

## **NAPA T&I Stakeholder Portal Submission**

**Introduction to NAPA:** The National Asphalt Pavement Association (NAPA) is the lone trade association representing over 1,100 companies involved in asphalt pavement production and application (paving) across the nation. Our members produce over 400 million tons of asphalt pavement every year, supporting close to 350,000 employees nationwide. Asphalt comprises 94% of the highway and roadway market, being the most flexible, recycled and sustainable pavement material.

### **NAPA's Highway Bill Reauthorization Policy Priorities**

**Work zone safety:** Keeping construction workers safe while they pave our nation's critical road network.

*Background:* In 2022, 891 people, including motorists and workers died in roadway work zones. These senseless tragedies are often in large part due to erratic and distracted driving, speeding, driving under the influence and failure to abide by other traffic laws. Although most of the jurisdiction related to work zone policy is at the state level, FHWA provides much-needed resources and support as states seek to implement new policies and best practices. Without these investments and resources, workers' safety will be compromised. Learn more about NAPA's work zone safety summary [here](#).

#### **Legislative recommendations:**

##### *Expand implementation and flexibility of Work Zone Safety Contingency Funds*

Section 120(c)(3)(B)(vi) of Title 23, United States Code – Included in IIJA under “innovative contracting mechanism”

- IIJA authorized the use and deployment of work zone safety contingency funds (WZSCF) that acts as a plus-up on state DOT contracts, as opposed to requiring a change order for work zone safety enhancements. However, only three states have currently implemented the program, due to certain constraints and limitations. We encourage Congress to expand the use of these funds to include proven technologies and best practices in work zones.
  - Change the requirement for increased federal share to include all work zone safety enhancements via the WZSCF, including but not limited to: police presence, barriers, lane closures, technology deployment, and maintenance of traffic changes.
  - Require FHWA to submit annually, a report identifying the use and deployment of WZSCF, including which states have implemented, and recommendations to improve the program.

##### Police presence in work zones

- One of the best deterrents for bad driver behavior in work zones is law enforcement presence. Currently, law enforcement presence in work zones is 100% funded by the road contractor or the state DOT.

- We ask Congress to make law enforcement presence in work zones eligible for federal participation in the large formula funding programs such as Surface Transportation Block Grant (STBG), National Highway Performance Programs (NHPP), Congestion Mitigation and Air Quality Improvement Program (CMAQ), and the National Highway Freight Program (NHFP).
- Suggested legislative text for the formula programs identified above: Special rule for work zone safety - A State may expend funds apportioned to the State under this section to provide law enforcement presence in highway work zones with posted speeds greater than 45 miles per hour. Each State that uses these funds shall submit a report to the Secretary of Transportation annually including hours of work zone coverage and expended funds.

#### Incentivizing efficient project delivery

- Include in “innovative project delivery” subsection, prioritization of lane and road closures, when practicable, that enhance project delivery timelines, efficiencies, and safety.

#### Work Zone Safety Working Group

The following language in H.R. 2992, a bipartisan bill introduced on April 24<sup>th</sup> by Reps. Carter, Titus, Yakum, and Bresnahan, should also be included in the surface transportation reauthorization. The bill requires FHWA to stand-up a working group with relevant parties, to identify work zone safety best practices and provide recommendations on policy changes.

- *The Secretary of Transportation in conjunction with the Occupational Safety and Health Administration and other relevant agencies, shall convene a working group of industry and nongovernment entities, including contractors, pavers, engineers, construction labor unions, traffic safety industry professionals, State transportation officials, and others in the road building community.*
- *Duties.—The working group convened under paragraph (1) shall collect, analyze, compile, and publish accurate, detailed data on work zone crashes, along with strategic plan to identify and implement solutions to the fatal and non-fatal injury crashes, adoption of better data sharing with the National Highway Traffic Safety Administration, including local adoption of the Model Minimum Uniform Crash Criteria, and annual updates on awareness and intervention activities and results.*
- Injury Health Data Section 24108(c)(2) of the Infrastructure Investment and Jobs Act (Public Law 117–58) is amended by inserting “, including work zone deaths” after “fatalities”

**Highway Trust Fund (HTF) Solvency:** NAPA endorses solutions to address fundamental issues with the Highway Trust Fund’s financial solvency and ensuring all road-users contribute to the system.

