

### *Utility Planning*

**Question: Should State DOTs consult with relevant electric utilities and utility regulators on their EV Infrastructure Deployment Plans?**

*Answer:*

Yes. State DOTs should consult with relevant electric utilities and utility regulators in the development of their Plans to ensure charging site viability, cost-effectiveness, and timeliness of deployment. These elements should be explicitly addressed in Plans, as well as the process for collaborative planning with electric utilities and utility regulators.

**Question: What details should Plans include regarding consultation with and the role of electric utilities and utility regulators?**

*Answer:*

Plans should describe the expected nature and cost of necessary utility investments (e.g., line extensions, make-ready programs, and site improvements), as well as the State's planned approach for securing utility and other regulatory approvals necessary to support EV charging station operations.

*Public Engagement*

**Question: How can State DOTs maximize participation and accessibility in public engagement activities?**

*Answer:*

State DOTs can maximize participation and accessibility using efforts including, but not limited to:

- Ensuring activities are fully accessible to all persons, including wheelchair accessibility, interpreters for the deaf, and Computer Aided Real-time Transcription (CART). Materials should be provided in alternative formats for people with vision loss or who are blind or have limited English proficiency;
- Providing reasonable public access to technical and policy information used in the development of the Plan;
- Providing adequate public notice of public involvement activities, including a reasonable opportunity to comment on proposed Plans;
- To the maximum extent practicable, ensuring that public meetings are held at convenient times and in convenient and accessible locations in close proximity to public transportation;
- To the maximum extent practicable, using visualization techniques to describe the proposed Plan and supporting studies;
- To the maximum extent practicable, making public information available in electronically accessible format and means, such as the World Wide Web, as appropriate, to afford reasonable opportunity for consideration of public information;
- Demonstrating explicit consideration of and response to public input during Plan development;
- Including a process for seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households; and
- Providing for the periodic review of the effectiveness of the public engagement process to provide full and open access to all interested parties and revise the process, as appropriate.

**Question: How should Plans reflect State DOTs public engagement activities?**

*Answer:*

As per [CFR 680.112\(d\)](#), States must include in the State EV Infrastructure Deployment Plan a description of the community engagement activities conducted as part of the development and approval of their most recently-submitted State EV Infrastructure Deployment Plan, including engagement with disadvantaged communities. Successful Plans will describe how that engagement informed the development of the Plan.

**Question: What kinds of stakeholders should be engaged during the planning process?**

*Answer:*

Potential stakeholders for public engagement may include:

- The general public;
- Governmental entities, including cities, local governments, and regional transportation and metropolitan planning organizations;
- State environmental protection agencies;

- State public utility commissions;
- State weights and measurement agencies;
- State and Federal land management agencies;
- State manufacturing extension partnerships;
- State department of motor and commercial motor vehicles;
- State departments of energy;
- State economic development agencies;
- Public transportation agencies;
- Port and freight authorities;
- State and local utilities;
- Electric utilities and transmission and distribution owners and regulators;
- Utility consumer advocates;
- Unions and labor organizations;
- Workforce training organizations;
- Clean Cities Coalitions;
- Responsible emergency/disaster preparedness functions in the State;
- Electric vehicle service providers;
- Organizations for persons with disabilities;
- Local housing organizations;
- Local social service providers;
- Community-based organizations
- Environmental justice and environmental protection organizations;
- Minority- and women-based businesses and organizations;
- Taxicab commissions and ridesharing companies;
- Chambers of Commerce and small business associations; and
- Tribal governments.

