

January 19, 2025



Administrator Nominee Sean Duffy
Department of Transportation
1200 New Jersey Ave, SE
Washington DC, 20590

Subject: Asphalt Pavement Industry's Regulatory and Legislative Priorities in the 119th Congress

The asphalt pavement industry congratulates President-Elect Donald J. Trump, and we are excited to have a builder and infrastructure supporter in the White House. The National Asphalt Pavement Association (NAPA) looks forward to working with President Trump's Administration to advance our nation's critical surface transportation system.

The asphalt pavement industry is essential to the nation's mobility and economic growth as the most prevalent roadway material across the United States and its territories. Our industry represents over 90% of the roadway pavement market and about 80% of the airfield pavement market with production plants in every state. Our industry produces over 400 million tons of asphalt pavement annually across the country and employs over 350,000 hard-working men and women.

NAPA is the only national trade association representing this critical infrastructure material, with over 1,100 member companies operating approximately 3,500 mix plants located in every Congressional district. Asphalt mix plants provide the critical materials needed to build and maintain the nation's 4 million roadway miles. Smooth asphalt pavements allow vehicles to travel over 3 trillion miles annually, trucks to transport over 11 billion tons of freight, and vehicles of all types to efficiently transport emergency crews, students, families, delivery services, and more. Asphalt pavements connect Americans with every aspect of daily life – simply put, we keep America moving.

Asphalt pavement is heralded for its utility, durability, cost savings, resilience and sustainability. In fact, it is the most recycled material, by rate, in the nation – 99% of asphalt pavements are recycled, the majority into new roads. It is infinitely reusable in new pavements without any degradation or decrease in performance – making taxpayer investment in asphalt pavement a long-term win. Each year, the U.S. government saves more than \$3 billion dollars by deploying Reclaimed Asphalt Pavement (RAP). You may learn more about the benefits of RAP [here](#).

Despite the importance of our surface transportation infrastructure system, which underpins our economic competitiveness and national defense, [it represents just 2% of the annual federal budget](#). To maintain such a robust and efficient network while maximizing resources, we must reimagine how the federal government emphasizes those investments and ensures a continued revenue stream for the Highway Trust Fund.

As your incoming Administration considers policy priorities – executive orders, regulatory actions, and legislative pursuits with the 119th Congress – we have flagged certain key items relevant to our industry's continued growth and support of our nation's vital surface transportation network. We appreciate the opportunity to share these items of industry importance, while also reaffirming our commitment to join you in ensuring the economic success of our country.

We look forward to working with your Administration, advancing our national surface transportation network together.

A handwritten signature in blue ink that reads "Audrey Copeland".

Audrey Copeland, PhD, PE
President & CEO
National Asphalt Pavement Association

A handwritten signature in black ink that reads "Nile Elam".

Nile Elam
Vice President, Government Affairs
National Asphalt Pavement Association

EXECUTIVE ORDERS

As the Administration identifies which policies deserve immediate action, the items below would most positively impact our industry's operations and materials, resulting in savings for our federal and state government customers and the American taxpayers:

- **Maintaining Efficiency in the Fragile Construction Materials Supply Chain – Buy America and Tariffs:** Road construction materials such as asphalt binder and aggregate have been exempted from Build America Buy America (BABA) requirements since the inception of those provisions in the 1980s. However, during passage of the *Infrastructure Investment and Jobs Act* (IIJA), BABA criteria were expanded, and for two years, despite bipartisan pushback, OMB declined to clarify whether these construction materials were included or excluded under BABA criteria, until their exclusion was finally reaffirmed in 2023. We stand by the current and longstanding policy, and Congress' original intent, that BABA mandates never include road construction materials. It is critical we avoid unintended consequences to the construction material supply chain as many markets rely on materials that cannot be sourced locally. For example, certain areas across the country, like Florida, lack aggregate reserves necessary to construct roads and bridges; and states like New York and Wisconsin lack oil and asphalt binder refining capacity – all necessitating that certain raw construction materials be imported from neighboring trade partners.

While we support the Administration's approach to putting American companies and goods first, BABA expansion, or blanket tariffs, on such raw construction material imports would dramatically increase costs on critical roadway projects, delay vital road improvements throughout the country, and underutilize precious federal resources for infrastructure advancement. In these cases, it is simply more efficient to import those select raw materials from neighboring countries instead of transporting them from within the nation's borders. Most importantly, while only a fraction of the materials for asphalt pavement mixtures need to be imported, 100% of asphalt pavement placed in the U.S. is manufactured domestically. We encourage your Administration to maintain BABA exemptions and exclude tariffs for road construction materials, maintaining efficiency and protecting the construction materials supply chain.

