



March 18, 2024

Jennie Romer, Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20640-0001

Subject: Request for Information (RFI) for Implementation of the EPA Label Program for Low Embodied Carbon Construction Materials (Inflation Reduction Act 60116) Docket Number EPA-HQ-OPPT-2024-0038

Dear Deputy Assistant Administrator Romer:

Thank you for the opportunity to provide comments on the Draft Approach for Stakeholder Input: Implementation of the EPA Label Program for Low Embodied Carbon Construction Materials (Inflation Reduction Act 60116) released on February 15, 2024.

With more than 1,100 member companies, the National Asphalt Pavement Association (NAPA) is the only trade association that exclusively represents the interests of the asphalt pavement producer/contractor on the national level with Congress, government agencies, and other trade and business organizations. NAPA's membership also includes companies and individuals that support the asphalt pavement industry, such as construction equipment manufacturers and material suppliers. NAPA members are leaders in implementing sustainable plant and pavement technologies, such as reclaimed asphalt pavements (RAP) and warm-mix asphalt (WMA), that reduce environmental impacts and greenhouse gas emissions.

While NAPA is the Trade Association for asphalt producers, it also serves as the Program Operator for the *Product Category Rule (PCR) for Asphalt Mixtures in North America*. As Program Operator, NAPA ensures that its PCR is compliant with the latest standards and that environmental product declarations (EPDs) for asphalt mixtures are compliant with the PCR. Based on its experience, NAPA provides the following feedback to the EPA:

NAPA Believes the Life-Cycle Stages Chosen Are Appropriate for a Material-Based Label

We support EPA's intention to initially address embodied carbon only from the production stage of materials/products (A1-A3) given the current state of practice with respect to EPDs for construction materials. For most construction materials, quantification of subsequent life cycle stages requires the use of whole-building or whole-project LCAs to consider project-specific design and use parameters. Going beyond A3 could make the label more challenging to implement because qualification for the label would be dependent on the project in addition to the material.

Recognizing that transport from the manufacturing plant to the jobsite (A4) can be significant for some asphalt mixtures, EPA should consider adding a qualifier to the label regarding A4 transport distances. For example, the label could qualify for materials sourced within a specific distance from the jobsite. Such distances should be product-type specific, and may vary regionally, depending on the availability of locally sourced materials (e.g., rural vs. urban areas).

NAPA Supports the Phased Approach with Materials Progressing on Their Own Timelines

As this label is the first of its kind, a systematic, phased approach for implementation makes sense. It will take the different Program Operators differing amounts of time to make the necessary changes to their programs. Therefore, allowing the different materials to progress on their own timelines will be the most effective way to advance the program.

NAPA Agrees that Data Quality Improvement Is the First Step

A program of this nature will only be as good as the data used to build it. Therefore, improving data quality is a critical first step. One step in the right direction would be to form a data users group including stakeholders such as Program Operators. While NAPA supports the Federal LCA Commons, the LCA Commons Data Interagency Team has not engaged with stakeholders to better understand what data are needed to improve data quality.

NAPA believes that the timeline EPA is suggesting for Phase 1 is very aggressive. Depending on the changes Program Operators will have to make to their current PCRs, it could take longer than the 6- to 12-month timeframe just to make the PCRs complaint, go through third-party review, and be subject to public comment. Then EPDs will have to be developed using the updated PCR. This process will be a significant investment of time and money for Program Operators and industry.

NAPA Believes Representativeness Is Difficult to Define for Asphalt Mixtures

To complete Phase 1, EPA requires a “representative number of robust EPDs developed in accordance with the PCR that are publicly available.” There are more than 3,500 asphalt plants in the United States today. Each plant may have as many as 100 different mix designs due to the proliferation of specifications in the market.

Every road owner develops a set of standard material specifications for asphalt mixtures based on the properties the owner expects will drive the performance needed for common pavement applications. For example, a state agency commonly has different requirements for an asphalt mixture used for an Interstate wearing course versus an asphalt mixture used as an Interstate base course, while a surface mixture for a highway carrying less traffic would be designed differently.

Most states have modified the American Association of State Highway and Transportation Officials (AASHTO) mix design specifications to meet the needs of the state, incorporating localized criteria such as aggregate geology and climate. Local agency material specifications often vary from state DOT specifications in ways that significantly affect EPD results. The result is thousands of asphalt mixture types that are not comparable due to variations in mix design requirements and expected performance.

Thus, complying with Phase 1 requires assessing representativeness based on each specification an owner may use.

What makes this even more challenging is that many agencies are beginning to explore the use of balanced mix design (BMD) as a new design method for some mixtures while continuing to use volumetric mix designs in specific applications. As owners change their design systems, there will be massive market changes in asphalt binder content, aggregate sourcing, recycled material content, and even binder type. As BMD is a newer mix design methodology and agencies are determining thresholds for performance specifications, there will be limited data for these types of mixtures.

NAPA Believes Data Should Not Be Limited to Published EPDs

While NAPA understands EPA's desire to tie the label to published EPDs, there is some reluctance from the contracting community to publish EPDs. In EPD's current form, some asphalt producers believe too much information related to the mix design is included in an EPD, revealing proprietary information that may give a competitor an advantage. NAPA is in the process of alleviating this concern in its EPD program; however, other concerns do exist.