**Question: Are specific tools available to help State DOTs conduct meaningful public engagement?**

*Answer:*

Yes. For example, FHWA’s guide, [Public Involvement Techniques for Transportation Decisionmaking](#), provides examples of public engagement best practices and illustrates how meaningful public engagement entails more than simply holding public events, but also incorporating public comments and feedback into decisionmaking. Additional suggested resources include:

- Public Involvement Techniques for Transportation Decisionmaking (FHWA) - [Public Involvement Techniques - Publications - Public Involvement - Planning - FHWA \(dot.gov\)](#)
- Virtual Public Involvement (FHWA) - [EDC-6: Virtual Public Involvement | Federal Highway Administration \(dot.gov\)](#)
- How to Engage Low-Literacy and Limited-English-Proficiency Populations in Transportation Decision Making (FHWA) - [Low Limited - Publications - Planning - FHWA \(dot.gov\)](#)
- Every Place Counts Leadership Academy Transportation Toolkit (FHWA) - [Every Place Counts Leadership Academy \(transportation.gov\)](#)

*Equity Considerations*

**Question: What is the Justice40 Initiative?**

*Answer:*

On January 27, 2021, President Biden issued [Executive Order \(E.O.\) 14008](#), which created the “Justice40” initiative. This initiative establishes a goal that 40 percent of the overall benefits of certain Federal investments (“covered investments”) flow to disadvantaged communities (DACs).

## **Question: Does the Justice40 Initiative apply to the NEVI Formula Program?**

### *Answer:*

Yes. The NEVI Formula Program has been identified as a covered investment by the White House Office of Management and Budget (OMB). Thus, 40 percent of the benefits from the NEVI program should flow to DACs.

## **Question: Do State DOTs need to address Justice40 in their Plans?**

### *Answer:*

Yes, State DOTs should address Justice40 in their Plans. Consistent with E.O. 14008 and the Interim Justice40 Guidance<sup>4</sup> issued by the OMB, as well as Section III.B. of the NEVI Formula Program Guidance, Plans should explain how the State DOT will deliver projects under the NEVI Formula Program that target 40 percent of the benefits flowing to DACs.

As explained more below, successful Plans should explain how, over the course of the State DOT's implementation of the NEVI Formula Program, the State DOT will identify, prioritize, and measure benefits from EV charging infrastructure. Successful Plans should incorporate input from DACs to ensure DACs are receiving 40 percent of benefits under the NEVI Formula Program (as is noted in the NEVI Formula Program Guidance, this does not mean that 40% of all charging infrastructure funded under this program must be located in DACs). Successful Plans should also explain how the State DOT has considered how DACs will benefit from the added job growth resulting from the NEVI Formula Program.

## **Question: What should State DOTs include in their Plans with regard to Justice40 for the NEVI program?**

### *Answer:*

Plans should describe how the State DOT intends to measure the accrual of program benefits to demonstrate that 40 percent of benefits are received either directly or indirectly by identified DACs. Successful Plans should also explain a public engagement process that they will utilize to identify those benefits. Existing methodologies or data collection efforts that State DOTs already have in place to measure the benefits of EV infrastructure programs should be included in Plans.

## **Question: How can State DOTs identify Disadvantaged Communities (DACs)?**

### *Answer:*

State DOTs should use the [Electric Vehicle Charging Justice40 Map tool](#) developed by the Department of Energy (DOE) and DOT to identify DACs that may directly or indirectly benefit from this program.<sup>5</sup> This tool incorporates publicly available data on vulnerable populations, health, transportation access and burden, energy burden, fossil dependence, resilience, and environmental and climate hazards. The methodology and resulting Census tracts identified as DACs for purposes of Justice40 are identified in this Map tool.

## **Question: How can State DOTs identify Justice40 benefits?**

### *Answer:*

State DOTs should describe in their Plans which benefits they anticipate measuring and tracking towards the Justice40 goal. Benefits, which are direct or indirect investment and program outcomes that positively

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<sup>4</sup> Section 219 of Executive Order (E.O.) 14008, Tackling the Climate Crisis at Home and Abroad, and OMB, "Interim Implementation Guidance for the Justice40 Initiative," M-21-28 (July 20, 2021) available at <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>