**Background:** The HTF is a standalone account that pays for federal investments in America’s highways and transit systems – accounting for about 25% of the nation’s roadway network (state and local

programs pay the remainder). The HTF is primarily funded through vehicle fuel taxes – and the total fund has been declining over the last 30 years due to increased vehicle fuel economy and use of electric vehicles. Since 1993, the HTF’s structure and revenue capture mechanisms have been left unchanged, which is why Congress has relied on general fund transfers to offset the HTF for every Highway Reauthorization since 2008. If current outlays and revenues are maintained, the HTF faces an estimated \$250B shortfall over the next decade. Learn more on NAPA’s HTF solutions [here](#).

**Legislative Recommendations:**

- Any potential user fee solutions to address the HTF revenue shortfall should reflect these core principles: derived fairly from system use, any funds collected from roadway users are dedicated to highway improvements, and durable to support robust growth for a safe, well-functioning and resilient surface transportation system.
- Reject any efforts to reduce or eliminate existing revenue sources, unless new user fees cover them at appropriate levels.
- A national EV and/or hybrid fee should be enacted with the revenues dedicated solely to the HTF. This fee should also be indexed to inflation – as we have seen over the past 5 years, inflationary impacts reduce the HTF’s buying power, requiring state DOT’s to cut critical projects.
  - We are encouraged that the current Budget Reconciliation legislation with T&I’s jurisdiction includes this capture, and would remain committed to implementing this capture and seeing those funds going to the HTF exclusively

**Formula funding:** Highway formula funding is the most critical funding Congress delivers for states, allowing them the flexibility to deliver local projects without having to navigate much bureaucracy.

**Background:** States have been relying on highway formula dollars to construct roads throughout the country since 1916. These funds are largely responsible for delivering the over 4 million lane miles of road that makes up our road network. The current structure of the formula programs allow state and local decision-makers, who best know their own needs, to choose which projects to build and how they should be constructed. This flexibility also allows state policy makers to deliver construction and maintenance projects based on the needs of the state, rather than legislatively prescribed, leading to a more efficient use of precious resources.

**Legislative Recommendations:**

- Continue the strong track record and performance of formula programs to provide states the flexibility to choose the projects best suited to their needs – 90%, if not more, of the overall highway reauthorization package that could be facilitated via formula funding would be encouraged
- Categories of formula dollars could potentially be reduced to make funding and requirements associated with the projects more uniform. This would create more efficiency and simplify funding processes.

**Limit an Overreliance on Discretionary Grants:** IIJA substantially expanded discretionary grant programs delivering great projects but not without unforeseen challenges – while certain discretionary grants work well, like AID-PT mentioned further below, an overabundance of discretionary programs without sane strategy creates problems and rising costs.

**Background:** Congress has long provided states discretionary grants for transportation projects, however IIJA significantly expanded these programs. Although many successful projects were delivered with discretionary grants, many state and local governments had difficulties handling the requirements associated with receiving the grant awards. Many local governments, especially in rural areas, lack the staffing and capacity to pursue these grants. In addition to the logistical challenges associated with grant awards, many rural jurisdictions do not have projects that would meet the requirements in the notice of funding opportunity. Another challenge that we have seen with discretionary grants in IIJA, was additional time added to the project timeline. For example, we have seen numerous times where state DOT's and FHWA take 18 to 24 months just to secure these grant agreements – before getting a shovel in the ground. When inflation is above 5%, it doesn't take long for projects to become unattonable or require other projects to be cut.

**Legislative Recommendations:**

- Target proven discretionary grant programs and prioritize formula funding for State DOTs
- For the remaining grant programs, require that, to qualify for a grant award, the project must be of regional or national significance. This will reduce the burden on FHWA, state and local governments, while maintaining the state's ability to deliver the most crucial road and bridge projects.

**Recycled Asphalt Pavement (RAP):** Incentivizing the use of recycled materials that save on road construction costs, efficiently use existing materials and advance road construction sustainability.

**Background:** Asphalt pavement is 95% aggregate (sand, stone and gravel) and 5% asphalt binder and one of the best properties of asphalt pavement is its 100% recyclable. Over the past decades the use of recycled asphalt pavements, known as RAP, have become a major focal point for the asphalt industry's efforts to maintain its competitive edge, increase efficiency and lower costs to end users. Although great progress has been made, some states have yet to fully embrace increased RAP mixes, where appropriate. We would like to see the committee use the next surface transportation reauthorization to provide incentives to states for using best practices without mandating materials. So far, RAP has saved State DOTs over \$3B and we think using pavements that meet performance specifications; while saving greatly on virgin material and transportation costs, help leverage federal funds further. Learn more about recycled asphalt pavement [here](#).

