

EXAMINING THE DEPARTMENT OF TRANSPORTATION'S REGULATORY AND ADMINISTRATIVE AGENDA

(118-68)

HEARING
BEFORE THE
SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

JULY 24, 2024

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U.S. House of Representatives
Washington, DC 20515

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JULY 19, 2024

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Highways and Transit
FROM: Staff, Subcommittee on Highways and Transit
RE: Subcommittee Hearing on “Examining the Department of Transportation’s Regulatory and Administrative Agenda”

I. PURPOSE

The Subcommittee on Highways and Transit of the Committee on Transportation and Infrastructure will meet on Wednesday, July 24, 2024, at 9:30 a.m. ET in 2167 of the Rayburn House Office Building to receive testimony at a hearing entitled, “Examining the Department of Transportation’s Regulatory and Administrative Agenda.” The hearing will provide Members the opportunity to hear from stakeholders on select regulatory and administrative actions taken by Modal Administrations under the Subcommittee’s jurisdiction. At the hearing, Members will receive testimony from the American Road & Transportation Builders Association (ARTBA), the Steel Manufacturers Association (SMA), the Owner-Operator Independent Drivers Association (OOIDA), and Transportation for America (T4A).

II. BACKGROUND

In 1946, Congress passed the Administrative Procedure Act (APA) (P.L. 79–404), which defines a rule as “the whole or part of an agency statement of general or particular applicability and future effect designated to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency”¹ The APA laid out general terms and processes for Federal agency rulemakings.² Generally, Congress passes legislation to provide statutory authority to direct Federal agencies to issue rulemakings.³

Agencies may issue different types of rules. “Legislative Rules” seek to carry out statutes as passed by Congress.⁴ “Non-legislative Rules” may include “interpretive rules and general statements of policy.”⁵ For the last several decades, following the United States Supreme Court’s decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, Federal agencies generally received deference to interpret

¹ 5 U.S.C. § 551.

² 5 U.S.C. § 553.

³ MAEVE P. CAREY, CONG. RSCH. SERV. (IF10003), AN OVERVIEW OF FEDERAL REGULATIONS AND THE RULEMAKING PROCESS, (Mar. 19, 2021), available at <https://www.crs.gov/Reports/IF10003>.

⁴ U.S. DEP’T OF TRANSP., *Rulemaking Process*, (last updated June 7, 2022), available at <https://www.transportation.gov/regulations/rulemaking-process#whatisrule>.

⁵ TODD GARVEY, CONG. RSCH. SERV. (R41546), A BRIEF OVERVIEW OF RULEMAKING AND JUDICIAL REVIEW, (Mar. 27, 2017), available at <https://www.crs.gov/Reports/R41546>.

laws passed by Congress and to issue regulations.⁶ In June 2024, the United States Supreme Court overruled the Chevron decision, in *Loper Bright Enterprises v. Raimondo*.⁷

The Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) announced the release of the Biden Administration's Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions on July 5, 2024.⁸ Published twice a year, the agenda details near- and long-term rulemaking efforts being pursued across all Federal agencies, including at the Department of Transportation (DOT).⁹ While there are 222 total actions listed under DOT, within the Subcommittee's jurisdiction, the agenda includes, but is not limited to, 73 actions: 11 proposed rulemakings, and three final rules for the Office of the Secretary (OST); 16 proposed rulemakings and five final rules for the Federal Highway Administration (FHWA); two pre-rules, 16 proposed rulemakings, and six final rules for the Federal Motor Carrier Safety Administration (FMCSA); six proposed rules and three final rules for the Federal Transit Administration (FTA); and three proposed rules and two final rules for the National Highway Traffic Safety Administration (NHTSA).¹⁰ Following publication of the Unified Agenda, DOT typically publishes a Significant Rulemaking Report, which provides additional information regarding pending rulemakings.¹¹ The most recent report was published in February 2024.¹²

OIRA also maintains a dashboard of current regulatory actions under review by OMB.¹³ The dashboard provides a summary of information regarding proposed regulatory actions. The dashboard currently lists 139 total pending actions. DOT has seven proposed actions pending review by OMB, three of which are within the Subcommittee's jurisdiction: FHWA's Statewide and Nonmetropolitan Transportation Planning proposed rule; FHWA's Notice of Request for Information (RFI) on Medium and Heavy-Duty Electric Charging Technologies and Infrastructure Needs; and FMCSA's Motor Carrier Operation of Automated Driving System (ADS)-Equipped Commercial Motor Vehicles proposed rule.¹⁴

III. ANALYSIS OF SELECT ADMINISTRATIVE ACTIONS UNDER THE FEDERAL HIGHWAY ADMINISTRATION

GREENHOUSE GAS PERFORMANCE MEASURE

On December 7, 2023, FHWA published a final rule to require states and Metropolitan Planning Organizations (MPOs) to establish a new performance measure with declining targets for carbon dioxide and to measure and report greenhouse gas (GHG) emissions associated with transportation on the National Highway System.¹⁵ Congress included provisions to address climate change and transportation resiliency in the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117–58).¹⁶ Although a rule requiring a new highway-related GHG performance measure was included in the House-passed H.R. 3684, the INVEST in America Act, it was consid-

⁶ BENJAMIN M. BARCZEWSKI, CONG. RSCH. SERV. (R44954), CHEVRON DEFERENCE: A PRIMER, (May 18, 2023), available at <https://www.crs.gov/Reports/R44954>.

⁷ BENJAMIN M. BARCZEWSKI, CONG. RSCH. SERV. (LSB11189), SUPREME COURT OVERRULES CHEVRON FRAMEWORK, (June 28, 2024), available at <https://www.crs.gov/Reports/LSB11189>.

⁸ Sam Berger, *The 2024 Spring Regulatory Agenda*, THE WHITE HOUSE, (July 5, 2024), available at <https://www.whitehouse.gov/omb/briefing-room/2024/07/05/the-2024-spring-regulatory-agenda/> [hereinafter 2024 Spring Regulatory Agenda].

⁹ U.S. GENERAL SERVICES ADMIN., OFFICE OF INFORMATION AND REGULATORY AFFAIRS, *Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions*, (last accessed July 10, 2024), available at <https://www.reginfo.gov/public/do/eAgendaMain>.

¹⁰ 2024 Spring Regulatory Agenda, *supra* note 8.

¹¹ U.S. DEPT OF TRANSP., *Report on DOT Significant Rulemakings*, (Jan. 26, 2024), available at <https://www.transportation.gov/regulations/report-on-significant-rulemakings>.

¹² *Id.*

¹³ U.S. GENERAL SERVICES ADMINISTRATION, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET, *EO Dashboard*, (last accessed July 9, 2024), available at <https://www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp>.

¹⁴ *Id.*

¹⁵ Nat'l Performance Mgmt. Measures; Assessing Performance of the Nat'l Highway System, Greenhouse Gas Emissions Measure, 87 Fed. Reg. 42,401, (July 15, 2022).

¹⁶ DOT, OFFICE OF PUBLIC AFFAIRS, *Fact Sheet: Climate and Resilience in the Bipartisan Infrastructure Law* (July 5, 2022), available at <https://www.transportation.gov/bipartisan-infrastructure-law/fact-sheet-climate-and-resilience-bipartisan-infrastructure-law>.

ered and disposed of during IIJA negotiations.¹⁷ The Administration cites section 150 of title 23 U.S.C. as the authority for its rulemaking.¹⁸

Several states have challenged FHWA’s final rule on the basis that it exceeds the Administration’s statutory authority. In December 2023, Texas filed a lawsuit challenging the rule, and separately, Kentucky led a group of 21 states in filing a lawsuit.¹⁹ Conversely, 15 states have written a letter to DOT in support of the measure.²⁰ On March 27, 2024, the Northern District of Texas vacated FHWA’s final rule, finding it unauthorized.²¹ In a different case challenging the rule, the United States District Court for the Western District of Kentucky issued an opinion on April 1, 2024, finding the rule exceeded FHWA’s statutory authority and is arbitrary and capricious.²² The Biden Administration has filed notices of appeal in both cases.²³

WORK ZONES

On September 20, 2023, FHWA published a Notice of Proposed Rulemaking (NPRM) and request for comments to update regulations pertaining to highway and street work zones.²⁴ The NPRM seeks to make changes to many provisions addressed in a 2004 FHWA final rule intended to bolster work zone safety.²⁵ Specifically, the NPRM proposes requiring states to “identify the safety and mobility performance measures that will be used to monitor and manage performance,” as part of their work zone safety and mobility policy.²⁶ It would also formally require states to “develop and implement systematic procedures to assess work zone impacts in project development, and to manage safety and mobility during project implementation.”²⁷

PROPOSED DISCONTINUATION OF GENERAL WAIVER OF BUY AMERICA REQUIREMENTS FOR MANUFACTURED PRODUCTS

In January 1983, following enactment of the Surface Transportation Assistance Act (STAA) of 1982 (P.L. 97–424), FHWA issued a temporary public interest waiver of Buy America requirements for “manufactured products.”²⁸ FHWA issued a Final Rule retaining this waiver for “all manufactured products other than steel and cement manufactured products”²⁹ which went into effect on December 27, 1983. While Buy America requirements for FHWA Federal-aid highway programs have been amended through legislation and litigation—for instance, removing Buy America requirements for cement in 1984 and adding iron materials and manufactured products to Buy America preference requirements in 1991—the waiver for manufactured products has remained.³⁰

¹⁷The INVEST in America Act of 2021, H.R. 3684, 117th Cong. (July 1, 2021), available at <https://www.congress.gov/bill/117th-congress/house-bill/3684/text/eh>.

¹⁸National Performance Management Measures, 88 Fed. Reg. 85,364 (Dec. 7, 2024), available at <https://www.federalregister.gov/documents/2023/12/07/2023-26019/national-performance-management-measures-assessing-performance-of-the-national-highway-system>.

¹⁹Press Release, KEN PAXTON ATTORNEY GENERAL OF TEXAS, *Attorney General Ken Paxton Sues Biden Administration for Overreaching Transportation Emissions Rule*, (Dec. 22, 2023), available at <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-biden-administration-overreaching-transportation-emissions-rule>; see also Press Release, *Attorney General Cameron Leads 21-State Coalition Challenging Biden Administration’s Unlawful Climate Mandate*, (Dec. 21, 2023), available at <https://www.kentucky.gov/Pages/Activity-stream.aspx?n=AttorneyGeneral&prId=1492>.

²⁰Letter from Jennifer Toth, et al., to Administrator Shailen Bhatt, Federal Highway Admin. (Jan. 4, 2024) (on file with Comm.).

²¹*State of Texas, et al. v. United States Department of Transportation, et al.*, No. 5:23-cv-304-H (N. Dist. Tx. Mar. 27, 2024).

²²*Commonwealth of Kentucky, et al. v. Federal Highway Administration, et al.*, No. 5:23-cv-00162-BJB-LLK (W. Dist. Ky. Apr. 1, 2024).

²³Defendants’ Notice of Appeal, *Commonwealth of Kentucky, et al. v. Federal Highway Administration, et al.*, No. 5:23-cv-00162-BJB-LLK (W. Dist. Ky. May 31, 2024).

²⁴Work Zone Safety and Mobility and Temporary Traffic Control Devices, 88 Fed. Reg. 64,836 (Sept. 20, 2023), available at <https://www.federalregister.gov/documents/2023/09/20/2023-19701/work-zone-safety-and-mobility-and-temporary-traffic-control-devices> [hereinafter *Work Zone Safety*].

²⁵Work Zone Safety and Mobility, 69 Fed. Reg. 54,562 (Sept. 9, 2004), available at <https://www.federalregister.gov/documents/2004/09/09/04-20340/work-zone-safety-and-mobility>.

²⁶Work Zone Safety, *supra* note 24.

²⁷*Id.*

²⁸23 C.F.R. § 635 (1983).