<sup>5</sup> In accordance with E.O. 14008, the White House Council on Environmental Quality is in the process of creating a Climate and Economic Justice Screening Tool that will identify DACs and will be used by all Federal agencies. At the time of the issuance of this report, that tool has not yet been finalized. Therefore, for the first year of the NEVI Formula Program, State DOTs should utilize the Electric Vehicle Charging Justice40 Map tool to identify DACs.

impact DACs, should be identified through a public engagement process. Example of potential benefits from EV charging infrastructure include:

- Improving clean transportation access through the location of charging stations;
- Decreasing the transportation energy cost burden by enabling reliable access to affordable charging;
- Reducing environmental exposures to transportation emissions;
- Increasing parity in clean energy technology access and adoption;
- Increasing access to low-cost capital to increase equitable adoption of more costly, clean energy technologies like EV charging;
- Increasing the clean energy job pipeline, job training, and enterprise creation in disadvantaged communities;
- Increasing energy resilience;
- Providing charging infrastructure that can serve transit and shared-ride vehicles;
- Increasing equitable access to the electric grid; and
- Minimizing gentrification-induced displacement result from new EV charging infrastructure.

**Question: What are examples of public engagement activities that may be effective in ensuring meaningful engagement with rural, underserved, or disadvantaged communities (DACs)?**

*Answer:*

See also preceding questions and answers under “Public Engagement”. In addition, the USDOT guide, [Promising Practices for Meaningful Public Involvement in Transportation Decision-Making](#) describes examples of how employing different methods to improve community engagement could enable a more inclusive, accessible, and transparent process to gain input from communities. These activities could include, but are not limited to the following:

- Briefings
- Brainstorming
- Canvassing
- Charettes
- Drop-in centers
- Established website and/or social media
- Focus groups
- Interactive displays and kiosks
- Meetings in comfortable/non-traditional spaces
- Outreach to community groups
- Outreach by phone
- Public workshops or meetings
- Scenario planning
- Surveys
- Transportation fairs
- Video recordings
- Visioning
- Visual preference surveys
- Voting and polling

For example, community engagement efforts should be made to ensure DACs are represented at public engagement activities and/or efforts should be made to hold events in or near DACs. Additional examples of how States can conduct meaningful public engagement with DACs includes but is not limited to:

- Clearly defining the goals of the public engagement strategy with members of DACs.

- Providing foundational information to DAC members that will equip them to actively provide feedback for NEVI decisions (e.g., outreach and education on EV charging basics, existing and planned public EV charger locations, total cost of ownership, and financial incentives).
- Gathering and publicly summarizing information about the benefits of EV charging infrastructure that DAC members most prioritize, and any concerns they may have about EV charging infrastructure deployment.
- Communicating progress on Plan development and deployment activities, including those informed by public engagement.
- Identifying how information collected through engagement with DACs is reflected in the State EV Infrastructure Deployment Plan.
- Evaluating how DAC members are receiving benefits as Plans are being deployed.
- Creating opportunities for DAC stakeholders to participate as leaders or decision-makers throughout the engagement process.
- Creating a resource allocation strategy to continue to implement meaningful community engagement.
- Identifying how quality community engagement will be consistently maintained over the implementation of the NEVI Formula Program.

**Question: Are costs associated with public engagement an eligible expense under the NEVI Formula Program?**

*Answer:*

Yes. NEVI Formula Program funds can be used for public engagement, including with rural, underserved, Tribal, and disadvantaged communities. This includes additional staffing resources to facilitate public engagement by States or other NEVI Formula Program funding recipients.

*Tribal Consultation*

**Question: Why is it important to consult with tribes on state NEVI plans?**

*Answer:*

Tribes do not have direct access to NEVI funds and must therefore work with the state to ensure that the state’s plans adequately reflect their interests. Many tribes control sizeable land areas with AFC corridors running through or near them and have interests in access to EV charging infrastructure both for their residents and also for the traveling public accessing tourist or other sites on tribal lands.