**Legislative recommendations:**

- The Federal Highway Administration (FHWA) shall analyze current State Department of Transportation (DOT) policies, practices, and standards which influence the use of reclaimed asphalt pavement (RAP) in asphalt mixtures. As RAP is a material which can be used to reduce costs of asphalt mixtures that in turn translates to cost savings for taxpayers while improving resource efficiency. FHWA shall in partnership with the State DOT and local industry develop a program designed to increase RAP usage without sacrificing mixture quality in the state to at least the 2022 national average (22.2%) by 2030 for all states who had not achieved this level of RAP usage. States DOTs using RAP at greater levels than the 2022 national average but still want to increase RAP usage, can be supported by FHWA to increase RAP to its desired level. Upon successful completion of the plan and achieving the desired RAP percentages, FHWA will reimburse each state up to \$10 million in research, technology transfer, equipment, and deployment activities needed to achieve its goals.

**Accelerated Implementation and Deployment of Pavement Technologies (AID-PT):** Reauthorizing an important pavement deployment program that produces better performing pavements and reduces costs to taxpayers.

**Background:** AID-PT was originally authorized in *MAP-21* and has been included in every highway reauthorization package since. The program receives \$12M in appropriations annually, and is evenly divided between asphalt and concrete pavements, respectively. Despite the modest size of this program, it produces invaluable resources for FHWA to study pavement designs; and it's truly the only program of its kind at FHWA. Funds are used to increase the use and deployment of innovative pavement materials focused on reducing costs and increasing performance. This includes deploying pavements with more recycled materials, including tire rubber, plastics and recycled asphalt pavements. These innovations are directly responsible for our industry's ability to use over 90M tons of recycled asphalt pavement annually.

**Legislative recommendations:**

- Reauthorize the AID-PT program through the life of the next highway reauthorization bill
  - Increase AID-PT program funding from \$12M annually to \$14M annually – the program hasn't had any funding changes since 2012, and even marginal resource increase would have far-reaching benefits on more technical research and pavement deployment strategies
  - Require FHWA to submit a bi-annual report for the program, creating greater transparency for the program

**Buy America Construction Material Exemption:** Preserving the critical construction materials supply chain by maintaining the "Buy America" exemption that has been in place for over 40 years for raw construction materials such as asphalt binder and aggregate.

**Background:** Construction materials such as asphalt binder and aggregate have been exempted from "Buy America" requirements since the inception of those provisions back in the 1980's. However, during

the passage of the IIJA, “Build America, Buy America” (BABA) criteria were expanded, and for two years, despite bipartisan pushback, OMB declined to clarify whether these construction materials were included in the BABA criteria. It is NAPA’s hope that Congress will never include construction materials in these types of BABA provisions because some regions simply do not have adequate access to those natural resources needed to manufacture asphalt pavement mixes. Learn more about the history of BABA and the impacts to the asphalt industry [here](#).

**Legislative recommendation:**

- We ask Congress to maintain the exemption for raw material inputs and allow asphalt producers to source materials abroad without penalty, when needed.

**Permitting Reform:** To steward our precious HTF resources, Congress must act to address the challenges associated with permitting road and bridge projects.

**Background:** The IIJA marked a critical step forward to expedite project delivery by codifying One Federal Decision (OFD), which was designed to consolidate environmental reviews, establish clear timelines, and enhance interagency coordination. However, while OFD has demonstrated potential in reducing permitting delays, its implementation has been inconsistent across federal agencies. In some cases, project sponsors still face prolonged review periods due to bureaucratic inefficiencies and a lack of accountability measures to enforce compliance with statutory deadlines. To fully realize the benefits of these reforms, Congress must ensure that OFD is applied fully and uniformly across all agencies involved in infrastructure permitting. A key challenge has been the absence of meaningful consequences for agencies that fail to meet review deadlines. Without enforcement mechanisms, project sponsors are left navigating an unpredictable and often redundant permitting process that stifles project progress. Congress should enact enforcement provisions for agencies that repeatedly fail to comply with statutory timelines. Such steps would incentivize adherence to deadlines and drive accountability in the permitting process.