- **Eliminate Ambiguous Environmental Justice Policy:** [Executive Order 14096](#), "implementing and enforcing the Nation's environmental and civil rights laws, preventing pollution, addressing climate change and its effects, and working to clean up legacy pollution that is harming human health and the environment," is aspirational but non-specific and lacks Congressional intent. Unfortunately, regulatory agencies like the EPA have relied on this Executive Order to promote and implement agency Environmental Justice (EJ) policy creating unnecessary animosity, often resulting in litigation and ill will across communities and industries, and pitting local zoning boards against county government and the Court. Given the recent Louisiana court case, [EPA now acknowledges such policy EJ may be inappropriate](#). Therefore, we encourage rescinding EO 14096 in 2025.
- **Prioritizing PFAS-Free Products:** [Executive Order 14057](#) "directs the federal government to use its scale and procurement power . . . to prioritizes the purchase of . . . products without added . . . PFAS." While potential environmental and toxicological impacts associated with PFAS remain uncertain, we know these chemicals are ubiquitous in everyday materials, from non-stick pans and dental floss, to biosolids and firefighting foams that can permeate into pavements. Until there is better scientific understanding of potential impacts and especially how to manage or dispose of such materials, we are concerned the prior Administration's Executive Order could unknowingly stymie the acquisition of critical pavement materials that may inadvertently contain PFAS. We encourage rescinding EO 14057. To learn more about how EPA's PFAS rulemaking impacts pavement infrastructure materials, see our brief write-up below and learn more [here](#).

URGENCY REGARDING CURRENT PROPOSED OR PROMULGATED RULES UNDER THE BIDEN ADMINISTRATION

We call to your attention a few industry-specific environment, health, and safety (EH&S) regulatory actions that were proposed or promulgated under the Biden Administration, which have a tremendous negative impact on our industry's ability to deliver critical infrastructure. Some are associated with materials and others with operational constraints. We encourage your Administration to strike, roll back, or halt implementation of these rules. We agree with the Supreme Court's recent rulings, culminating in overturning the Chevron Doctrine, that regulatory agency policy and rulemaking are often discordant with legislative intent, and that regulatory agency deference must be scrutinized.

- **Materials**

EPA's PFAS Rule – In May 2024, EPA finalized its [PFAS CERCLA 'hazardous substances'](#) rule, regulating certain PFAS chemistries as Superfund hazardous substances. While the asphalt pavement industry *does not use, manufacture, nor intentionally add PFAS into asphalt pavements*, we are increasingly aware that airfield pavements may be contaminated with PFAS from firefighting foams. EPA's rule assigns potential joint and severable liability to any entity that transports or stores PFAS-containing materials, even if unknowingly, unintentionally, or passively by receiving such material during normal commerce. Because recycling pavements is an integral part of our industry, keeping asphalt pavements' material costs and carbon footprint low, we are concerned when a typical airfield pavement maintenance project, normally costing approximately \$2 million, could now cost in excess of \$60 million due to disposal requirements. We are currently facilitating [FAA-sponsored and university-led research](#) to understand if such airfield pavements can be safely reused in new pavements, rendering them harmless to the environment. While we understand EPA's PFAS rule impacts a wide swath of unknowing, unintentional passive receivers, this specific PFAS rule (and others from EPA) will have profound impact on the cost of critical infrastructure (concrete and asphalt pavements). While repealing the rule is ideal, we also provide two distinct pathways to protect unaware passive receivers or transporters of the nation's most recycled material – one through existing statute and another via recently proposed legislation. Learn more about the impacts of EPA's rule and our airfield recycling efforts [here](#).

EPA's Tire Rubber Rule – In November 2024, EPA issued a [proposed rulemaking](#) on a tire-rubber chemical called 6PPD/Q. While the antioxidant chemical has been used in tire compounding since the 1970s, it has only recently been implicated as a potential causative agent in adverse aquatic environmental impacts. Given the decades of use, it is uncertain why EPA continues to expedite review of the chemical, especially under its most onerous TSCA Section 6 rulemaking authority. EPA's latest [notice](#) indicates the agency has authority to "require warning statements or instructions for use with respect to the chemical's use in tires and non-tire materials (e.g., rubber modified asphalt, sneakers, elastics, etc.), distribution in commerce, and/or disposal of the chemical or products containing the chemical." Simply put, such rulemaking seems aggressive at this late juncture. We encourage your Administration to pause such rulemaking, pending additional thought and data.

- **Operational Constraints**

OSHA's Heat Illness Prevention Rulemaking – In July 2024, OSHA proposed its [heat injury and illness prevention rule](#). The road construction industry takes worker health and safety seriously, and since 2022 has been adhering to the agency's current [National Emphasis Program on heat hazards](#), which requires employers to develop a heat illness prevention program. NAPA was instrumental in ensuring the industry adequately protects its road construction workers from heat illness by implementing an industry-specific and highly reviewed program ([accessible here](#)). OSHA's most current rulemaking, establishing a prescriptive one-size-fits-all standard, will frustrate ongoing efforts to protect road construction workers because of the unique logistical challenges associated with their work sites and work zones. Additionally,

OSHA's proposed shade requirement is untenable, given that pavement work often occurs on public rights-of-ways with little natural shade. Given the extent of resources already expended to successfully meet the agency's prior program requirements, we recommend this agency rulemaking be removed from the 2025 regulatory calendar.