**Question: Can NEVI funds be used for tribal consultation?**

*Answer:*

Yes, as with other public engagement or planning activities, NEVI funds can be used to support tribal consultation.

**Question: What special considerations should be incorporated into tribal consultation?**

*Answer:*

Tribal engagement should be tailored to the needs and interests of the specific tribes, but can include discussion of:

- **Proposed plans for AFC corridors that are located in or near tribal lands.** Tribes will want to know what charging infrastructure is planned near their communities and how it will be implemented, and in some cases may be interested in having it sited on tribal lands to better serve their members and the traveling public.

- **Tribal goals regarding EVs and electrification.** Tribes may have particular goals for access to EVSE to benefit their members or to serve visitors to their lands, in the interest of spurring economic development. This may include workforce development opportunities to allow their tribal members to build or maintain EVSE. They may also be planning other EVSE on their lands that should be coordinated with NEVI site selection.
- **Other relevant tribal goals regarding economic development.** In addition to goals specifically related to electrification, tribes may have future development plans that could impact travel patterns or EVSE needs in their region.
- **Workforce Development.** Consistent with the labor and workforce considerations described in the [NEVI Formula Program Guidance](#) (see Section III-B), tribes may be interested in workforce training for their members to enable them to build or maintain EVSE, for instance by participating in EVITP programs. How will tribes be involved in the state's workforce development plans for EVSE construction and maintenance?
- **Access to NEVI funds.** In states that are planning to disperse NEVI funds through competitive processes, tribes will want to know how or if they can apply. They may also suggest special considerations relevant to tribes that could be incorporated into the design of such a program. Finally, given that many NEVI funds will be used for private contractors to build or operate charging sites, tribes will want to know how these contracts will benefit tribes: Can their members win or work on these contracts?

### *Disadvantaged Business Enterprise (DBE) Program Applicability*

#### **Question: Does the Disadvantaged Business Enterprise (DBE) Program at 49 CFR Part 26 apply to NEVI Formula funds?**

*Answer:*

No. The DBE requirements do not apply to NEVI Formula funds. Section 11101(e)(3) of the BIL provides that the DBE Program applies to the amounts made available for any program under division A (other than section 14004), division C, and 23 U.S.C. 403. The NEVI Formula Program is authorized and appropriated in division J, which is not specifically covered by Section 11101(e)(3). Moreover, while the recipients of NEVI Formula funds are already required to have DBE Programs, the NEVI Formula Program concerns funding for a new contracting industry which Congress has not made a finding with respect to the existence of discrimination in the contracting markets associated with the work funded by such grants.

#### **Question: May a State DOT voluntarily establish and apply DBE contract goals to NEVI-funded contracts or count race-neutral DBE participation on NEVI-funded contracts toward the State's overall DBE goal?**

*Answer:*

No. Since the DBE Program does not apply to the NEVI Formula Program, State DOTs may not establish DBE goals for NEVI-funded contracts nor count race-neutral DBE participation on such contracts toward the achievement of the State's overall DBE goal.

#### **Question: May State DOTs establish DBE contract goals on contracts that are funded with both NEVI funds as well as another funding source to which the DBE Program does apply, such as Surface Transportation Block Grant (STBG) funds?**

*Answer:*

Yes. For contracts that are funded with both funds that are subject to the DBE Program, such as STBG funds, and NEVI funds, to which the DBE Program does not apply, then States may establish DBE contract goals for those contracts. However, the DBE goal established for that contract must be set only in proportion to the portion of funds that are subject to the DBE Program. For example, if a recipient uses \$1 million in STBG funding, to which the DBE program requirements apply, in addition to \$1 million in NEVI funding on the same contract, a DBE contract goal may only be set in proportion to the amount of



the STBG funds on the project. So, if the State sets a 10 percent contract goal, the contract goal would be \$100,000, or 10 percent of the STBG funds. The State could not count any work performed by the DBE subcontractor(s) above the 10 percent goal toward its overall annual DBE goal.