²⁹*Id.*

³⁰Pub. L. No. 98–229, 98 Stat. 55; see also DOT, FHWA, *23 CFR Part 635 Final Rule General Material Requirements* (July 21, 1993) available at <https://www.fhwa.dot.gov/construction/con>

As part of the Build America, Buy America Act (BABAA) provisions in IIJA, Federal agencies are required to review general applicability waivers every five years following the issuance of such a waiver.³¹ On March 17, 2023, FHWA issued a Notice and Request for Comment on its review of its General Applicability Waiver of Buy America Requirements for Manufactured Products, and received over 7,500 comments during the 30-day window in which this request remained open.³² On March 12, 2024, FHWA published an NPRM proposing to discontinue its general waiver of Buy America requirements for manufactured products.³³ The NPRM initially set a 30-day public comment period, during which it received more than 7,500 comments.³⁴ FHWA subsequently extended the comment period to May 22, 2024, during which time it received over an additional 1,900 comments.³⁵ In total, more than 9,400 comments were received regarding the NPRM.³⁶ The Unified Agenda anticipates a Final Rule by December 2024.³⁷

BUY CLEAN INITIATIVE

On December 8, 2021, President Biden issued Executive Order 14057 to create a Buy Clean Task Force to prioritize low-carbon construction material in Federal procurement and Federally-funded projects.³⁸ The Task Force is co-chaired by the Federal Chief Sustainability Officer and the White House Office of Domestic Climate Policy, and has representatives from the Departments of Commerce, Defense, Energy, Homeland Security, Housing and Urban Development, Health and Human Services, Interior, State and Transportation; the Environmental Protection Agency (EPA); the General Services Administration (GSA); the National Aeronautics and Space Administration; the Veterans Administration; the White House Domestic Climate Policy Office, Council on Environmental Quality, Infrastructure Implementation Team, Office on Clean Energy Innovation and Implementation, and Office of Management and Budget.³⁹ Collectively, the agencies account for 90 percent of all Federally-funded and purchased construction materials.⁴⁰

The Task Force is charged with considering how the Federal Government can promote low-embodied carbon emissions in construction materials. Actions include identifying construction materials (steel, cement and concrete, asphalt, and flat glass) with the highest embodied carbon, increasing the use of Environmental Product Declarations (EPDs), and establishing pilot programs for clean construction materials.⁴¹ On March 8, 2023, the Biden Administration launched the Federal-State Buy Clean Partnership.⁴² The partnership includes 12 states who work collaboratively with the task force to prioritize low-carbon construction materials in state-funded projects.⁴³

On August 16, 2022, President Biden signed the Inflation Reduction Act (IRA) (P.L. 117–169) into law, which provided \$4.5 billion for GSA, DOT, and EPA to establish low-embodied carbon construction materials programs.⁴⁴ EPA issued their

tracts/930721.cfm; *see also* NAT'L ACADEMIES PRESS, BUY AMERICA REQUIREMENTS FOR FEDERAL HIGHWAY PROJECTS 13 (2020), *available at* <https://nap.nationalacademies.org/read/25799/chapter/5>.

³¹ Build America, Buy America Act, Title IX, IIJA, Pub. L. No. 117–58, §§ 70901–52.

³² Notice and Request for Comment on FHWA's Review of its General Applicability Waiver of Buy America Requirements for Manufactured Products, 88 Fed. Reg. 16,517 (Mar. 17, 2023), *available at* <https://www.govinfo.gov/content/pkg/FR-2023-03-17/pdf/2023-05498.pdf>.

³³ Buy America Requirements for Manufactured Products, 89 Fed. Reg. 17,789, (Mar. 12, 2024), *available at* <https://www.federalregister.gov/documents/2024/03/12/2024-05182/buy-america-requirements-for-manufactured-products>.

³⁴ Review of General Applicability Waiver of Buy America Requirements for Manufactured Products, 88 Fed. Reg. 16,517 (Mar. 17, 2023) [hereinafter Waiver of Buy America Requirements].

³⁵ General Applicability Waiver of Buy America Requirements for Manufactured Products, 88 Fed. Reg. 24,651 (Apr. 21, 2023).

³⁶ Waiver of Buy America Requirements, *supra* note 34.

³⁷ U.S. GENERAL SERVICES ADMIN., OFFICE OF INFORMATION AND REGULATORY AFFAIRS, *Application of Buy America to Manufactured Products*, (2024), *available at* <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=2125-AG13>.

³⁸ U.S. OFFICE OF THE FEDERAL CHIEF SUSTAINABILITY OFFICER, *Federal Buy Clean Initiative*, (last accessed July 9, 2024), *available at* <https://www.sustainability.gov/buyclean/>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ The Inflation Reduction Act of 2022, Pub. L. No. 117–169, 136 Stat. 1818 [hereinafter IRA of 2022].

Interim Determination on global warming potential (GWP) and material requirements to DOT and GSA on December 22, 2022.⁴⁵

On May 16, 2023, GSA launched a new pilot program with low-embodied construction material requirements.⁴⁶ The material requirements were based on the EPA's Interim Determination and developed with insight from domestic manufacturers and environmental and labor groups.⁴⁷ GSA and DOT, led by FHWA, are continuing to engage industry on material requirements and increase EPD harmonization and availability among manufacturers.⁴⁸ EPDs are third-party verified, but there are data collection barriers that may impact accuracy of the lifecycle assessment.⁴⁹

On March 12, 2024, FHWA launched the Low Carbon Transportation Materials Program, which makes \$1.2 billion available to state departments of transportation and will make \$800 million available to non-state applicants in the coming months.⁵⁰ Applicants must adhere to the Interim Determination material requirements set by the EPA.⁵¹ The goal of the program is to increase the use of low-embodied carbon materials in Title 23 projects, but also to make sure these materials are appropriate and have adequate engineering performance for use in Title 23 projects.⁵²

IV. ANALYSIS OF SELECT REGULATIONS UNDER THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

The FMCSA establishes the Federal Motor Carrier Safety Regulations (FMCSR), which set minimum safety standards for motor carriers and drivers.⁵³ The *Code of Federal Regulations* (CFR) is the official publication containing the codification of the general and permanent rules published in the *Federal Register*.⁵⁴ For FMCSA, under the CFRs, any interested person may petition the FMCSA Administrator to establish, amend, interpret, clarify, or withdraw a rule.⁵⁵

SPEED LIMITERS

On May 29, 2013, FMCSA initiated a rulemaking to require the installation of speed-limiters on commercial motor vehicles (CMVs) with a gross vehicle weight rating (GVWR) greater than 26,000 pounds.⁵⁶ On September 9, 2016, a NPRM was jointly published between FMCSA and NHTSA to equip CMVs over 26,000 pounds with a speed limiter, which, when combined with an electronic stability control system on an engine, can govern the maximum speed of a vehicle.⁵⁷ The proposal considered setting the maximum speed at 60, 65, and 68 miles per hour.⁵⁸

On May 4, 2022, FMCSA announced its intention to further proceed with the 2016 rulemaking through a supplemental notice of proposed rulemaking (SNPRM), while

⁴⁵ Letter from Janet G. McCabe, Deputy Administrator, United States Environmental Protection Agency, to Andrew Wishnia, Deputy Assistant Secretary for Climate Policy, United States DOT, and Kevin Kampschroer, Chief Sustainability Officer and Director of the Office of Federal High-Performance Green Buildings, United States General Services Admin., (Dec. 22, 2022), available at https://www.epa.gov/system/files/documents/2023-01/2022.12.22%20Interim%20Determination%20on%20Low%20Carbon%20Materials%20under%20IRA%2060503%20and%2060506_508.pdf.

⁴⁶ IRA of 2022, *supra* note 44.

⁴⁷ Press Release, U.S. GENERAL SERVICES ADMIN., *GSA Pilots Buy Clean Inflation Reduction Act Requirements for Low Embodied Carbon Construction Materials*, (May 16, 2023), available at <https://www.gsa.gov/about-us/newsroom/news-releases/gsa-pilots-buy-clean-inflation-reduction-act-requirements-for-low-embodied-carbon-construction-materials-05162023>.

⁴⁸ *Id.*

⁴⁹ John Milko and Ruth Cox, *Improving Data for Federal Buy Clean Efforts*, THIRD WAY, (June 22, 2023), available at <https://www.thirdway.org/memo/improving-data-for-federal-buy-clean-efforts>.

⁵⁰ U.S. DEPT OF TRANSP., FHWA, *Low-Carbon Transportation Materials Grants Program*, (last updated June 18, 2024), available at <https://www.fhwa.dot.gov/lowcarbon/>.

⁵¹ *Id.*

⁵² *Id.*

⁵³ UNITED STATES DEPT OF TRANSP., FED. MOTOR CARRIER SAFETY ADMIN., *The Motor Carrier Safety Planner*, available at <https://csa.fmcsa.dot.gov/SafetyPlanner/Default.aspx>.

⁵⁴ UNITED STATES NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, *Code of Federal Regulations, eCFR*, (last accessed July 9, 2024), available at <https://www.ecfr.gov/>.

⁵⁵ 49 C.F.R. § 389.31; see also 49 U.S.C. § 113.

⁵⁶ UNITED STATES DEPT OF TRANSP., REPORT ON DOT SIGNIFICANT RULEMAKINGS, DECEMBER INTERNET REPORT (2016), available at <https://www.transportation.gov/regulations/significant-rulemaking-report-archive>.

⁵⁷ Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Parts and Accessories Necessary for Safe Operation; Speed Limiting Devices, 81 Fed. Reg. 61,942 (Sept. 7, 2016).

⁵⁸ *Id.*

also requesting more information regarding the proposal.⁵⁹ This SNPRM did not include any proposed maximum speeds. The Spring 2024 Unified Agenda anticipates a second NPRM to be published by June 2025.⁶⁰

AUTOMATIC EMERGENCY BRAKES (AEBs)

IIJA requires the Secretary of Transportation to prescribe a Federal Motor Vehicle Safety Standard (FMVSS) and performance requirements for Automatic Emergency Brakes on CMVs heavier than 26,000 pounds; to study equipping other CMVs with AEB systems, and, if warranted, to develop performance standards; and to review AEB systems used in CMVs to address any identified deficiencies in the rule-making.⁶¹

On July 6, 2023, in response to this requirement, FMCSA and NHTSA jointly proposed a NPRM to require AEB systems and electronic stability control systems on new vehicles over 10,000 pounds, with a phased in timeline.⁶² Vehicles weighing over 26,000 pounds (Class 7 and 8) would be required to meet the new standards in three years.⁶³ Vehicles weighing between 10,000 and 26,000 pounds (Class 3 to 6) would be required to meet the new standards in four years.⁶⁴ The comment period for this rule ended on September 5, 2023, and a Final Rule is anticipated by January 2025.⁶⁵

V. WITNESSES

- Mr. Tim Duit, President, Duit Construction Co., Inc., *on behalf of* the American Road & Transportation Builders Association (ARTBA)
- Mr. Philip K. Bell, CAE, President, Steel Manufacturers Association (SMA)
- Mr. William “Lewie” Pugh, Executive Vice President, Owner-Operator Independent Drivers Association (OOIDA)
- Ms. Beth Osborne, Director, Transportation for America (T4A)

⁵⁹ Parts and Accessories Necessary for Safe Operations; Speed Limiting Devices, 87 Fed. Reg. 26,317 (May 4, 2022).

⁶⁰ UNITED STATES GENERAL SERVICES ADMIN., OFFICE OF INFORMATION AND REGULATORY AFFAIRS, *Heavy Vehicle Speed Limiters*, (2024), available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=2126-AB63>.

⁶¹ IIJA, Pub. L. No. 117–58, 135 Stat. 766.

⁶² Heavy Vehicle Automatic Emergency Breaking, 88 Fed. Reg. 43,174 (Jul. 6, 2023).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

EXAMINING THE DEPARTMENT OF TRANSPORTATION'S REGULATORY AND ADMINISTRATIVE AGENDA

WEDNESDAY, JULY 24, 2024

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 9 a.m., in room 2167 Rayburn House Office Building, Hon. Eric A. "Rick" Crawford (Chairman of the subcommittee) presiding.

Mr. CRAWFORD. The Subcommittee on Highways and Transit will come to order. I ask unanimous consent that the chairman be authorized to declare a recess at any time during today's hearing.

Without objection, so ordered.

I also ask unanimous consent that the Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

As a reminder, if Members wish to insert a document into the record, please also email that to DocumentsTI@mail.house.gov.

I now recognize myself for the purposes of an opening statement.

OPENING STATEMENT OF HON. ERIC A. "RICK" CRAWFORD OF ARKANSAS, CHAIRMAN, SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

Mr. CRAWFORD. We are here today to examine the Department of Transportation's regulatory and administrative agenda with respect to the modal administrations under this subcommittee's jurisdiction.

Since President Biden took office, we have heard frequently from stakeholders spanning all regions and industries about the burden of this administration's onerous regulatory agenda. An analysis by the National Association of Manufacturers found that across the board, Federal regulations cost the United States economy more than \$3 trillion. Yet, the administration continues to march forward with crushing regulations, including those that exceed its statutory authority.

The Federal Highway Administration continues to pursue its final rule to force a greenhouse gas performance measure on State departments of transportation and metropolitan planning organizations, despite lacking the statutory authority to do so. As I have said many times in this subcommittee, this policy was considered

and disposed of during negotiations of the Infrastructure Investment and Jobs Act.

