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November 9, 2017

The Honorable Elaine Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Re: Docket No. FHWA-2017-0025

Dear Secretary Chao:

The Associated General Contractors of America (AGC) is a national organization representing 26,500 businesses involved in every aspect of construction activity in all 50 states, Puerto Rico and Washington, D.C. AGC members perform construction contracts for the Federal Highway Administration (FHWA), state and local transportation agencies and other entities that receive funding through the Federal-aid highway program and therefore have a direct interest in the implementation of both the Fixing America's Surface Transportation (FAST) Act and the Moving Ahead for Progress in the 21st Century Act (MAP-21).

AGC has joined with 38 associations with similar interests in filing comments in this Docket in strong support of the proposed repeal of requirements for carbon dioxide (CO₂)-based greenhouse gas (GHG) performance measurement and management, published by the U.S. Department of Transportation (USDOT), Federal Highway Administration (FHWA), at 82 Federal Register 46427 *et seq.* (October 5, 2017). We urge that the proposed repeal be finalized as promptly as possible.

AGC commends FHWA for recognizing that the current rule would impose costly new burdens on states at a time when there is a need for enhanced highway and infrastructure investment. As detailed in our joint comments, FHWA lacks the authority to impose the rule and for this reason alone should withdraw it.

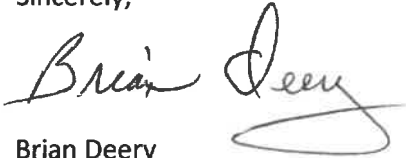
In addition, AGC believes there are significant reasons why GHG measurement and management requirements would pose significant obstacles to the transportation planning process, probably adversely impact national air quality, and duplicate other federal agency regulations and initiatives currently underway. Those reasons include:

1. Diluting already limited Congestion Mitigation and Air Quality (CMAQ) funds to mitigate GHG emissions will negatively impact states' efforts to meet National Ambient Air Quality Standards (NAAQS). Nonattainment has severe consequences for construction, including requirements to demonstrate "conformity." What is more, states and MPOs cannot take "credit" for GHG reductions in their conformity determinations. Any *required* GHG emission reduction measures would run counter to the core intent of the CMAQ program.

2. Integrating GHG performance management requirements into an already complex process of uniting air quality planning and critically important transportation infrastructure decisions will bog down highway planners. As NAAQS become more stringent, the likelihood of Metropolitan Planning Organizations (MPOs) confronting “conformity lapses” will increase. Construction bans will thwart many efforts to reduce traffic congestion: a key strategy to controlling on-road GHG emissions. Construction bans will also prevent the construction industry from building energy efficiency into existing and future infrastructure
3. Other federal agencies—like the U.S. Environmental Protection Agency—already have set new nationwide standards and guidelines for GHG emission reductions that are focused on the most significant sources.
4. Non-road sources used in construction and maintenance of Title 23 projects are not a significant source of GHG emissions. Moreover, the federal Clean Air Act (CAA) preemption provisions prohibit government mandates to lower engine emissions from existing fleets of off-road diesel equipment.
5. More technical assistance and incentive-based strategies are needed to facilitate state/local efforts to reduce GHG emissions without jeopardizing the competitiveness of U.S. companies in the global marketplace and without stopping construction activities, which are vital to meet the needs of growing communities, to sustain a strong economy, and ultimately to achieve the nation’s goals of energy efficiency and energy independence/security.

AGC strongly supports the proposed rule to repeal the GHG performance measurement and management requirements. We agree with the reasons for repeal advanced by FHWA in this proposed rule and offer the above additional comments, along with the issues raised in our joint comments, in support of repeal. FHWA should not impose new federal mandates that would require states and MPOs to evaluate on-road or off-road GHG emissions as a factor in transportation planning—with or without specific factors as to how GHG emissions should be addressed.

Sincerely,



Brian Deery
Senior Director
Highway and Transportation Division