### **Question: May DBEs be utilized on NEVI-funded contracts?**

#### *Answer:*

Yes. While the BIL's DBE provision does not expressly cover NEVI formula funds, DBEs are still eligible to compete for the \$5 billion in electric vehicle charging infrastructure contracts that will be made available under State deployment plans. Additionally, 2 CFR 200.321 requires recipients of Federal financial assistance to take specified<sup>6</sup> and all other necessary affirmative steps to assure that minority businesses and women's business enterprises are used for contracting when possible. Therefore, State DOTs should continue to encourage contractors to work with small and disadvantaged businesses on NEVI-funded work. As stated above, however, since the DBE Program does not apply to the NEVI Formula Program, State DOTs may not set contract goals nor count race-neutral DBE participation on NEVI-funded contracts toward the achievement of the State's overall DBE goal.

### **Question: What resources are available to assist DBEs to participate in NEVI-funded contracts?**

#### *Answer:*

The DBEs that are interested in competing for NEVI grants should consult their State DOT that may be a recipient of funding from FHWA's DBE Supportive Services (DBE/SS) Program. FHWA allocates funding to State DOTs to provide services to DBEs to improve their business practices and overcome barriers to success so that they can more successfully compete for DOT assisted highway projects, such as NEVI.

### **Question: Who should I contact for questions concerning the DBE Program?**

#### *Answer:*

Any questions concerning the DBE Program should be directed to FHWA's Office of Civil Rights (<https://www.fhwa.dot.gov/civilrights/programs/dbe/#:~:text=The%20DBE%20program%20ensures%20that,socially%20and%20economically%20disadvantaged%20individuals>).

## *Permitting and Environmental Review*

### **Question: Are EV charging stations eligible for a "categorical exclusion" (CE) National Environmental Policy Act (NEPA) class of action?**

#### *Answer:*

In most instances, yes. As stated in the NEVI Formula Program Guidance, State DOTs should consider the appropriate level of review under NEPA. EV charging station installation is generally the type of action that would not be expected to result in significant environmental impacts, and can be processed with a CE (see 23 CFR 771.117(c) and 23 CFR 771.117(d)), unless there are unusual circumstances that may require a higher NEPA class of action. During site selection, States should consider locations within

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<sup>6</sup> When contracting, recipients of Federal financial assistance must take the following specified steps under 2 CFR 200.321 to ensure that minority businesses and women's business enterprises are used when possible:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above.

a previously disturbed or developed area. We encourage states to rely on their programmatic CE agreements, when applicable, to accelerate the delivery of these projects.

### **Question: Are there tools to help identify potential impacts of EV charging stations?**

*Answer:*

We encourage the State DOTs to use their existing CE checklists to help identify if an EV charging station project qualifies for a CE. There are other web-based tools such as NEPAAssist (<https://www.epa.gov/nepa/nepassist>) that can help with initial screening of potential impacts.

### **Question: Can States take steps to efficiently meet National Historic Preservation Act Section 106 requirements?**

*Answer:*

Yes. Section 106 Programmatic Agreements (PAs) can streamline the review process required under Section 106. Section 106 PAs vary by State and an inventory is available [here](#). By planning to locate EV charging infrastructure in locations with low probability to affect historic properties, States can decrease the likelihood that additional consultation would be required under Section 106. In addition, an exemption to Section 106 of the National Historic Preservation Act<sup>7</sup> was published on November 2, 2022 releasing all federal agencies from the Section 106 requirement to consider the effects of their undertakings involving the installation and placement of electric vehicle supply equipment, provided specific conditions outlined in the exemption are met. <sup>8</sup> The Lead Federal Agency would make the determination as to whether the Section 106 exemption applies. A project sponsor should review the conditions outlined in the exemption and coordinate with the Lead Federal Agency. Either the Section 106 consultation process under a Section 106 Programmatic Agreement or the standard Section 106 process would apply in the event that the exemption is determined not applicable.