Two federal courts issued opinions earlier this year finding the rule exceeds the administration's statutory authority. The United States District Court for the Northern District of Texas went so far as to vacate the rule. Concerns have been repeatedly raised in this subcommittee about the administration's unauthorized actions, including concerns that this rule would put the thumb on the scale and potentially influence project selection.

This rule would be particularly disastrous for rural areas whose communities can't build a subway or bike lanes to cut emissions. Yet, the administration is squandering valuable resources to appeal both rulings.

Unfortunately, this isn't the only example we have seen of the Department using executive action to advance the progressive agenda it wishes had been included in IIJA. For example, in December 2021, the Federal Highway Administration released a policy memo, which, among other things, sought to encourage States to prioritize nonmotorized modes and transit, as well as update existing infrastructure over developing new capacity projects. Many called on Federal Highways to rescind that memo, specifically citing confusion as the memo ran counter to IIJA, as well as concerns with the administration's process and lack of public notice or comment period.

Thankfully, after several members of this committee raised our significant concerns, Federal Highways did the right thing and superseded its own memo. Going forward, we must retain the ability of individual States to prioritize projects and address their wide-ranging and unique needs.

Similarly troubling, we have heard concerns from businesses that they are being hamstrung by ambiguity and lack of clarity surrounding regulations.

The so-called Inflation Reduction Act provided \$4.5 billion for the Biden administration's Buy Clean initiative to allow the General Services Administration and Federal Highways to pilot low-embodied carbon programs. There has been confusion about the material requirement differences between GSA and Federal Highways, as well as a lack of transparency for the Environmental Product Declaration—or EPD—collection. I remain concerned that the Biden administration is pushing the market without considering the actual life cycle of the materials in construction projects.

Likewise, rules and regulations continue to be considered that mandate certain technologies that may not be ready for mass adoption, particularly as it relates to the trucking sector. This can stifle the safe and efficient movement of freight, have safety implications on other roadway users, and may needlessly increase costs for consumers.

I appreciate our witnesses being here to discuss their thoughts on the administration's regulatory agenda and look forward to hearing their perspective.

[Mr. Crawford's prepared statement follows:]

Prepared Statement of Hon. Eric A. “Rick” Crawford, a Representative in Congress from the State of Arkansas, and Chairman, Subcommittee on Highways and Transit

We are here today to examine the Department of Transportation’s regulatory and administrative agenda with respect to the modal administrations under this subcommittee’s jurisdiction.

Since President Biden took office, we’ve heard frequently from stakeholders spanning all regions and industries about the burden of this administration’s onerous regulatory agenda. An analysis by the National Association of Manufacturers found that across the board, federal regulations cost the United States economy more than \$3 trillion. Yet, the Administration continues to march forward with crushing regulations, including those that exceed its statutory authority.

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I appreciate our witnesses being here to discuss their thoughts on the Administration’s regulatory agenda and look forward to hearing their perspectives.

Mr. CRAWFORD. I now recognize Ranking Member Holmes Norton for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. ELEANOR HOLMES NORTON OF THE DISTRICT OF COLUMBIA, RANKING MEMBER, SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

Ms. NORTON. Thank you, Mr. Chairman. I would like to thank subcommittee Chair Rick Crawford for holding this hearing on transportation regulations.

The Department of Transportation is a crucial partner to Congress in implementing the laws we write. The technical expertise within the Department educates and informs Congress in writing laws and fills in gaps through rules and guidance. The Department and its agencies are tasked with issuing rules to fight climate change, improve safety and air quality, provide transparency and reduce fraud in federally funded projects, and standardize the design of roads and bridges to ensure their structural integrity.

In short, the Department's regulatory role is to ensure the safe and efficient movement of people and goods across our transportation systems.

This is no small task. Roughly every 5 years, Congress gives the Department's agencies dozens of new rulemakings to develop and directs them to update or modify existing ones. Additionally, the agencies regularly accept petitions to develop rules from the public.

This process is key to our democracy. It provides avenues for every citizen, lawmaker, and stakeholder to provide input into the rulemaking process.

The Infrastructure Investment and Jobs Act tasks the Department with several rulemakings of interest. I would like to speak today about those that will improve safety for all users of our roadways.

The law required the Federal Highway Administration to update the standards for street design, which is particularly important as cities work to reduce pedestrian and bicyclist fatalities. The agency has also issued guidance to States on how to incorporate vulnerable road user safety assessments into their safety programs.

The National Highway Traffic Safety Administration is required by the infrastructure law to develop regulations to ensure cars are equipped with impaired driving prevention technology to avoid fatalities from drunk driving.

The infrastructure law also directed the Department to finalize several rules designed to improve safety in the trucking industry. Fatalities involving large truck crashes have risen 76 percent in the last 15 years. Since 2010, the number of trucks involved in fatal crashes on roads with speed limits of 75 miles per hour or more saw a 440-percent increase.

The Department has already issued a final rule requiring truck trailers to have rear impact guards to provide protection to passenger vehicle occupants.

The Federal Motor Carrier Safety Administration is still working to finalize a rule to require automatic emergency brakes on heavy-duty vehicles. The administration's proposed rule regarding these brakes is projected to prevent nearly 25,000 crashes and save 155 lives each year. I urge the administration to move forward to finish this rulemaking.

Finally, I want to note the importance of Congress and the administration in hearing from multiple points of view when it comes to improving safety. Every road user cares about safety.

Traveling by car, truck, bike, or foot remains one of the riskiest things we can do on a day-to-day basis. It is imperative that we address safety issues from all perspectives and listen to those impacted. No one person or stakeholder has all the answers, but I be-

lieve collectively we can take a stronger approach to reducing injuries and fatalities.

I look forward to working with my colleagues on improving the safety of our transportation system, and I thank the witnesses for their testimony today.

[Ms. Norton's prepared statement follows:]

Prepared Statement of Hon. Eleanor Holmes Norton, a Delegate in Congress from the District of Columbia, and Ranking Member, Subcommittee on Highways and Transit

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The Federal Motor Carrier Safety Administration is still working to finalize a rule to require automatic emergency brakes on heavy duty vehicles. The Administration's proposed rule regarding these brakes is projected to prevent nearly twenty-five thousand crashes and save one hundred fifty-five lives each year. I urge the Administration to move forward to finish this rulemaking.

Finally, I want to note the importance of Congress and the Administration in hearing from multiple points of view when it comes to improving safety. Every road user cares about safety.

Traveling by car, truck, bike or foot remains one of the riskiest things we do on a day-to-day basis. It is imperative that we address safety issues from all perspectives and listen to those impacted. No one person or stakeholder has all the answers, but I believe collectively we can take a stronger approach to reducing injuries and fatalities.

I look forward to working with my colleagues on improving the safety of our transportation system and thank the witnesses for their testimony.

Mr. CRAWFORD. I now recognize ranking member of the full committee, Mr. Larsen, for 5 minutes.

OPENING STATEMENT OF HON. RICK LARSEN OF WASHINGTON, RANKING MEMBER, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. LARSEN OF WASHINGTON. Thank you, Chair Crawford and Ranking Member Norton, for holding this hearing today on the Department of Transportation's regulatory agenda.

Members of Congress are motivated to serve on this committee for lots of reasons. Whether your interest in transportation includes reducing traffic fatalities, helping U.S. businesses compete in the global economy, combating pollution, creating jobs, or making transportation work for more communities, regulations do play a role in meeting these goals.

While Congress writes the laws, Federal agencies turn these legislative proposals into the rules of the road that are to be followed and enforced.

Federal agencies have professionals—engineers, planners, and economists—who bring their expertise to bear to make our transportation systems work seamlessly.

This DOT, under the leadership of Secretary Buttigieg, is implementing policies to make our transportation systems cleaner, greener, safer, and more accessible. As the administration continues to implement the BIL, this committee will continue our oversight to ensure the regulations are consistent with the law and with congressional intent.

We continue to have a roadway safety crisis, with a total of 42,795 people killed in traffic crashes on U.S. roadways in 2022. Nearly 6,000 of those people were killed in crashes involving large trucks, including 85 people in Washington State.

The BIL took steps towards ending these preventable fatalities, including by requiring rear underride guards and automatic emergency brakes for commercial motor vehicles.

Today, we will hear testimony from the Owner-Operator Independent Drivers Association, whose members are frontline workers with a vested interest in safety, and it is critical we listen to the voices of those directly impacted by truck safety standards.

It is equally important that we listen to those whose lives have been devastated by the loss of a loved one in a traffic crash.

I applaud the tireless work of the transportation safety advocates who help hold Congress and the administration to account as we work to make our roadways safer.

We continue to have a climate crisis, and transportation emissions are increasing. Transportation is the largest emitter of carbon pollution in the U.S., and 80 percent of those emissions come from cars and light-duty trucks. The Biden administration's greenhouse gas performance measure was a small but important attempt to address climate change. We cannot solve what we do not measure.

While this particular rule has been struck down, asking States to track carbon emissions on their roadways and set nonbinding goals to reduce emissions is not an unreasonable ask as part of the system where States control hundreds of billions of dollars and have the flexibility to spend them however they see fit, including on highway expansions.

Ignoring the link between transportation and climate change will not prevent roadways from being washed out during storms, pave-

ments from buckling under extreme heat, or tunnels from flooding during a hurricane.

I look forward to the testimony from Transportation for America on how we can chart a better path forward.

Clear, consistent rules save time, save money, and certainly save lives. They underpin our ability to travel freely, for businesses to ship their goods to market, and for people with differing abilities to access the transportation systems that they need to get around.

While we may differ on the details of individual rules, I hope we can agree that consistent, reliable funding for infrastructure and data-driven rules to guide the buildout and the use of that infrastructure is key to safety and the economy.

So, with that, I will yield back. And I want to thank the witnesses for being here and look forward to our discussion.

[Mr. Larsen of Washington's prepared statement follows:]

Prepared Statement of Hon. Rick Larsen, a Representative in Congress from the State of Washington, and Ranking Member, Committee on Transportation and Infrastructure

Thank you, Chairman Crawford and Ranking Member Norton, for holding this hearing today on the Department of Transportation's regulatory agenda.

Members of Congress are motivated to serve on this Committee for lots of reasons.

Whether your interest in transportation includes reducing traffic fatalities, helping U.S. businesses compete in the global economy, combating pollution, creating jobs or making transportation work for more communities, regulations play a role in meeting these goals.

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We cannot solve what we do not measure. While this particular rule has been vacated, asking states to track carbon emissions on their roadways and set non-binding goals to reduce emissions is not an unreasonable ask as part of a system where states control hundreds of billions of dollars and have the flexibility to spend them however they see fit—including on highway expansions.

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While we may differ on the details of individual rules, I hope we can agree that consistent, reliable funding for infrastructure and data-driven rules to guide the build out and use of that infrastructure is key to safety and the economy.

Thank you to our witnesses, and I look forward to the discussion.

Mr. CRAWFORD. Thank you, Mr. Larsen. I now would like to welcome our witnesses and thank them for being here today.

Before we get started, I want to take a quick minute to explain our lighting system. It seems pretty self-explanatory. Three lights, much like a traffic light, in front of you. Green means go, but unlike a stoplight, yellow does not mean slow down and proceed with caution as you might expect. It actually means hurry up because it is fixing to turn red.

When it turns red, you might hear one of these little numbers [tapping gavel], which is a reminder to conclude your remarks quickly. So, when it does turn red, like I said, you might hear a little tap.

I ask unanimous consent that the witnesses' full statements be included in the record.

Without objection, so ordered.

I also ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing.

Without objection, so ordered.

I also ask unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

As your written testimony has been made part of the record, the subcommittee asks that you limit your oral remarks to 5 minutes.

With that, Mr. Duit, you are recognized for 5 minutes for your testimony.

TESTIMONY OF TIM DUIT, PRESIDENT, DUIT CONSTRUCTION & COMPANY, INC.; ON BEHALF OF THE AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION (ARTBA); PHILIP K. BELL, CAE, PRESIDENT, STEEL MANUFACTURERS ASSOCIATION (SMA); WILLIAM "LEWIE" PUGH, EXECUTIVE VICE PRESIDENT, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION (OIODA); AND BETH OSBORNE, DIRECTOR, TRANSPORTATION FOR AMERICA (T4AMERICA)

TESTIMONY OF TIM DUIT, PRESIDENT, DUIT CONSTRUCTION COMPANY, INC.; ON BEHALF OF THE AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION (ARTBA)

Mr. DUIT. Good morning, Chairman Crawford, Ranking Member Norton, and members of the subcommittee. Thank you for inviting me to appear in my role as chair of the American Road & Transportation Builders Association.