Aside from OFD advances, improving the NEPA Phase 2 process would greatly enhance the speed and costs associated with major roadway projects. As it stands, the NEPA Phase 2 rule under the Biden Administration allows for various litigious groups to deliberately delay and hamstring contractors and State DOTs, which result in increased costs and considerable project delays. These legal challenges can occur throughout a design/build process, without many restrictions, and can be filed even after a project is nearing completion.

Lastly, affirming *Sackett v EPA* via the regulatory capture and limitations of WOTUS – past interpretations from the Obama and Biden Administrations, respectively, have created more inconsistency and ambiguity regarding what waters are, and are not, considered Waters of the US. The WOTUS regulations have a direct impact on project design and sourcing of the key raw materials necessary for asphalt production.



### Legislative Recommendations:

- Strengthening the OFD framework and introducing robust accountability measures will help ensure that the IJA's historic investments translate into timely and efficient infrastructure improvements, rather than being bogged down by unnecessary red tape.
- Implement more succinct and less complicated processes related to the NEPA Phase 2 rule, which has tremendous impact on the design and review process of major road and highway projects; mitigating delays from duplicative reviews and arbitrary litigious activities facilitated within current NEPA Phase 2 reviews would dramatically improve the review, cost and project delivery throughout our national roadway network.

**Limit Arbitrary PFAS Liabilities on Passive Receivers:** Ensuring critical construction materials suppliers are not held liable for passively receiving recycled materials potentially containing PFAS.

Congress should act to:

- Expand the Existing CERCLA Recyclable Materials Exemption to Include PFAS-Containing Recycled Pavements
- Provide a passive receiver liability exemption for entities that unknowingly, unintentionally, or passively handle or receive PFAS-containing pavement materials.

**Background:** In May of 2024, U.S. EPA [finalized its rule](#) designating certain per- and polyfluoroalkyl substances (PFAS) as CERCLA (Superfund) hazardous substances. While the asphalt and other roadway pavement industries do not use, manufacture, nor intentionally add PFAS into pavements, we are increasingly aware that pavements may contain or be contaminated with PFAS from firefighting foams, especially at airfields or on roadways where firefighting foams are used to extinguish vehicular and tanker truck fires. Compounded by atmospheric source deposition, we also know that pavements may contain PFAS from vehicle wear particles like brake pads, tires, plastics, and interior fabrics. PFAS is ubiquitous and can be found virtually everywhere - but despite its pervasiveness, the pavement construction industry does not depend upon, nor deliberately facilitate, PFAS in its manufacturing processes. Unfortunately, EPA's rule assigns joint and several liability to any entity that transports or stores PFAS-containing materials, even if unknowingly, unintentionally, or simply passively receiving such material during normal commerce.

Because recycling pavements is an integral part of the road construction industry and keeps pavement material costs low, we are concerned about the impact these regulations could and currently have on roadway maintenance and construction projects that remove, recycle, or reuse existing pavement materials. For example, a typical pavement maintenance project - normally costing approximately \$2 million - may now cost in excess of \$60 million due to disposal requirements. This type of material cost escalation, for disposal of PFAS-containing pavements, is untenable and unsustainable for critical roadway pavement maintenance, and is completely unnecessary.

Historically, the ability of pavements to safely encapsulate otherwise deleterious material has been

scientifically validated and any waste designation of the underlying contaminants are exempted statutorily via a number of legislative constructs including outright [EPA rulemaking](#) and more broadly, through EPA's 1999 [Superfund Recycling Equity Act](#) which "[exempt\[s\] certain generators and transporters of recyclable scrap materials from cleanup liability under CERCLA](#), if the person who received the materials disposed of them instead and the disposal resulted in contamination." While recycling and reusing existing pavement is **not** disposal, under EPA's current PFAS regulation, recycling such pavement materials would still be subject to CERCLA liability.

Currently, we are facilitating agency-sponsored research to investigate the environmental impacts of recycling PFAS-containing pavements. Specifically, whether PFAS remnants from firefighting foams can be encapsulated and immobilized in recycled pavement. Based on experience with other byproduct-derived aggregates, there is a general expectation that pavement remnants exposed to historic use of firefighting foams can be encapsulated and largely immobilized in recycled pavement. Current research is underway at the University of Florida to validate this is the case.