### **Question: Can States take steps during the planning process to reduce the likelihood of impacts to Threatened and Endangered Species?**

*Answer:*

Yes. The U.S. Fish and Wildlife Service's (USFWS) [Information for Planning and Consultation](#) (IPaC) is a GIS tool that identifies listed species, critical habitat, migratory bird, and other resources. The location of a potential EV charging project can be entered into the IPaC tool to generate a report that includes listed species, critical habitat, migratory bird, and other resources that may be found within the project area. Consultation with the USFWS is not required if the project will have "no effect" on a listed species or designated critical habitat.

### **Question: Are there additional requirements if an EV charging station is located in the floodplain?**

*Answer:*

Yes. Executive Order 11988, "Floodplain Management," as amended by E.O. 13690, "Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input," requires Federal agencies to consider alternatives for proposed actions in or affecting

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<sup>7</sup> [About the Exemption Regarding Historic Preservation Review Process for Undertakings Involving Electric Vehicle Supply Equipment \(EVSE\) | Advisory Council on Historic Preservation \(achp.gov\)](#)

<sup>8</sup> Two examples of these conditions are (1) the action takes place in existing parking facilities with no major electrical infrastructure modifications and are located as close to existing electrical service panel as practicable and (2) minimize ground disturbance to the maximum extent possible. See Section IV at 87 FR 66201, 66203 (Nov. 2, 2022) (<https://www.achp.gov/sites/default/files/exemptions/2022-11/Exemption%20for%20Electric%20Vehicle%20Supply%20Equipment%2010.26.22.pdf>)

floodplains. FHWA implements these Executive Orders through DOT Order 5650.2 (1979); and 23 CFR part 650, subpart A (Location and Hydraulic Design of Encroachments on Flood Plains). The FHWA also issued FHWA Order 5520 in 2014 to address extreme events and climate change. The FHWA's floodplain regulation also generally requires projects to be consistent with the intent of the standards established by the Federal Emergency Management Agency (FEMA), States, and local governmental agencies for the administration of the National Flood Insurance Program (NFIP). 23 CFR 650.103(g) and 650.115(a)(5). The presence of a floodplain will typically not preclude FHWA from funding or approving the placement of a charging station within a proposed or existing transportation facility, unless the proposal is a significant encroachment and there are other practicable alternatives to the proposed action. See 23 CFR 650.113. However, floodplains can still pose some flooding risks for EV charging stations and project sponsor should consider the following factors:

- **Safety:** If a project sponsor seeks to place EV charging stations in a base floodplain, they will need to conduct appropriate location hydraulic studies under 23 CFR 650.111. To evaluate safety risk, the project sponsor should confirm with the manufacturer that the charging station can be safely inundated with floodwater within the base floodplain. See CFR 650.111(c) and 650.115(a). If inundation of the charging station presents a risk to safety, the project sponsor may need to elevate the EV charging station or implement appropriate measures to minimize or avoid the risk.
- **Access:** Project sponsors will need to consider access to the EV charging station, including access roads that are located within a base floodplain, that may reduce or prevent access to EV charging station locations during a flooding event.

To determine whether a proposed location for an EV charging station will be within the limits of a base floodplain, States must use NFIP maps or, if NFIP maps are not available, information developed by the State highway agency. 23 CFR 650.111(a). NFIP maps may be found on FEMA's online [Map Service Center](#). States should also consider the location of existing and proposed EV charging infrastructure with respect to the Federal Flood Risk Management Standard, as well as how climate change may affect the floodplain, and construct EV charging infrastructure consistent with the Federal Flood Risk Management Standard, to the extent consistent with law. The FHWA regulations, policies, and procedures apply to encroachments in all base floodplains, not just the floodplains regulated by FEMA in the NFIP.