ARTBA's public- and private-sector members design, build, and maintain the Nation's transportation network. I am also president of Duit Construction, based in Edmond, Oklahoma. We are a family-owned, heavy highway concrete, asphalt, and bridge construction company with around 700 employees.

Before I address the regulatory matters at the heart of today's hearing, let me note that the increased investment levels in the 2021 infrastructure law are supporting an overdue modernization of America's transportation network. States have initiated 75,000 improvements with at least 1 Federal-aid highway and bridge project in nearly every U.S. county. In Oklahoma, 1,600 projects are taking shape.

The infrastructure law is also helping with job creation. Nationally, 43,000 new construction industry jobs have been added since 2021. Another key part of the infrastructure story is the Federal agencies implementing the maze of policy changes. Regulatory proposals that are clear and well-defined can achieve their intended purpose.

For example, when the Federal Highway Administration recently proposed updates to its work zone regulations, we were pleased to see greater emphasis on the need for positive separation between workers and motorists. It will help improve safety for everyone. In other instances, however, while the road to regulation is paved with good intentions, the outcomes can cause uncertainty in the lack of clarity for the companies working on transportation projects.

My written testimony addresses numerous areas for regulatory reform that are worthy of additional oversights by this subcommittee. In the interest of time, I will address four of them.

The first relates to what constitutes "waters of the United States." If a project includes a roadside ditch, is a Clean Water Act permit required? This should be an easy answer, but, unfortunately, it is not. The definition has bounced back and forth like a ping-pong ball with different proposals from the last three different Presidential administrations.

Years of litigation led to a definitive clarification by the United States Supreme Court, but Federal agencies have not yet fully complied. So, more than a decade of uncertainty, confusion, and frustration continues for transportation builders.

Second, ARTBA fully supports congressional intent to strengthen domestic manufacturing. However, we continue to see inconsistencies and uncertainties in the Buy American implementation. The Federal Highway Administration has proposed to roll back its Buy America waiver for manufactured products. This would require contractors to dissect electronic, mechanical, and other items incorporated into projects and document the origin of thousands of small inexpensive components. To prevent unnecessary cost increases

and project disruptions, ARTBA supports continuation of the existing waiver.

Third, while we work to comply with other IIJA changes, we are also contending with unexpected regulations that are not part of the law, like a rule requiring a greenhouse gas performance measure. This measure was debated and deliberately left out of the bipartisan IIJA, yet the current administration finalized their rule in December and now litigation is ongoing.

Fourth, the Fish and Wildlife Service is preparing to tighten protections against accidental harming of migratory birds. While contractors aim to safeguard wildlife on or near project sites, a rule that imposes a rigid and unpredictable requirement could result in work stoppages every time these types of birds appear in the area.

In closing, let me say that historic levels of infrastructure investment when accompanied by the harmonious regulatory environment intended by Congress can result in timely completion of transportation projects that move people and products safely and efficiently. We look forward to our continued collaboration with Congress to achieve this goal.

Thanks again for the opportunity to be here today. I am happy to answer any questions.

[Mr. Duit's prepared statement follows:]

Prepared Statement of Tim Duit, President, Duit Construction Company, Inc.; on behalf of the American Road & Transportation Builders Association (ARTBA)

Subcommittee Chairman Crawford, Ranking Member Norton, and members of the subcommittee, thank you for convening today's hearing.

I am Tim Duit, president of Duit Construction, a heavy highway concrete and asphalt construction company with more than 700 team members that is based in Edmond, Oklahoma. I also serve as the current chair of the American Road & Transportation Builders Association (ARTBA).

Established in 1902, ARTBA is the only national association representing all aspects of the U.S. transportation design and construction industry. Our 8,000 members, anchored by our 36 state contractor chapter affiliates, design, build, and manage the nation's transportation infrastructure.

Today's hearing offers an opportunity to examine the balance between the work required to construct and maintain America's roads, bridges, and public transportation systems and the regulatory safeguards under which the transportation construction industry operates.

These safeguards aim to protect workers and the traveling public, provide a level-playing field for businesses to compete, and ensure stewardship of the environment and national transportation system.

A robust regulatory framework and a strong national transportation system are not mutually exclusive.

The Infrastructure Investment and Jobs Act (IIJA) provided a much-needed boost in investment. to support modernization of the multi-modal U.S. transportation network. My company has already experienced the impacts of this investment, winning multiple bids for projects supported by the infrastructure law. Oklahoma has seen more than 1,600 projects receive IIJA funding commitments, and Duit Construction has ramped up hiring and equipment purchases to accommodate the increase in activity for our company.

At the same time as the infrastructure law's investments are supporting mobility and safety improvements, a maze of new and expanded regulations that govern the use of these funds is being advanced. The resulting uncertainty impacts how I hire, when my teams can begin construction, and where to purchase materials and equipment needed on jobsites.

As I noted at the outset, state and federal regulations have always been part of public sector infrastructure endeavors. Our goal is to ensure that the regulatory en-

vironment has the same objectives as transportation investments—to help move people and products in the safest and most efficient manner possible.

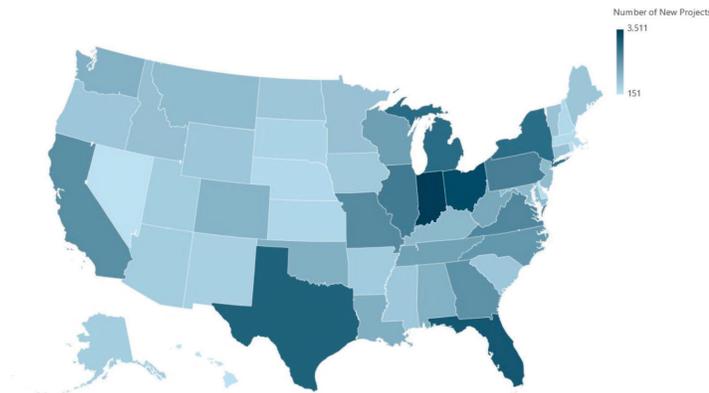
THE INFRASTRUCTURE LAW SO FAR

A complex regulatory environment existed prior to the IIJA, and it's important to underscore that any rulemakings underway since 2021 do not overshadow the significant impacts most states are seeing in work performed thanks to the law's investment increases.

As the IIJA has crossed the mid-way point of its five-year authorization, its market impacts are evident at all stages of the highway and bridge construction pipeline, delivering safety improvements, upgrades, and enhancements that improve the quality of life for all Americans. There are very few government programs that have such a widespread and lasting impact on our country.

The map below depicts the number of new federal-aid highway and bridge project commitments in the law's first two years—totaling more than 75,000 so far.

Number of New Federal Aid Formula Projects by State
FY 2022 and FY 2023



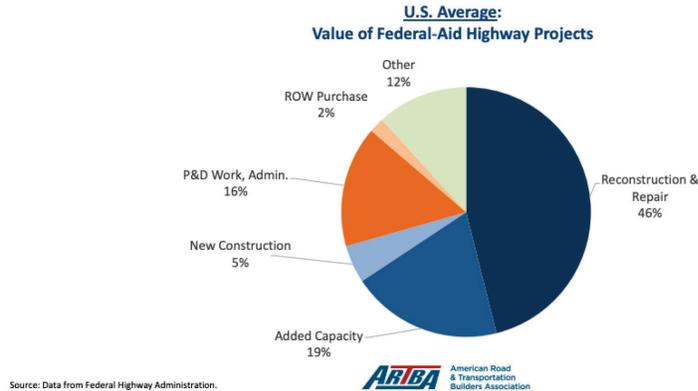
Source: ARTBA analysis of U.S. Treasury data

Additional indicators of the law's progress since October 1, 2021, include:

- States have advanced at least one federal-aid highway and bridge project in nearly every county across the country;
- The value of state and local government projects breaking ground was up, year-to-year, 27 percent in 2022 and another 9 percent in 2023;
- The value of state and local government projects was nearly \$114 billion in 2023, compared to \$75 billion in 2019;
- Nearly 43,000 new construction industry jobs have been added since 2021; and
- The value of highway and bridge construction work is up over 18 percent in the beginning of 2024, on top of record levels of work in 2022 and 2023.

Projects supported by the infrastructure law include repair and reconstruction work, new capacity, planning and design, right of way purchases, and other eligible activities under the federal-aid highway program, as depicted in the chart below.

**Breakdown of Federal Aid Highway Projects by Type of Work Performed,
October 1, 2021 through April 30, 2024**



The law also supports major projects with a regional impact, such as the Anzalduas International Bridge project in Texas or upgrades to the I-10 freight corridor in Mississippi, along with important improvements at the local level, such as the reconstruction of Cedar Falls Main Street in Iowa and safety improvements on South McGregor Avenue in Mobile, Alabama.

Closer to home, Muskogee, Oklahoma, will see freight, safety, and community improvements thanks to a \$74 million replacement of the east and westbound spans of the U.S. Highway 62 bridge over the Arkansas River. The 60-year-old bridge was showing major signs of wear and tear, and with the help of IIJA funding, the state is investing in the economic future of the region. Given the strength of leading indicators and stable funding, construction activity is expected to continue to grow in the next three years as highway and bridge improvements continue.

TRANSPORTATION CONSTRUCTION AND THE REGULATORY ENVIRONMENT

Federal regulations, when properly enacted, can foster market growth and competition, spur innovation, and ensure that safety and environmental stewardship run parallel with the cost-effective delivery of transportation infrastructure projects. However, when these regulations become overly burdensome, they have the potential to stifle infrastructure investment and shift costs from construction to compliance.

Government wide, 2024 has been one of the most-costly years for federal regulations finalized to-date. And since the enactment of IIJA, there have been at least 50 new regulations affecting the transportation construction industry alone.

Compliance costs such as rule familiarization, new paperwork, and recordkeeping requirements, as well as the need for increased staff and equipment, are exacerbated when businesses do not know how to comply with rules. As such, contractors competing to work on transportation improvement projects will often “price” the risk of new regulatory requirements—or uncertainty about them—into their bids, resulting in needlessly higher project costs for taxpayers.

These rulemakings have generated new uncertainties for the industry as they seek to properly comply, threatening to delay projects and increase costs. A cycle of a proposed rule, finalization, and in some cases, litigation, creates significant challenges for businesses large and small.

The following represents a cross section of recent regulatory activity in transportation construction that impacts how projects are delivered:

Contracting

The transportation construction industry seeks to maximize safety, cost-effectiveness, efficiency, and environmental stewardship in building federal-aid projects. The federal regulatory regime should not—and need not—compromise those objectives. Regrettably, several recent regulatory changes or proposals threaten to undermine economic benefits from the IIJA’s record investments.

Here are current examples of regulations which, when improperly interpreted and implemented, threaten to dilute the value of federal investment.

Build America, Buy America

The “Build America, Buy America Act” (BABA), embedded in the IIJA, remains a significant implementation challenge as we approach three years since the law’s enactment. ARTBA supports the clear congressional intent to grow domestic manufacturing capacity in the long-term. Our concern relates to the potential for project disruptions, given unrealistic market expectations and the time required for domestic manufacturing capacity to develop.

For more than 40 years, Buy America has required a domestic manufacturing process for iron, steel and certain manufactured products permanently incorporated into federal-aid highway and transit projects, which ARTBA has supported. The IIJA expanded Buy America coverage to five categories of construction materials (non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall). The law also codified responsibilities for the Made in America Office (MIAO), part of the Office of Management and Budget (OMB) which the Biden administration had created by executive order. The MIAO is charged with coordinating domestic preference programs and reviewing related waivers for the entirety of the federal government.

ARTBA continues to see shortcomings and misplaced priorities in BABA’s implementation. In February 2024, ARTBA joined three other national associations in filing a petition for rulemaking with OMB. Our coalition contends that MIAO has wrested numerous responsibilities for BABA implementation from the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and others with decades of experience in applying Buy America to projects. In some cases, this has resulted in uncertainties or inconsistencies in current Buy America requirements across states. Additionally, the petition notes that the BABA waiver process, in which MIAO now plays a critical role, has proven to be inconsistent, opaque, and dysfunctional for several agencies.

Also of great concern, FHWA has proposed rolling back its longstanding waiver for manufactured products. This action would result in significant administrative costs and delays, in part because contractors will need to document the origin of small, inexpensive, commercially available, off-the-shelf items that comprise various manufactured products.

In a survey of contractors undertaken in response to FHWA’s request for information on this topic, two-thirds of respondents anticipated the proposed rollback would require “significant additional time and cost to document and certify the components within manufactured products.” They also identified dozens of manufactured products—including electrical, electronic, and mechanical items—that would be difficult or impossible to procure at a reasonable cost—or at all—with enough domestic content to comply with FHWA’s proposed rule change.

