

February 3, 2017

The Honorable Elaine Chao
United States Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590
Sent via email to: elaine.chao@dot.gov

Dear Secretary Chao,

Congratulations on your confirmation as Secretary of the Department of Transportation. Given the focus of President Trump and his administration on eliminating and controlling excessive regulations, the organizations below wish to bring to your attention a particularly egregious case of regulatory overreach advanced in the final days of the prior administration, which many of the undersigned groups raised during the notice and comment process.

Specifically, on January 18, the Federal Highway Administration (FHWA) finalized the third of its performance measures authorized by the 2012 Moving Ahead for Progress in the 21st Century (MAP-21) surface transportation reauthorization law, which were intended to address the Congestion Mitigation Air Quality (CMAQ) program and freight movement. Unfortunately, FHWA chose to exceed the explicit congressional directives of MAP-21 by injecting new policy objectives that are outside the scope of MAP-21—including the addition of a “greenhouse gas” (GHG) measurement component to the performance measure.

The GHG measurement segment of the proposed rule exceeds both the authority of the FHWA and the intent of MAP-21. Congress had a chance to include GHG related measures in MAP-21 when it was deliberated in both the House and Senate and chose not to do so. In addition, the Office of Management and Budget released a February 9, 2012, Statement of Administration Policy during the MAP-21 negotiations which did not identify GHG analysis as an administration priority or urge Congress to include such a priority.

Further, it should be noted that any sort of a GHG measurement program cannot be justified under the auspices of the CMAQ program. As stated in both 23 U.S.C. 149 (b) and FHWA’s CMAQ question and answer website (available here: <http://www.fhwa.dot.gov/fastact/factsheets/cmaqfs.cfm>), the CMAQ program only applies to areas not meeting federal Clean Air Act standards for ozone, carbon monoxide and particulate matter. As such, the CMAQ program does not convey any sort of authority to regulate or measure GHGs.

The simple fact is that MAP-21 was approved with broad bipartisan majorities in the House and Senate and the inclusion of an unrelated GHG proposal violates this bipartisan spirit. It is hard to see this proposal as anything other than a maneuver to achieve a policy objective the prior administration failed to advance in the appropriate legislative arena.

As such, we urge you to withdraw the January 18 performance measure and reissue a revised rule without the GHG emissions measure and with any additional changes consistent with the administration's focus on regulatory reform.

Sincerely,

Alliance of Automobile Manufacturers
American Bus Association
American Chemistry Council
American Coke and Coal Chemicals Institute
American Concrete Pipe Association
American Council of Engineering Companies
American Farm Bureau Federation
American Forest & Paper Association
American Fuel & Petrochemical Manufacturers
American Highway Users Alliance
American Moving & Storage Association
American Petroleum Institute
American Road & Transportation Builders Association
American Trucking Associations
American Wood Council
Associated Equipment Distributors
Associated General Contractors of America
Auto Care Association
Brick Industry Association
The Fertilizer Institute
Foundation for Pavement Preservation (FP2)
International Liquid Terminals Association
Industrial Minerals Association – North America (IMA-NA)
International Union of Operating Engineers
Laborers International Union of North America
Motor and Equipment Manufacturers Association
National Asphalt Pavement Association
National Association of Manufacturers
National Association of Truck Stop Operators
National Electric Contractors Association (NECA)
National Industrial Sand Association (NISA)
National Lime Association
National Ready Mixed Concrete Association

National Stone, Sand & Gravel Association
Precast/Prestressed Concrete Institute (PCI)
Service Station Dealers of America and Allied Trades (SSDA-AT)
Texas Cotton Ginners' Association
Tire Industry Association (TIA)
U.S. Chamber of Commerce
The Vinyl Institute