## *Air Quality Conformity*

### **Question: Is a transportation conformity determination required for an EV charging infrastructure project funded or approved by FHWA/FTA?**

#### *Answer:*

Transportation conformity applies only in nonattainment or maintenance areas for the criteria pollutants of ozone (O<sub>3</sub>), carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), and particulate matter (PM<sub>10</sub>, and PM<sub>2.5</sub>) (see definitions of "nonattainment area" and "maintenance area" at 40 CFR 93.101).

EPA's transportation conformity regulation (40 CFR part 93 subpart A) states that transportation conformity determinations in such areas are required for FHWA/FTA projects (40 CFR 93.102). The transportation conformity regulation defines an FHWA/FTA project, highway project, and transit project in 40 CFR 93.101.

*FHWA/FTA project* is defined in 40 CFR 93.101 as:

"any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project,

such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

*Highway project* is defined in 40 CFR 93.101 as:

an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to: (1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

*Transit project* is defined in 40 CFR 93.101 as:

an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to: (1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope; (2) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Because EV charging stations would not themselves fit within the definition of a highway or transit project in 40 CFR 93.101, therefore a project-level conformity determination is not required for these stations.

However, if an EV charging infrastructure project funded or approved by FHWA or FTA also includes infrastructure beyond the charging stations that would fit the definition of a highway or transit project in 40 CFR 93.101, such infrastructure may need a project-level conformity determination, unless exempt under 40 CFR 93.126.

Similarly, with respect to metropolitan transportation plan/transportation improvement program (TIP) conformity, because EV charging stations do not fit within the definition of a highway or transit project in 40 CFR 93.101, a transportation conformity determination on the plan/TIP amendment is not required if such amendment is for adding EV charging stations only with no other changes. However, if an EV charging infrastructure project includes non-exempt additions, a transportation conformity determination on the plan/TIP amendment would be necessary.

## *Contract Administration & Procurement*

**Question: Are Federal highway construction contracting requirements (such as 23 USC 113, prevailing wages) applicable to EV charging infrastructure projects that are built on private property using NEVI formula funds or other Title 23 funding?**

*Answer:*

Yes. NEVI Formula Program funds are to be administered as if apportioned under chapter 1 of Title 23, U.S.C. The BIL also included a new provision, 23 USC 109(s)(2), which states that EV charging infrastructure projects using Title 23 funds “shall be treated as if the project is located on a Federal-aid highway”.

In addition, 23 CFR 680.118(b), states that 23 USC 113 applies, and prevailing wages must be paid on NEVI formula funded projects.

See also Right of Way questions and answers in this document.

**Question: Are EV charging infrastructure projects considered “construction” and subject to Federal-aid construction contracting requirements?**

*Answer:*

Yes, the installation of EV charging equipment would typically be considered construction, not operational improvements. Thus Title 23 construction requirements would apply.

23 USC 112(a) provides:

In all cases where the [construction](#) is to be performed by the [State transportation department](#) or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the [Secretary](#).

Furthermore, 23 USC 109(s)(2) provides:

Notwithstanding any other provision of law, a [project](#) to install electric vehicle charging infrastructure using funds provided under this Title shall be treated as if the [project](#) is located on a [Federal-aid highway](#).

Furthermore, 23 CFR 635.103 provides:

The policies, requirements, and procedures prescribed in this subpart shall apply to all Federal-aid highway projects.

Also, we note that 23 CFR 635.104(a) & (b), while applicable, apply to the same extent that they do to the procurement of other highway construction projects. In other words, the Division Administrator may approve some other method if found to be more cost effective pursuant to the force account procedures under 23 CFR 635 subpart B and [FHWA's Order 5060.1](#). Per the order, analysis is conducted on a project-by-project basis, and cost savings related to reductions in less-than-complete plans, reduced quality assurance, reduced construction management and documentation may not be counted in establishing cost effectiveness. Thus, the use of this process would not typically apply to EV charging infrastructure projects. Pursuant to these procedures, in the unlikely event that circumstances are considered to justify a negotiated contract or another unusual method of construction, Division Administrators must find that the method is not only cost effective but also that the rights or responsibilities of the community are so affected as to require some special course of action.