We urge this committee to engage with OMB, MIAO, FHWA and FTA, and seek to minimize project cost increases and delays resulting from the BABA provisions.

Disadvantaged Business Enterprise Program

In April 2024, the U.S. Department of Transportation (DOT) released rule changes for its longstanding Disadvantaged Business Enterprise (DBE) program. Conducted over two years, the rulemaking addressed almost 40 aspects of the DBE program, yielding approximately 400 comments to the docket.

ARTBA supported some of the rule changes and appreciated FHWA’s responsiveness to a number of our comments. However, since the May 9 effective date, the association has heard significant concerns from members—including DBE firms—as to how various new requirements are being interpreted at the state level.

This includes extensive data collection responsibilities, which some state transportation agencies appear poised to impose on contractors and subcontractors bidding on federal-aid projects. Some DBE firms have commented that these types of administrative mandates may drive them from the transportation construction market entirely.

ARTBA recommends that this committee deploy its oversight responsibilities to review various aspects of DBE program implementation under the revised rule.

U.S. Department of Labor (DOL), Davis-Bacon Act Regulations

Last summer, DOL announced significant changes to the Davis-Bacon Act’s regulations that govern the prevailing wage for federal contracting. While DOL was responsive to and specifically referenced ARTBA’s comments, portions of the final rule remain problematic. Specifically, DOL’s revisions concerning truck drivers and materials suppliers created significant confusion for transportation construction con-

tractors. Furthermore, DOL regional offices have not reported consistently on the rules.

Litigation has stayed the most problematic rule changes for the time being, but ARTBA notes that DOL's implementation guidance has not been sufficiently detailed or timely (including updates needed since recent court actions). Ensuring consistent application of the rule will alleviate unnecessary confusion. Non-compliance with these regulations can result in substantial penalties, including fines and potential debarment from future federal contracts, underscoring the importance of clear and uniform guidance for the industry.

We have also seen systemic challenges in Davis-Bacon compliance unrelated to the recent rule changes. For about the past fifteen years, job classifications and territories for calculating prevailing wage rates in Oklahoma have grown steadily, adding administrative costs. Congress or DOL should seek to streamline this process, which will reduce project costs and lead to more economic benefits from federal transportation investment.

Fish and Wildlife Service (FWS), Migratory Bird Treaty Act (MBTA)

In a forthcoming proposed rule change, FWS is expected to further tighten penalties for accidental harm to migratory birds. While well-intentioned, this approach does not recognize that these species' habitats can appear on transportation project sites (especially bridges) virtually overnight as birds build new nests. Broadening interpretation of the MBTA would likely require industry professionals to utilize extraordinary, costly and time-consuming measures to avoid accidental harm to, or takings of, any such birds, potentially requiring work stoppages. Moreover, if unintended incidents occur despite preventative steps, the contractor would be subject to an economic penalty. While contractors make significant efforts to protect wildlife on or near project sites, use of the MBTA in this way will diminish the predictability of workflow and costs.

Procurement

Federal Highway Administration, Qualifications Based Selection Rule

Contracts for architecture and engineering services that are related to a construction project and utilize federal funding must foster open competition under the 1972 Brooks Act. This is achieved through a current FHWA procurement process known as "qualifications-based selection" (QBS), which assesses engineering design services based on demonstrated competence and qualifications for services being procured, all while ensuring a fair and reasonable price.

FHWA proposed eliminating the requirement to use the QBS method for projects awarded directly to a non-state agency (e.g., local, or municipal agency). ARTBA strongly opposes this proposal, as it could lead to suboptimal project outcomes by prioritizing cost over quality. High-quality engineering and design services are crucial for ensuring the safety, durability, and efficiency of transportation infrastructure. ARTBA is also concerned FHWA's proposal would create an uneven playing field with QBS applying to some recipients and not others, without a substantive justification.

Project Delivery

ARTBA members have consistently demonstrated innovation and environmental stewardship, with many achieving significant sustainability successes through environmentally conscious project delivery methods. However, agency overreach and policy ambiguity create significant obstacles, and jeopardize the certainty required to advance transportation improvement projects.

Federal Highway Administration, Greenhouse Gas Performance Measure

FHWA finalized a December 2023 rule requiring state departments of transportation (DOTs) and metropolitan planning organizations to establish greenhouse gas (GHG) emissions targets. While FHWA did not mandate specific targets, it required that emissions decline over time, as measured by tailpipe carbon dioxide data. This would apply to all mainline highways and public roadways.

ARTBA is not opposed to the reduction of GHG emissions in principle, but believes FHWA lacks the statutory authority, environmental expertise, and enforcement ability to enact such regulations. In fact, Congress deliberately contemplated and excluded such provisions from the IIJA. Further, this rule could impinge on state flexibility to select projects.

Twenty-two states challenged the rule in two federal district courts, and ARTBA filed an amicus brief in support of the challenge. Both courts ruled that FHWA does not have statutory authority, and the agency is now appealing, thereby prolonging the regulatory uncertainty under which ARTBA members operate.

U.S. Environmental Protection Agency/Army Corps, Waters of the United States

Determining what constitutes Waters of the United States (WOTUS) under the Clean Water Act (CWA) is a perennial dilemma in Washington, D.C., and on construction sites around the country, given the shifting definitions proposed in various rulemakings over the last few years. For transportation construction professionals, roadside ditches have historically been exempted under WOTUS, but recent U.S. Environmental Protection Agency (EPA) action has created ambiguity.

The U.S. Supreme Court decision in *Sackett v. Environmental Protection Agency* clarified the scope of the CWA and sought to reduce regulatory ambiguity by providing a clear standard. Despite the Court's directives, EPA finalized a new rule that made only marginal improvements, while perpetuating longstanding uncertainties in CWA jurisdiction.

While the agency removed the term "significant nexus" as instructed by the Court, EPA failed to provide a clear standard for "relatively permanent" water flow in the rule, leaving regulated individuals to determine this on their own and bringing in further compliance uncertainty. This resulting lack of clarity forces project proponents to determine WOTUS on a case-by-case basis, leading to delays and potential agency overreach.

Given that CWA violations carry criminal penalties, it is crucial for all regulated parties to understand what constitutes a WOTUS. ARTBA has requested implementation guidance from EPA to help achieve greater clarity and urges this committee to press the agency to issue draft implementation guidance for public comment.

Permitting and National Environmental Policy Act (NEPA) Regulations

The IIJA introduced "One Federal Decision" (OFD) reforms, exemplifying a bipartisan spirit for improving and expediting environmental reviews. Currently, the approval process for new, major federal-aid transportation projects averages five to seven years, with some ARTBA members waiting as long as 14 years.

OFD aims to improve environmental reviews by enacting page limits, setting a two-year goal, and allowing federal agencies to engage in concurrent review. The IIJA made OFD a goal, and 2023's Fiscal Responsibility Act strengthened OFD reforms into a requirement. To date, ARTBA cannot point to any tangible applications of OFD. Failing to implement these reforms can incur significant taxpayer costs, as projects take longer to move to the construction phase.

Separately, the White House Council on Environmental Quality (CEQ) earlier this year finalized phase two of its NEPA rulemaking. The rule was responsive to ARTBA's comments by excluding prior greenhouse gas emissions guidance, but unfortunately removed references to the procedural nature of NEPA permitting, allows for indefinite extensions and requires consideration of abstract, hard-to-measure factors. ARTBA members have concerns that these ambiguities may lead to extended project delays and increased spurious litigation risks from third parties.

Efficient project delivery is vital to achieving the infrastructure renewal goals of the IIJA, and all parties must work in concert to achieve this, while protecting environmental safeguards.

Work Zone Safety

Safety for workers and the public is the top priority for ARTBA's membership. ARTBA has a strong working relationship with the U.S. Occupational Safety and Health Administration (OSHA) and respects the core purpose of the agency to ensure the safety of workers and worksites.

Regrettably, current regulatory policies from OSHA have expanded from its core objective. This is particularly concerning in the context of safety, where clear and effective regulations are crucial to protecting these vulnerable workers.

Occupational Safety and Health Administration, Worker Walkaround

Historically, an employee—and when necessary and justified a relevant expert—could accompany an OSHA inspector during jobsite inspections. Recently, OSHA expanded this rule, allowing any third party to accompany an inspector if deemed "reasonably necessary," removing the requirements for good cause and specific expertise.

The previous, longstanding rule enumerated examples of qualified individuals, such as industrial hygienists or safety engineers. Instead, a third party can join an inspection if deemed "reasonably necessary" by the inspector, who has broad discretion to decide based on factors like relevant knowledge and communication skills. This expanded eligibility also includes individuals with prior relationships with employees.

In the transportation construction industry, the expanded rule could have several impacts. Union representatives might access non-union worksites for unauthorized organizing. Employers may face increased risks and liabilities if a third party is injured on an active site, especially if they are unfamiliar with proper safety protocols.

Third parties with ulterior motives might gather information for litigation, while their overall presence could distract employees and, once again, compromise safety. There are also privacy concerns about exposing proprietary information. Additionally, inspections could lead to operational delays and increased project costs.

OSHA claims this rule provides clarity, but it opens a door to new, undefined individuals and may result in delays, complications, and legal risks. Congress should require OSHA to remove this recent update to its regulation.

Occupational Safety and Health Administration, Heat Safety Standards

OSHA announced a July 2, 2024, proposal to establish heat safety standards in indoor and outdoor settings. Despite comments from ARTBA and others urging OSHA not to enact a one-size-fits-all rulemaking, the agency is proposing to set nationwide heat triggers. ARTBA proposed OSHA adopt regional approaches, as workers in different settings are acclimatized to different temperatures.

ARTBA urged OSHA to allow employers to continue to implement the practices that best suit their employees, rather than requiring broad, prescriptive methods to address potential heat illness issues. Heat is not a new hazard for the transportation construction industry, and OSHA's rule fails to account for the unique nature of the transportation construction industry, like the need for continuous activity during certain paving work. ARTBA members employ the most innovative and effective methods available to protect their workers, and OSHA's proposal may detract from jobsite safety and effective project delivery with its combination of prescriptive break times and burdensome recordkeeping.

Federal Highway Administration, Highway Safety Improvement Program

Approximately 900 fatalities occur in and around transportation construction worksites annually, and as many as 200 are roadway construction professionals. Ensuring a safe workplace for the thousands of professionals tasked with delivering mobility and safety enhancements envisioned by the IIJA is ARTBA's top priority.

As thousands of new projects are initiated, there will also be an increased number of work zones, resulting in increased risk exposure for workers. The transportation construction community is committed to doing its part to mitigate an increase in the number of safety-related incidents.

FHWA's Highway Safety Improvement Program (HSIP) rule is a well-meaning attempt to protect vulnerable road users but misses a key vulnerable group: roadway workers. The HSIP requires states to develop and implement strategic highway safety plans to reduce fatalities and serious injuries on all public roads. ARTBA has urged FHWA to explicitly recognize highway workers as vulnerable road users in all roadway safety initiatives. The health and well-being of workers who build and maintain transportation systems are not always fully considered by those who depend on them.

Roadway construction workers are not discretionary system users. They are required to be in work zones to aid the traveling public and support their families. They deserve the same prioritization as pedestrians and bicyclists.

LOOKING AHEAD TO 2026

Regulations should support, rather than hinder, the efficient and effective deployment of IIJA funds in the law's remaining years. In support of that, ARTBA offers the following recommendations:

- *Pass H.R. 8204, the Bipartisan Regulatory Early Notice and Engagement Act of 2024*—this bipartisan legislation would increase transparency and engagement in the rulemaking process.
- *Continued congressional oversight*—a constant dialogue with federal agency officials on regulatory proposals is a valuable tool to ensure the law is implemented as Congress intended. This committee should continue to request testimony and updates from administration officials.
- *Pursue additional reforms to enhance project delivery*—the IIJA suggested a two-year goal for environmental reviews, which was strengthened in subsequent legislation to a requirement. Congress should consider additional policy reforms to streamline the permitting process and increase coordination among federal agencies.
- *Provide agencies with clear directives in legislation*—the U.S. Supreme Court's overturning of the Chevron doctrine spotlights the crucial role of congressional

leadership in ensuring that legislation is unambiguous, preventing regulations from ending up in litigation. ARTBA looks forward to its continued partnership with lawmakers to ensure that federal regulations are consistent with congressional intent.

- *Timely engagement on reauthorization*—a key driver for transportation construction investment is funding certainty to help states plan long-term investments. With the authorization of core surface transportation programs expiring in nearly two years, Congress should begin assessing current law and identifying priorities for timely enactment of a new, five-year law by October 1, 2026, including enacting revenue solutions for solvency of the Highway Trust Fund.