Greenhouse Gas Rule - The Biden Administration, without authority, required states to implement Greenhouse Gas (GHG) emissions standards on infrastructure projects that included a reporting requirement and GHG reduction strategy. This rule would require states to discontinue certain capacity expansion and highway widening projects, and instead focus investments and priorities on other modes of transportation such as transit, biking and walking - all of which are viable alternatives to driving, but not practical for all. We ask that you immediately repeal this rule and allow states to choose which transportation investments are best for their local communities.

WOTUS: It is imperative that EPA provide long-term clarity and certainty over the definition of Waters of the United States (WOTUS). For the last four years, the Biden Administration has hamstrung industries like aggregate mining, by interpreting how 'navigable water' and 'continuous surface connection' are defined. Despite the Supreme Court's recent holding in *Sackett vs. EPA*, identifying EPA's over-reach in defining WOTUS, we have yet to achieve any clarity on federal (EPA) vs. state environmental agency jurisdictional definition of WOTUS. Industries like ours need clear and consistent governance, balancing environmental stewardship with economic development - a key pillar we follow - and also the intent of Congress when they passed the Clean Water Act decades ago.

LEGISLATIVE PRIORITIES FOR THE 119TH CONGRESS

NAPA will be advocating for the following policies with Congressional leadership and committees of jurisdiction. With IIJA expiring September 30, 2026, highway funding is a significant priority that will require input from leaders across industry and government. Our roadway network cannot receive the vital investments and improvements necessary to keep our national economy competitive without a robust and timely reauthorization package. We must ensure Congress and the White House work together on a bill that focuses on highways and roads, provides reliable revenue sources for the Highway Trust Fund, and eliminates any short-term extensions. Combining this priority with a potential Budget Reconciliation package, the next Congress is poised to have lasting impacts on the national economy and businesses large and small, like the countless family-owned businesses NAPA represents.

- **Timely Highway Reauthorization:** Reauthorizing the surface transportation program provides the certainty and investment that states, businesses, constituents, and contractors need to prosper. The highway system allows goods, services, and people to move freely and conduct interstate commerce. Without critical federal surface transportation funding, state and local governments would be left with few resources to fund infrastructure projects.
- **Highway Trust Fund (HTF) Solvency:** 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 inflation, increased vehicle fuel economy, and use of electric vehicles. The HTF's structure and revenue capture mechanisms have not changed since 1993, forcing Congress to rely on general fund transfers to offset the shortfall for every Highway Reauthorization since 2008. Learn more about the HTF [here](#).
- **Improve Work Zone Safety (WZS):** Every year there are over 100,000 work zone collisions, leading to over 1,000 fatalities. Many of these horrific incidents are attributed to driver behavior such as speeding, recklessness, and impairment. Although most of the WZS policy initiatives are handled at the state and

local levels, NAPA has identified discreet federal legislative WZS priorities including more funding for law enforcement in work zones, a federal WZS working group, reporting requirements for FHWA on the use of Work Zone Safety Contingency Funds (WZSCF), and new driver education. Read more about WZS [here](#).

Tax Policies in the 119th Congress:

Over 96% of NAPA's asphalt producers are either a small business, or family business/privately owned, responsible for roughly 400 million tons of asphalt production annually in the United States. To support these businesses and the nation's economy, we look forward to working with your Administration and the 119th Congress, Speaker Johnson and Leader Thune, to pass pro-business, pro-worker, and pro-American legislation that reduces taxes and red tape, and provides consistent, robust funding for America's highway network.

Our focus on a potential tax package in 2025 will ensure our asphalt producers – both big and small – can continue to compete, innovate, and grow as we lay the foundation for a nationally competitive economy. In particular, we'll support efforts to solidify a permanent extension of the Section 199A deduction that was achieved in the *Tax Cut and Jobs Act* (TCJA).

We also support a full repeal of the 40% estate or 'death tax' for our family-owned companies, a permanent extension to the bonus depreciation program from TCJA to help our capital-intensive industry, and deductions for research and development (R&D) expenses to deploy the latest technologies and pavement improvements.

NAPA will also focus efforts on ensuring the HTF regains financial solvency to eliminate continued dependency on General Fund Transfers from the Treasury. NAPA will work with Congress on revenue raisers to the HTF, including programs like vehicle miles traveled (VMTs), gross vehicle weight registration, capturing all highway users including electric vehicles, public-private partnerships, and much more.

CONCLUSION AND PARTNERSHIP

NAPA and its member companies are truly dedicated to providing the American people and businesses with the best, most reliable, and unmatched transportation network in the world. This system will allow the American people and economy to thrive, and give businesses a world-class environment to operate in. Thank you for your attention to these critical issues. NAPA stands ready to partner with your Administration to deliver the critical roadway improvements necessary to keep America the most economically competitive nation in the world.