**Question: Can a State use a grant program to distribute NEVI formula funds and implement their NEVI program?**

*Answer:*

Yes. In general, a recipient may choose to distribute their NEVI formula funds via a grant program. However, Title 23 requirements apply to the NEVI formula program and non-Federal entities that receive grant awards as “subrecipients” must also follow Title 23 procurement and contracting requirements. For NEVI funded construction projects, this would involve the subrecipient complying with 23 U.S.C. 112, 23 CFR parts 635 and 636, and other applicable Federal requirements, as a contracting agency, and the States would be responsible for overseeing the subawards and ensuring compliance with all applicable Federal requirements. Recipients should consider whether the non-Federal entity is performing the function of a “subrecipient” or a “contractor.” Please see 2 CFR 200.331 Subrecipient and Contractor Determinations and 2 CFR 200.332 Requirements for Pass-Through Entities, as well as the FHWA CFO’s 2 CFR 200 implementation guidance. For subawards to local public agencies, States should follow normal Title 23 procedures.

**Question: What are some examples of competitive contracting mechanisms that allow for best value selection and are available under Title 23 for potential use in the procurement of EV charging projects?**

*Answer:*

States can select any construction contracting method provided for under [Subchapter G of 23 Code of Federal Regulations](#) when available in that State. Examples of potential construction contracting methods include design-build ([23 CFR 636](#)), public-private partnership design-build ([23 CFR 636.119](#)), and indefinite delivery/indefinite quantity(ID/IQ) ([23 CFR 635 Subpart F](#)).

**Question: When is a State uses a “grant” approach to administer their funds acting as a pass-through entity, when is the party receiving the funds considered a subrecipient and when are they considered a contractor?**

*Answer:*

See [2 CFR 200.331](#) for assistance in these determinations.

### *Technical Assistance*

**Question: What types of support or technical assistance can State DOTs obtain from the Joint Office?**

*Answer:*

The Joint Office will provide support to State DOTs as they develop their Plans, and once Plans are approved by FHWA, move toward supporting implementation of those Plans. Specific technical assistance from the Joint Office includes, but is not limited to, EV technologies, modeling and analysis, sharing relevant data sources, identification of best practices, consultation requirements, and implementation of Justice40. Support can be accessed through the “Contact Us” form at [driveelectric.gov/contact](https://driveelectric.gov/contact). The Joint Office will assist State DOTs directly or connect State DOTs to other available resources. State DOTs are encouraged to work directly with the Joint Office during Plan development, updates, and implementation.

**Question: What types of support or technical assistance can State DOTs obtain from FHWA?**

*Answer:*

FHWA can assist with questions regarding the [NEVI Formula Program Guidance](#) and questions regarding the administration of Title 23 U.S.C. This includes questions about program eligibility, financial administration, contracting and procurement, and NEPA. Initial questions on these items should be routed through [FHWA Division Office](#) contacts. FHWA Division Offices will coordinate with program staff at FHWA headquarters when necessary to support States.

**Question: Who can answer specific questions related to the NEVI Formula Program?**

*Answer:*

Technical assistance questions regarding Plan development can be directed to the Joint Office at <https://driveelectric.gov/contact> or 833-600-2751.

Program-related questions regarding the implementation of the NEVI Formula Program, such as those regarding financial management, non-Federal share, or other Title 23, U.S.C., requirements, should be directed to the appropriate FHWA Division Office. General questions on the overall Program may be directed to Diane Turchetta ([Diane.Turchetta@dot.gov](mailto:Diane.Turchetta@dot.gov)), Will Stein ([William.Stein@dot.gov](mailto:William.Stein@dot.gov)), or Suraiya Motsinger ([Suraiya.Motsinger@dot.gov](mailto:Suraiya.Motsinger@dot.gov)).