The federal role to develop and maintain a national transportation system is a responsibility enshrined in the U.S. Constitution that enables interstate commerce, supports the economy, and improves quality of life.

Thank you for the opportunity to share some of the practical impacts that a complex regulatory environment can have on the fulfillment of this responsibility.

ARTBA looks forward to collaborating with this committee to help ensure federal regulations work in concert with the delivery of a reliable and safe national transportation network for the nation.

Mr. CRAWFORD. Thank you, sir. Mr. Bell, you are recognized.

**TESTIMONY OF PHILIP K. BELL, CAE, PRESIDENT, STEEL
MANUFACTURERS ASSOCIATION (SMA)**

Mr. BELL. Good morning, Chairman Crawford, Ranking Member Norton, and distinguished members of the committee. Thank you for the opportunity to share ideas with you today.

My name is Philip Bell. I am president of the Steel Manufacturers Association. The SMA is the largest U.S. trade association for steel. Our members are investing in the future.

Between 2022 and 2026, they will have invested more than \$20 billion, leading the way in the electrification, modernization, job creation, and further decarbonization of America's steel industry, which is already the cleanest in the world. As the Federal Highway Administration implements its Buy Clean program, it must promote low-emission steelmaking and adhere to statutory requirements established by Congress.

A little background might be helpful. There are currently two ways to make steel. The traditional blast furnace production method is a centuries-old, coal-based, high-emissions way of making steel. By contrast, SMA members use recycling-based electric arc furnaces to manufacture steel with an emissions profile 70 percent lower than traditional producers.

EAFs are inherently more efficient and lower emitting, which is why virtually every new U.S. steel mill built in the last 50 years has been an electric furnace. EAF production dominates the steel used in our Nation's infrastructure, including 99 percent of all domestic rebar, wire rod, light shapes, wire mesh, and structural beams. Electric furnaces and blast furnaces can make the same grades and types of steel. The finished products from either method are identical. From a customer perspective, the type of steel production process does not matter.

America's reliance on EAF production gives us a significant carbon advantage over our global competition. In fact, the domestic steel industry emits 75 to 320 percent less carbon than global producers. So, why does this carbon emissions advantage matter?

The IRA appropriated more than \$4 billion to the GSA and Federal Highway Administration to purchase construction materials

that have substantially lower levels of embodied greenhouse gas emissions. The EPA defines “substantially lower” to mean products with the lowest 20 percent of emissions.

SMA believes that a well-designed Buy Clean program can meaningfully accelerate decarbonization and assist in securing a stable future for the American steel industry and its workers. However, we have serious concerns with the GSA’s implementation of its Buy Clean program and their adoption of a dual emissions standard for steel. We urge that Federal Highway reject GSA’s misguided approach.

For multiple steel product categories, GSA has set separate emissions standards for steel products simply based on how they are made. Under this dual standard, steel produced from blast furnaces will be subject to more lenient requirements than those made in modern electric furnaces despite an identical end product.

This is contrary to the Buy Clean statute, which requires that only materials with substantially lower emissions be purchased. This market-distorting action discriminates against companies and workers that have invested heavily and worked tirelessly to reach substantially lower emission levels. GSA justifies this dual standard by claiming that electric furnaces cannot produce all the same types and grades of steel and that there will be an insufficient supply of recycled scrap to support greater EAF production. Both claims are wrong.

First, there is simply no dispute that electric furnaces can produce the grades and types of steel needed for construction projects and Government procurement.

Second, recent data by the OECD shows that global scrap surpluses will exist through at least 2050. In fact, the United States has so much steel scrap that we are a net exporter. GSA did not have a legitimate reason to set two standards, and neither does the Federal Highway Administration.

To conclude, a single standard is simple and transparent. A single standard is fair to all producers and encourages innovation and investment. A single standard results in the greatest emissions reductions and will further our global advantage on lower emission steel.

And, finally, a single standard is the only way to comply with the statute.

Thank you for inviting me to testify today, and I look forward to continued engagement with members of the committee.

[Mr. Bell’s prepared statement follows:]

Prepared Statement of Philip K. Bell, CAE, President, Steel Manufacturers Association (SMA)

Good morning, Chairman Crawford, Ranking Member Norton and distinguished members of the committee. Thank you for the opportunity to appear before you to discuss the Department of Transportation’s regulatory and administrative agenda. As the Federal Highway Administration (“FHWA”) and other federal agencies implement Buy Clean programs, it is imperative that they are designed to promote low emissions steelmaking and adhere to the statutory requirements established by Congress.

INTRODUCTION

My name is Philip Bell. I am a 35-year manufacturing industry veteran. I developed an interest in the steel industry in the 1980s while working in maintenance and operations at American Chrome and Chemicals Company in Corpus Christi, TX. Our plant made chromium coatings that are used in the electroplating of metal products. I have been president of the Steel Manufacturers Association (SMA) for over a decade. Prior to the SMA I held executive-level positions with Gerdau North America, the SGL Carbon Group, and Qualitech Steel Corporation. I am extremely proud to be a part of and represent an industry that is the backbone of our country. The steel industry is a wonderful and glorious industry that has built careers, companies, communities, cities and even civilizations.

The SMA is the largest U.S. trade association for steel. SMA members are focused on safety, sustainability and innovation. Our members make essential products for America's infrastructure, national security, energy and manufacturing sectors. Between 2022 and 2026 our members will have announced, started or finished new capex projects worth more than \$20 billion, leading the way in the electrification, modernization and further decarbonization of America's steel industry, which is already the cleanest in the world.

MODERN STEEL INDUSTRY

There are currently two ways to make steel. The traditional blast furnace/basic oxygen furnace (BF-BOF) production method is a centuries old, extractive, coal-based, high emissions way of making steel. 90% of the steel made in China uses this carbon intensive process. By contrast, SMA members use recycling- and scrap-based electric arc furnaces (EAFs) to manufacture steel with an emissions profile 70% lower than traditional BF-BOF producers. EAFs are inherently more efficient and lower emitting, which is why virtually every new U.S. steel mill built in the last 50 years has been an EAF. As a result, EAFs currently account for 70% of the steel made in the United States. EAF production dominates the steel used in our nation's infrastructure, including 99% of the domestic rebar (structural integrity of bridges, highways, buildings and foundations), wire rod (reinforcement), light shapes (strength and elasticity for load-bearing structures), wire mesh (holds concrete in place) and structural beams (creates strong and stable structures). EAF steel also accounts for the vast majority of plate, sheet, and pipe products used in construction. EAFs and BF-BOF can make all the same grades and types of steel. The finished products from either method are virtually identical. America's reliance on EAF production gives us a significant carbon advantage over our global competitors. In fact, the domestic steel industry emits 75-320% less carbon than global producers.¹

A SINGLE BUY CLEAN STANDARD FOR STEEL IS THE ONLY SOLUTION

SMA believes that well-designed Buy Clean programs have the potential to meaningfully accelerate decarbonization and assist in securing a stable future for the American steel industry and its workers. However, we have serious concerns with the General Services Administration's (GSA) implementation of its Buy Clean program and, in particular, the adoption of a dual emissions standard that favors integrated BF-BOF steel production over recycling based EAF production. We urge the FHWA and other agencies to reject GSA's misguided approach.

The Inflation Reduction Act (IRA) appropriated more than \$4 billion to the GSA and the FHWA to purchase construction materials that "have substantially lower levels of embodied greenhouse gas emissions" as determined by the Environmental Protection Agency (EPA).² The EPA defined "substantially lower" to mean products with the lowest 20% of embodied emissions when compared to similar materials.³ There is no ambiguity in the requirement that purchases under these programs are limited to those with "substantially lower" emissions. However, the dual emissions standard adopted by GSA is inconsistent with this statutory requirement and harms the goals of Buy Clean policies.

Specifically, for multiple steel product categories, GSA has set separate emissions standards for steel products made by integrated BF-BOF mills and those made by modern, efficient EAFs. Under this dual standard, steel produced in BF-BOF mills will be subject to more lenient emissions requirements than those made in EAFs.

¹ CRU, Emissions Analysis Executive Summary (June 14, 2022)

² Inflation Reduction Act of 2022, H.R. 5376, 117th Cong. § 60503(a)

³ EPA Guidelines on Inflation Reduction Act Programs <https://www.epa.gov/inflation-reduction-act/inflation-reduction-act-programs-fight-climate-change-reducing-embodied#:~:text=For%20purposes%20of%20the%20interim,in%20embodied%20greenhouse%20gas%20emission>

This means that a steel product made in a BF-BOF facility may be considered just as clean or cleaner than a steel product made in an EAF facility with much lower emissions. As a result, low emissions steel that would qualify as clean under a single standard may not qualify under a dual standard, while high emission steel that has substantially *higher* emissions, may qualify as clean. This is contrary to the statute, which requires that only materials with “substantially lower” emissions be purchased. It also discriminates against companies and workers that invested heavily and worked tirelessly to reach substantially lower emissions levels.

Further, dual standards like the one adopted by GSA are bad climate policy. They will result in higher total emissions by creating a carve-out for the highest emitting producers. By encouraging the continued acquisition of high emissions steel and not promoting purchases of the lowest emissions steel, the government will not put maximum pressure on the highest emitters to decarbonize. Transitioning towards low emitting technologies like EAFs is the quickest and most reliable way to significantly reduce the greenhouse gas (“GHG”) emissions associated with steelmaking in the United States and across the globe. Buy Clean policies that do not distinguish between production technologies or raw material inputs can help accelerate the decarbonization of the American steel industry and send the right signals to steelmakers globally.

GSA justifies its dual standard by claiming that EAFs cannot produce the same types and grades of steel products as BF-BOFs (*e.g.*, exposed automotive, advanced high strength, electrical, and tin mill steels) and that there will be insufficient scrap supply to support greater EAF production. Both claims are wrong and not supported by the market.

First, EAFs can produce the same types and grades of steel as BF-BOFs. Further, the products that integrated producers claim cannot be made by EAFs are not the types of construction products covered by Buy Clean programs. There is simply no dispute that EAFs can produce the grades and types of steel needed for construction projects and government procurement. Even for the most demanding steels, many of the BF-BOFs that are transitioning towards EAF production publicly acknowledge that their EAFs can produce the same types of advanced products as their BF-BOF operations.

Second, the availability of scrap does not limit the ability of EAFs to supply a greater and significant percentage of steel demand. Recent data from the OECD show a global scrap surplus through at least 2050. In fact, the United States is a significant net exporter of scrap. The availability of scrap is not a concern for construction grade products. And as far as automotive grades are concerned, recent technological advancements are increasing the available substitutes for prime scrap, and EAFs can produce high quality steel with little or no prime scrap.

SMA appreciates FHWA’s work in developing its Buy Clean program and its efforts to engage domestic steel producers in doing so. We encourage the agency to avoid the same misguided approach as GSA. Consistent with the IRA, FHWA should adopt a single emissions standard that applies equally to all products regardless of their production process or raw material inputs. All that should matter under FHWA’s Buy Clean program are the actual embodied emissions of the products and that the production and use of materials with the lowest embodied emissions are encouraged.

From the customer perspective, the type of steel production process does not matter. Steel is purchased according to industry grades and standards that do not distinguish based on production technology or raw material inputs. In this sense, an emissions standard that differentiates by production process, such as a dual standard, delays decarbonization by allowing the highest emitting producers to claim they are cleaner than their actual emissions. It also discourages recycling and penalizes companies for investing in circular steelmaking. Instead, there should be a single standard based on actual emissions.

- *A single standard is simple and transparent.* A single standard makes clear to customers, business partners, and governments who are the lowest and highest emitting producers based on total, actual emissions, without caveats based on production process. High emissions producers should not be allowed to conceal the significant gap between the dirtiest and cleanest producers. Put simply, if two steel products are identical, they should be held to the same Buy Clean emissions requirements.
- *A single standard is fair to all producers and encourages innovation and investment.* A single standard does not prioritize specific steel production processes or raw material inputs and, in doing so, it incentivizes investment in all production pathways, including the types of steel technologies that will be needed to achieve significant reductions in the future. There is no longer a clear divide

between EAF and BF-BOF production, and the future of steelmaking will require a variety of technologies. Buy Clean policies should promote the development and adoption of all types of new and low emissions steelmaking processes, rather than locking-in old technologies and production routes.

- *A single standard results in the greatest emissions reductions and will further our global advantage on low emissions steel.* By applying equally to all producers and production methodologies, a single standard rewards those with the lowest embodied GHG emissions and promotes the fastest possible transition by companies who do not qualify for preferred government procurement under these programs.