#### Legislative Recommendations:

- We ask Congress to simply expand the existing CERCLA Recyclable Materials Exemption [\(<42 USC 9627>\)](#) to include PFAS-containing recycled pavements **and** to also provide a 'passive receiver' exemption to potential CERCLA liability for unsuspecting receivers of materials containing PFAS. More specific information is elaborated under our separate submittal on this issue, but the legislative amendment would be as follows:

Beneficial Reuse and Recycling of Reclaimed Pavement Materials. – Section 127 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC 9627) is amended –

- 1) In subsection (b), immediately following “scrap textiles” by inserting “reclaimed and reprocessed road. highway and other surface pavement materials”
- 2) In subsection (b) (2), immediately following “polychlorinated biphenyls” by inserting “or per- and polyfluoroalkyl substances”
- 3) In subsection (c), immediately following “textiles” in the title, by inserting “reclaimed and reprocessed pavements”, and immediately following “scrap textiles” by inserting “reclaimed and reprocessed road. highway and other surface pavement materials”

Note: Amending various environmental statutes through Surface Transportation Reauthorization legislation is not new. For example, Title IV (Sec 70402 (c) Federal Procurement) of the Infrastructure Investment and Jobs Act amended Sec 6002 of the Solid Waste Disposal Act to provide additional clarification on recycling practices.



**Support Workforce Opportunities:** Supporting workforce challenges facing the industry, including finding and training the workforce necessary to complete the thousands of roadway projects across the country each year.

**Background:** The asphalt industry employs over 350,000 people throughout the country, yet we continue to face challenges recruiting and keeping workers every year. While the asphalt industry provides good-paying jobs with competitive benefits, worker retention is difficult given the manual labor required and in certain markets, inflationary impacts have undercut worthwhile career opportunities. Further, the seasonality of paving in most markets makes it difficult to keep workers who aren't on a active jobsite, despite getting paid year-round for their employment, even if the paving season is only a portion of the calendar year.

**Legislative Recommendations:**

- Foster worker immigration programs that protect and incentivize opportunities in construction, despite the seasonality of industries like the paving industry
- Provide programs to State DOTs to work with local high schools and community and technical colleges to foster training and construction industry demonstrations on future career opportunities
- Encourage STEM-related programs at four-year institutions, given we need to continue to produce civil and heavy-construction engineers to support and lead State DOTs as many seasoned engineers are aging out of their roles and we must replace those vital roles over the next five years

**Material Neutrality:** Ensuring there is no material bias within any federal highway bill regarding pavement materials and mixtures.

**Background:** NAPA does not want Congress creating any undue bias or preference towards any material – these decisions should be left to the local State DOT and engineers who know their project variables, including cost, performance needs, weather conditions, traffic patterns, etc.

**Legislative Recommendations:**

- Maintain material neutrality – as has been done in various highway bills previously – and let local decisionmakers determine what is best for their roadway projects

**Additional Policies:** While the nuance may change, a lot of common-sense proposals on permitting reform, highway funding and project delivery are in line with NAPA from organizations like ARTBA, AASHTO, and NSSGA – to name a few. Further, we support stakeholder input from member companies like CRH, Granite Construction, and Vulcan Materials. We also support completing outstanding highway

corridor projects and any gaps in the national freight network/highway network, specifically the remaining Appalachian Development Highway System Segments:

*Description: A little over 3,000 miles of the ADHS have been authorized by Congress, with roughly 90% in use. There remain roughly 10% of the roads that are yet to be completed. The original need of connecting isolated areas of Appalachia to the interstate system and the National Highway System remain compelling today, and the remaining 10% of uncompleted roads in the ADHS should be funded to completion. Congress recognized the imperative of completing the ADHS in the IIJA by providing dedicated ADHS funding through FY2026. We support including dedicated ADHS funding in the reauthorization to complete the ADHS.*

**Conclusion:**

We appreciate the Committee's consideration on the above priorities and look forward to working with you and the Members of the 119<sup>th</sup> Congress to pass a landmark surface transportation reauthorization package. Please consider NAPA as a resource, and if you have any questions on these items or other policies within the upcoming highway package, please contact:

- Nile Elam – Vice President of Government Affairs – [nelam@asphaltpavement.org](mailto:nelam@asphaltpavement.org)
- Howard Marks – Vice President of Environmental, Health & Safety – [hmarks@asphaltpavement.org](mailto:hmarks@asphaltpavement.org)
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Thank you for providing a robust stakeholder engagement process and we are eager to continue to partner on relevant policies impacting the asphalt industry.