In preparing these comments, asphalt producers expressed concern about how environmental impacts could be evaluated in the procurement process. For example, numerous European countries are using either the social cost of carbon or a contractor's environmental practices to rank contractors in the procurement process or determine which contractor was the "low bid." If EPDs are used in procurement, having a publicly available EPD would essentially be disclosing part of your bid package before submitting it. This would discourage competition and discourage participation in the programs.

NAPA currently allows asphalt contractors to create EPDs, but to encourage participation in the program without making "trade secret" data publicly available to competitors, they do not have to publicly post them to a website or database. NAPA encourages EPA to work with Program Operators to maintain an environment for healthy competition while still building a robust program. NAPA believes that non-publicly available EPDs and similar benchmarking data EPDs can be used if the process has been critically reviewed. To this end, NAPA's *EPD Benchmark for Asphalt Mixtures* (published February 2024) relies on confidential data submitted by asphalt mix producers, ensuring that companies can participate without concern for disclosing their trade secrets to competitors. NAPA's EPD Benchmark report was verified by a competent third party and is undergoing a similar review by an expert panel organized by FHWA. EPA's threshold-setting process could follow a similar model. Full disclosure of EPD results for public owners would be a part of the procurement process.

This approach of using confidential industry data to set thresholds is not new to EPA. The ENERGY STAR Energy Performance Indicator (EPI), which is used to determine eligibility for ENERGY STAR to certify industrial plants as operating efficiently, relies on confidential industry data that is reviewed and analyzed by a third party. The EPI model is subsequently reviewed by industry prior to finalization.

NAPA Believes that Thresholds Will Be Difficult to Set and Keep Up to Date

The draft Label Program Approach indicates that threshold setting will be dependent on the availability of robust EPDs. However, there needs to be flexibility in how strictly the criteria for robustness are applied, especially in the early years of this program. For example, there is currently a lack of clarity regarding criteria for defining supply chain specificity. The timeframe to define supply chain specificity and other aspects of robust EPDs, implement them in PCRs, and get EPDs into the marketplace will be measured in

years, not months. Thus, the availability of robust EPDs, as defined in footnote 3 of the draft Label Program Approach, should not be a requirement for threshold setting.

EPA is proposing to seek stakeholder input on global warming potential (GWP) thresholds by issuing a Notice of Intent (NOI), which will provide an opportunity for stakeholders to respond to the draft GWP thresholds. However, there is no discussion in the Label Program Approach of how EPA will engage with relevant stakeholders prior to issuing an NOI for a given material/product category. EPA should directly engage with relevant stakeholders to collaboratively develop sector-specific approaches that can subsequently be offered as a draft for public feedback.

NAPA agrees that GWP thresholds should be routinely updated, but the update frequency has to allow time for the market to respond. Considerations that may affect the frequency of GWP threshold updates include the following:

- The time needed for operational improvements at a manufacturing facility to be reflected in EPDs, which generally requires a 12-month dataset.
- The time needed for capital improvements at manufacturing facilities, which can take several years for design, permitting, construction, and accruing a 12-month operational dataset.
- The review cycle for PCRs, which typically occurs on a 5-year cycle, coupled with the time needed for manufacturers to develop and publish EPDs under new versions of a given PCR.

For these reasons, we recommend that GWP thresholds should be updated in conjunction with (but lagging behind) the PCR update cycle for a given product type.

Another concern with respect to GWP thresholds is whether they should be tied to a specific version of a PCR. EPA should engage more directly with stakeholders (Program Operators and industry) to better understand how to align GWP thresholds and PCR updates.

NAPA Believes that this Program Should Just Be Limited to Data Contained in EPDs

The draft Label Program Approach suggests that other impact categories or parameters may be included as part of the low carbon criteria but provides little information on how such parameters might be included. This program should focus exclusively on GWP impacts, given the statutory focus on embodied carbon. With that said, EPDs provide additional information regarding other impact categories. By using EPDs as the basis for determining a product or material's GWP, users of the label should be able to directly view the EPD and evaluate whether other impact categories are relevant to their decision-making process.

NAPA strongly recommends **not** including human health impact categories like health product declarations (HPDs) in the label program. While many consider HPDs the tool for disclosing the content of building products, HPDs are deficient in defining risk of exposure. There is a reason the science associated with human health impact categories has not been included in life cycle assessment to date. It is a completely different science and would require **extensive** rewriting of PCRs and background data development needed for their inclusion.

EPDs should also not be required to disclose the manufacturing plant's ENERGY STAR EPI score. While NAPA strongly supports the ENERGY STAR industrial program, and the PCR for Asphalt Mixtures was the

first PCR to include criteria for the optional disclosure of EPI scores and other ENERGY STAR information, this information should remain optional for disclosure in an EPD.

NAPA also believes that while the ENERGY STAR program is a good program, it is optional and should be separate from EPDs.

NAPA Encourages More In-Depth Stakeholder Engagement

To date, most stakeholder engagement has come via webinars and RFIs. To truly develop programs that can drive change, in-depth conversations need to occur between Program Operators, Agencies, and industry. NAPA has shown a willingness to participate in these discussions to ensure laws can be implemented in a way industry can reasonably comply. NAPA strongly encourages EPA to discuss these programs with industry in a more conversational manner.

Thank you for considering our comments on this groundbreaking program. If you have any questions, please do not hesitate to reach out or email me at RWillis@AsphaltPavement.org.

Regards,



J. Richard Willis, Ph.D.

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