In short, FHWA and other federal agencies should not differentiate between steel products made in EAFs or BF-BOFs, but rather adopt a single emissions standard that applies the same requirements to all steel producers and steel products, regardless of their production technology or raw materials. Doing otherwise would create a Buy Clean program that disadvantages carbon efficient producers and workers, mislabels dirty steel as clean, and tempers our ambition to decarbonize.

* * *

Because of America's tremendous carbon advantage on steel, successful Buy Clean programs can be a powerful tool to meaningfully reduce emissions and support the American steel industry and its workers. A single standard that applies equally to all producers is the only way to comply with the statute, maximize emissions reductions, and incentivize investment in decarbonization. Thank you for inviting me to testify today. I look forward to continued engagement with members of this committee.

Mr. CRAWFORD. Thank you, Mr. Bell.
Mr. Pugh.

TESTIMONY OF WILLIAM "LEWIE" PUGH, EXECUTIVE VICE PRESIDENT, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION (OIDA)

Mr. PUGH. Chairman Crawford, Ranking Member Holmes Norton and members of the subcommittee, I am Lewie Pugh, and I am a proud trucker. I also serve as the executive vice president of the Owner-Operator Independent Drivers Association. I laid out my career as a trucker in the United States Army. After that, I spent 23 years driving a truck as a small-business motor carrier, amassing 2.5 million safe miles across this country. I still hold my CDL today.

OIDA is the largest trade association representing small-business truckers and professional drivers across the country. We have 150,000 members in all 50 States who operate collectively 240,000 pieces of equipment. OIDA promotes and protects the interests of our members on issues impacting economic well-being, working conditions, and safe operation of a commercial motor vehicle.

Small trucking businesses account for 96 percent of all registered motor carriers in the U.S., and they are undoubtedly the safest and most diverse operators on the road. Trucking is one of the most heavily regulated industries in America.

From the number of hours you can drive to the color and width of tape that you must put on your trailer to even when you can go home, every element of trucking is controlled by regulation. Complying with existing regulations, many of which have no connection to safety, can be overwhelming even for the most experienced drivers. In some cases, it is damn near impossible.

While compliance rates have never been higher, there are those, including large motor carriers, shippers, safety advocates, and

elected officials, along with bureaucrats, who not only resist in modernizing or eliminating needless regulations but want to impose even more rules on the American trucker.

Some folks want to mandate speed limiters on all commercial vehicles while dismissing the disastrous consequences and concerns of highway safety and supply chain issues. Others with no experience in a commercial motor vehicle want to mandate the use of unproven and cost-prohibitive equipment like side underride guards. Unfortunately, these examples only scratch the surface.

If this is painting a picture of a dysfunctional regulatory environment where practical solutions have become secondary considerations, you are starting to see things like an OOIDA member. Let me be clear, OOIDA and our members are not anti-regulation. We have a long history of supporting regulations that address critical needs in our industry and are backed by sound research and data.

We have pushed for enhanced driver training requirements, improved broker transparency, stronger truck leasing rules, better driver pay, and a more accurate and reliable safety rating system. Unfortunately, Congress and DOT have an inconsistent record when it comes to crafting regulations.

Even members of this subcommittee have demonstrated inconsistency when it comes to developing regulations that support truckers and highway safety. On a positive note, Ranking Member Holmes Norton has championed a bipartisan legislation to fight freight fraud, and Representative Van Drew has introduced a bipartisan bill to eliminate the overtime exemption to ensure drivers are paid for all the hours that they work.

In contrast, other lawmakers, at the behest of trial lawyers, have continued to push a massive 500-percent increase in liability insurance minimums despite knowing the existing minimum covers the cost of 99 percent of crashes.

Even the Infrastructure Investment and Jobs Act provided a mixed bag for truckers. On one hand, Congress included provisions to combat predatory leasing. On the other, the bill authorized an overly ambitious automatic emergency braking mandate. It has also created an underride committee dominated by blatantly biased participants who failed in their mission to generate a consensus on the ways to reduce underride crashes, fatalities, and injuries.

While Congress' record features positive and negative aspects, truckers are completely frustrated with DOT's regulatory actions, mostly concerning the Department's wildly unpopular and dangerous speed limiter mandate, its efforts to water down CDL requirements, the slow pace of addressing broker transparency, and improving the National Consumer Complaint Database.

In the end, truckers want regulations that reflect their needs and the changing dynamics of their industry. It is time for Congress and DOT to help make trucking an appealing, safe, and sustainable career by listening to the people who make their living behind the wheel.

Thank you for this opportunity.

[Mr. Pugh's prepared statement follows:]

**Prepared Statement of William “Lewie” Pugh, Executive Vice President,
Owner-Operator Independent Drivers Association (OOIDA)**

Chairman Crawford, Ranking Member Norton, and members of the Subcommittee, my name is Lewie Pugh and I am the Executive Vice President of the Owner-Operator Independent Drivers Association (OOIDA). Prior to working at OOIDA, I was a small-business trucker for nearly 23 years with 2.5 million miles of safe driving. Before operating my own trucking business, I drove a truck during my service in the United States Army. I still proudly hold a Commercial Driver's License (CDL). In short, I've been a trucker my entire career.

ABOUT OOIDA

The Owner-Operator Independent Drivers Association is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has approximately 150,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks. OOIDA's mission is to promote and protect the interests of our members on any issues that impact their economic well-being, working conditions, and the safe operation of commercial motor vehicles (CMVs) on our nation's highways.

Small trucking businesses, like those we represent, account for 96 percent of registered motor carriers in the United States, making them a key component of the nation's supply chain. We are undoubtedly the safest and most diverse operators on our nation's roads. Every region of our country and segment of our economy relies upon long-haul truck drivers. Our members are an integral part of the global supply chain and have a unique perspective on the many challenges our nation faces in moving freight in the safest, most efficient manner.

INTRODUCTION

Trucking is one of the most heavily regulated industries in America. Federal regulations affect nearly every aspect of a professional driver's life. From the number of hours they can drive before taking a break or shutting down, to the color and width of tape they must use on their trailers, nearly every element of trucking is controlled by a regulation. Complying with existing regulations, many of which have absolutely no connection with safety, can be overwhelming for even the most experienced driver. In some cases, it can be damn near impossible.

While compliance rates with this dizzying array of regulations have never been higher, there are those, including large motor carriers, shippers, safety advocates, elected officials, and bureaucrats, who not only resist modernizing or eliminating needless regulations, but want to impose even more impractical and ineffective rules on American truckers.

Some of these entities want to go so far as mandating speed limiters on all commercial vehicles, which could force truckers to travel 20 mph below the posted speed limit. Supporters have dismissed concerns about the disastrous consequences this regulation would have on highway safety and the supply chain. Others, with no experience in the day-to-day operation of a CMV, want to mandate the use of unproven and cost-prohibitive equipment like side underride guards that would jeopardize the safety of drivers and the future of their businesses. There are even members of this Committee who want to dramatically increase the amount of liability insurance truckers must carry, knowing this increase is entirely unnecessary and will immediately destroy innumerable small trucking businesses.

If this paints a picture of a dysfunctional regulatory environment where practical solutions have become secondary considerations, then you're starting to see things like an OOIDA member.

Let me be clear, OOIDA and our members are not anti-regulation, as some would have you believe. In fact, the opposite is true. We have a long history of supporting regulations that address critical needs in our industry and are backed by sound research and data. For decades, we have pushed for enhanced driver training requirements to ensure the men and women behind the wheel of a CMV are prepared to operate at the safest level. We've also pushed for greater broker transparency, stronger truck leasing requirements, better driver pay, and more accurate and reliable safety ratings systems.

Truckers believe Congress and the Department of Transportation (DOT) have inconsistent records when it comes to crafting regulations that support their needs. Even members of this Subcommittee have demonstrated inconsistency when it comes to developing regulations that advance our shared objective of improving highway safety and supporting those who make their living on the road.

On a positive note, Ranking Member Holmes Norton and Representative Ezell have championed bipartisan legislation to fight freight fraud, which is destroying small trucking businesses every day, and Rep. Van Drew has introduced a bipartisan bill to eliminate the overtime exemption for truckers, ensuring drivers are paid for all the hours they work. In contrast, other lawmakers, at the behest of trial lawyers, continue to push for a massive 500% increase in liability insurance minimums that would immediately kill small trucking businesses, despite knowing the existing minimum of \$750,000 covers costs in over 99% of crashes involving a CMV.

Even the Infrastructure Investment and Jobs Act (IIJA) provided a mixed bag for truckers. On one hand, Congress included provisions that will combat predatory lease agreements that take advantage of truckers. On the other, the bill authorized an overly-ambitious automatic emergency braking (AEB) mandate that ignores known limitations and deficiencies with the technology. The Act also created an override committee dominated by blatantly-biased participants who failed in their mission to generate consensus on ways to reduce override crashes, fatalities, and injuries.

While Congress's recent record features both positive and negative aspects, truckers have grown frustrated with the Biden Administration's regulatory steps initiated under their own authority. First and foremost is the wildly unpopular and dangerous speed limiter mandate proposed by the Federal Motor Carrier Safety Administration (FMCSA), which should be withdrawn immediately. We are also concerned by FMCSA's efforts to water down commercial driver's license (CDL) requirements at a time when we should be enhancing driver training regulations. Even when moving in the right direction, such as working to improve broker transparency and enhancing the ability of truckers to report safety risks through the National Consumer Complaint Database (NCCDB), the agency is painfully and unnecessarily slow to act. Outside DOT, truckers can't believe the Environmental Protection Agency (EPA) is moving forward with more crippling emissions regulations.

In the end, truckers want regulations that reflect their needs and the changing dynamics of their industry. It's time for Congress and DOT to help make trucking an appealing, safe and sustainable career by listening first to the people that make their living behind-the-wheel.

SPEED LIMITERS

In April 2022, DOT reopened a potential speed limiter mandate on all CMVs over 26,000 pounds, despite receiving overwhelming opposition after its initial 2016 Notice of Proposed Rulemaking. Any speed limiter mandate would be harmful for road safety, crash rates, driver retention, and supply chain performance. By establishing a one-size-fits-all federal mandate restricting heavy-duty CMVs to a speed that is separate from passenger vehicles, this regulation would create dangerous speed differentials between trucks and cars. Decades of highway research shows greater speed differentials increase interactions, such as passing or braking, between truck drivers and other road users. Studies have consistently demonstrated that increasing these interactions directly increases the likelihood of crashes.

In many states, this mandate would create split speed limits on two-lane rural roads, which are particularly hazardous. In these conditions, passenger vehicles that want to travel at the posted limit get stuck behind slower-moving trucks, increasing the number of risky passes they must make using the oncoming lane of traffic. Speed limiting trucks also increases pressure on drivers to complete their work. Truckers required to operate below the posted speed limit must drive longer hours to cover the same distance, which increases their fatigue and places even greater stress on them to comply with burdensome federal hours-of-service regulations. A speed limiter mandate would also exacerbate supply chain challenges. By prohibiting trucks from traveling at the posted speed limit in certain areas, this mandate will literally slow down freight movement across the country. If the regulation is implemented, more trucks will be needed to carry the same amount of freight in the same amount of time, which also increases road congestion and contributes to higher crash rates.

Furthermore, this mandate would be especially bad for small businesses. Some large motor carriers already use speed limiters as a fleet management tool, but small business and single-truck operators have no need for these devices. A government mandate would ultimately take away one of the last competitive advantages that small businesses have over large carriers. In its rulemaking, FMCSA admitted this mandate would be bad for small businesses, stating, "small trucking companies, especially independent owner-operators, would be less profitable with speed limiting devices."

There is already a mechanism in place to address vehicle speeds: speed limits set and enforced by the states. In 1995, Congress repealed the national speed limit and gave states the authority to establish speed limits for their roads. Since then, states have been able to design their roadways and set top speeds according to what they have determined to be safest for their specific needs and conditions. FMCSA's ongoing rulemaking ignores this long-standing authority.

OOIDA is leading a coalition comprised of transportation stakeholders in support of H.R. 3039, the Deregulating Restrictions on Interstate Vehicles and Eighteen-Wheelers (DRIVE) Act. The legislation prohibits FMCSA from implementing regulations mandating the use of speed limiters on heavy-duty trucks. We encourage all subcommittee members to support H.R. 3039 and hope the DRIVE Act can be enacted before FMCSA promulgates another dangerous mandate.

AUTOMATIC EMERGENCY BRAKING

Section 23010 of IJA required DOT to prescribe federal motor vehicle safety standards for AEB systems on newly manufactured CMVs. The legislation also required DOT to directly consult with representatives of CMV drivers regarding the experiences truckers have had with AEB systems as a means to identify and address deficiencies in technologies that are already in use.

DOT ignored these requirements prior to publishing an AEB NPRM in June 2023, claiming previous outreach to truckers, initiated before the AEB rulemaking began, satisfied the requirement to consult with drivers. We disagree. Additionally, the National Highway Traffic Safety Administration (NHTSA) has an open investigation into AEB systems on certain heavy-duty trucks because of reports of false activations. These factors resulted in a proposal that did not adequately ensure AEB systems could meet necessary safety standards before the technology requirement becomes effective.

The NPRM contained four irresponsible flaws: (1) failure to address false activations; (2) inadequate consultation with professional truck drivers; (3) precedes necessary completion of ongoing research; and (4) cloaks deficient testing processes with minimum performance expectations. These shortcomings negligently pose highway safety risks to the motoring public and to professional drivers alike. Congress must ensure that DOT addresses these deficiencies in the pending AEB Final Rule anticipated in January 2025. If not, AEB systems will jeopardize our members' safety and create otherwise avoidable hazards on our roads.

FREIGHT FRAUD

The evolution of technology, a lack of federal oversight, and a failure to prioritize criminal enforcement have all contributed to an unprecedented rise in fraudulent activity in trucking over the last few years. Motor carriers are victimized through unpaid claims, unpaid loads, double brokered loads, or load phishing schemes on a daily basis. This costs the trucking industry over \$800 million annually. Freight fraud committed by criminals and scam artists has been particularly devastating to many small business truckers simply trying to survive in a tough freight market. The current regulatory framework limits enforcement, enables bad actors to operate with impunity, and forces out drivers who want to build sustainable trucking careers.

In recent months, FMCSA has taken initial steps that may curtail fraud, including finalizing a long-awaited Broker and Freight Forwarder Financial Responsibility Rule, announcing a registration fraud team, and preparing modernization updates to the motor carrier/broker registration process. However, many drivers remain skeptical that these changes will be sufficient to substantively address the problem. OOIDA strongly supports H.R. 8505, the Household Goods Shipping Consumer Protection Act—bipartisan legislation introduced by Ranking Member Holmes Norton and Rep. Mike Ezell. The bill restores and codifies FMCSA's authority to issue civil penalties against bad actors, and also requires brokers, freight forwarders, and motor carriers provide a valid business address to FMCSA in order to register for authority. H.R. 8505 would provide FMCSA with better tools to root out unscrupulous actors, which are also harmful to consumers and highway safety. We hope this bill will be marked-up by the Full Committee without delay.

BROKER TRANSPARENCY

For years, small-business truckers have expressed frustration that regulations designed to provide transparency are routinely evaded by brokers or simply not enforced by FMCSA. 49 CFR §371.3 mandates that brokers keep transaction records and permits each party to a brokered transaction to review these documents. These

regulations are in place to protect motor carriers, brokers, and the public by ensuring the transparent and smooth movement of goods throughout the supply chain. This transparency helps owner-operators when brokers send them bills regarding disputed claims, such as damages. Without this information, it is impossible to know if these charges are legitimate. Unfortunately, many brokers deliberately implement hurdles they know will prevent a carrier from ever seeing this information.

To ensure that truckers have access to the documents they have a right to review under existing regulations, OOIDA petitioned FMCSA to require brokers to automatically provide an electronic copy of each transaction record within 48 hours after the contractual service has been completed, and explicitly prohibit brokers from including any provision in their contracts that requires a carrier to waive their rights to access the transaction records as required by existing regulations.

In March 2023, FMCSA announced it would launch a rulemaking to address our petition. Yet, the proposal is not expected until October 2024. If rules are promulgated to improve broker transparency and DOT better enforces current regulations, the economic stability of the trucking industry would be more assured and the reliability of our supply chain would improve.

UNDERRIDE PROTECTION

Underride crashes are accidents where a passenger vehicle travels under a semi-trailer in a truck-involved crash. While these types of accidents are very rare, they are truly tragic and forever alter the lives of the individuals and families involved.

OOIDA supported NHTSA's 2022 Final Rule improving rear guard standards and annual inspection requirements, which was required by IIJA. However, professional drivers have numerous concerns about mandating side underride equipment. OOIDA has discussed operational challenges regarding rail-crossings, loading docks, and low ground clearances with Congress, as well as equipment damage resulting from curbs, roundabouts, speed bumps, and other highway features.

IIJA also required DOT to establish the Advisory Committee on Underride Protection (ACUP) to study underride crashes and provide recommendations on how to reduce injuries and fatalities from these crashes. Congress purposefully required that the committee include a diverse membership, including trucking companies, truckers, manufacturers, as well as safety advocates. In establishing this committee, DOT specifically tasked the panel with providing, "written consensus advice to the Secretary on underride protection to reduce underride crashes and fatalities." Congress and DOT intended that this committee find broad areas of agreement among stakeholders and develop practical recommendations for their consideration.

ACUP failed spectacularly in its mission. In short, safety advocates and other biased committee members used their slim numerical advantage on the committee to redefine "consensus" to mean a simple majority. Once this change was made, a bare majority of committee members issued its "majority" report, which is essentially a haphazard compilation of safety advocates' unrealistic wishes. Recommendations included in the majority report completely ignore the legitimate concerns of other committee participants—concerns that are informed by data, testing, and real-world experience. Because of the committee's failings, dissenting members were compelled to issue a "minority" ACUP report.

NHTSA's most recent research once again found that the costs of a side underride guard mandate would significantly outweigh the benefits. Just last year, NHTSA estimated equipping new trailers and semitrailers with side underride guards would be six to eight times the corresponding estimated safety benefits, even when omitting all of the associated feasibility costs. These updated findings, along with the dissenting reports produced by the ACUP, indicate that the development of performance standards for side underride guards, or a mandate that trucks be fitted with this equipment, remains unwarranted. The NHTSA rulemaking process, coupled with the activity of the advisory committee, represents a massive waste of government time and resources pursuing a regulation that is entirely untenable.

Neither Congress nor NHTSA should advance potential new underride standards until further research and analysis are completed. The only recommendations that garnered true consensus support among ACUP panel members generally involved enhancing research and reporting. As such, these are the only elements of the final report Congress and NHTSA should take seriously.

ENTRY-LEVEL DRIVER TRAINING

Too many new drivers are still getting behind the wheel without the basic skills needed to safely operate a CMV—even after Entry-Level Driver Training (ELDT) regulations have been in place for two-plus years. This will not change until the ELDT rule is supplemented to include more comprehensive standards, such as a

minimum number of hours of behind-the-wheel training. The insufficient ELDT regulations are failing new drivers when they encounter unfamiliar conditions, scenarios, and other challenges that weren't included in their limited training. This presents serious safety concerns. We encourage FMCSA to share findings from the pending agency review of the ELDT trainer registry to determine what degree ELDT regulatory objectives have been met and how regulations can be improved. Strengthening ELDT requirements is a no-brainer to improving driver retention and reducing truck-related crashes.

COMMERCIAL DRIVER'S LICENSE FLEXIBILITY

Instead of focusing on enhancing driver training, FMCSA has astonishingly proposed to waive certain training provisions and CDL regulations. Most notably, the agency intends to remove safety requirements for a CDL holder to accompany a commercial learner's permit (CLP) holder when the CLP driver is behind-the-wheel. This regulation is designed to ensure that inexperienced drivers will have sufficient training, instruction, and oversight as they learn the job. Given that ELDT standards do not contain a minimum number of behind-the-wheel training hours, we believe it would be unwise to eliminate this requirement since it provides new entrants at least some additional driving experience with a more tenured trucker. FMCSA had previously noted that, "safety considerations outweigh convenience during driver training," but is now seemingly accommodating a petition from large motor carriers based on the false premise of a driver "shortage."

Rather than proposing ways to expedite the CDL training and administration processes, FMCSA must focus on solutions to address high turnover rates by bolstering driver training programs. We strongly oppose any rulemakings or legislation that would reduce or roll back existing CDL testing and administration requirements.

GREENHOUSE GAS EMISSIONS STANDARDS FOR HEAVY-DUTY VEHICLES—PHASE 3

Clean air is a priority for everyone, including the truckers, but emissions requirements for heavy-duty vehicles should be practical, affordable, and reliable. Unfortunately, EPA has continued their regulatory blitz on small-business truckers with their latest rule establishing Phase 3 Greenhouse Gas Emission standards. Mom-and-pop trucking businesses would be suffocated by the sheer cost and operational challenges of effectively mandating zero-emission trucks beginning in Model Years 2030–2032. The Phase 3 rule attempts to rush production of battery electric vehicles (BEVs) while a national charging infrastructure network remains absent for heavy-duty trucks. Professional drivers are skeptical of BEV costs, mileage range, battery weight and safety, charging time, and availability.

OOIDA has joined with groups across dozens of industries to raise concerns about the feasibility of the Phase 3 Final Rule. We believe enacting H.J. Res. 133 is the best course of action to defeat this misguided environmental mandate.

TRUCK LEASING TASK FORCE

OOIDA has supported DOT's role in administering the Truck Leasing Task Force (TLTF). Section 23009 of IIJA established TLTF to examine the terms, conditions, and equitability of common truck leasing arrangements, particularly as they impact owner-operators. During their series of meetings beginning in July 2023, TLTF has particularly focused on predatory lease-purchase agreements. Predatory truck leasing schemes are another longstanding problem within in the industry. Carriers and leasing entities peddling these "opportunities" typically offer the false promise of fair compensation, future ownership of the truck, and "independence" from employer-employee requirements. While the purported goal of these agreements is for the driver to own the truck and become a full-fledged owner-operator at the end of the lease, the agreements rarely work out that way. In the end, drivers are paid pennies on the dollar with little chance of owning the truck, and zero independence. This system pushes individuals who desire a career in trucking out of the industry and further contributes to driver churn. Additionally, the financial and personal pressures resulting from escalating debt can create highway safety risks.

We anticipate that TLTF's report to Congress, DOT, and the Department of Labor, which is expected in November 2024, will include a number of consensus recommendations to overhaul the lease-purchase model, create necessary regulatory oversight, and protect drivers from undue financial exploitation.

PREDATORY TOWING

The towing and recovery industry is an essential partner to trucking that provides a critical service when truckers have a breakdown or are involved in a crash. Yet the very nature of these situations leaves motor carriers vulnerable to unscrupulous towing companies. Predatory towing happens when a company imposes excessive or unnecessary charges for equipment, services, damages, or anything else the company dreams up. After a tow, motor carriers will often have their equipment held hostage until they pay these exorbitant and superfluous fees.

Predatory towing and fees are a particular problem with respect to nonconsensual tows. These are situations where a truck breaks down or is involved in a crash, and the truck owner does not have any power to select a towing company for recovery. In these cases, the trucker is at the mercy of the responding company, and has no way of knowing whether they will be dealing with an honest tow service.

Unfortunately, predatory practices aren't limited to a small segment of overall towing services. In a recent survey conducted by the American Transportation Research Institute, they found that approximately 30% of crash related tows included some form of predatory billing.¹ This same survey found that the average pre-tax total for a crash-related tow was approximately \$9,000, while the average predatory bill was over \$18,000.²

OOIDA is supportive of FMCSA's efforts to combat these unfair and unnecessary fees. In February 2024, FMCSA submitted comments to the Federal Trade Commission (FTC) in response to its proposed rulemaking on Unfair or Deceptive Fees, also known sometimes as "junk fees." In its comments, FMCSA accurately identified a number of predatory practices, including³:

- Towing companies that provide an initial quote for a tow, but then add additional, mandatory fees only after the job is completed.
- Towing companies that add vague or misleading fees, such as "administrative fees," that add no value or are completely unnecessary.
- Towing companies that simply charge excessive fees because they have a captive customer.

We agree with FMCSA's comments that the FTC should act to prohibit misleading or hidden fees, ensure clarity around the definition of "total price," and impose restrictions on excessive fees, among other recommendations.

In addition to these comments, FMCSA has also initiated a public process (FMCSA-2024-0124) to collect more information on predatory towing practices. The agency has held a public meeting on the issue, and is also accepting written comments through July 31, 2024. We are supportive of these efforts and hope that it will guide both the FTC and FMCSA on how to crack down on these unfair practices.

DATAQ

FMCSA allows motor carriers, truck drivers, and others to request a review of FMCSA-issued data, such as violations and inspection reports, that might be incomplete or incorrect. This is commonly referred to as a Request for Data Review, or DataQ. States have the authority to establish their own review process, and unfortunately, nearly all of them have chosen a system that does not provide due process for truck drivers or motor carriers.

In most cases, the DataQ review process is not objective—an appeal determination is made by the same person or agency who issued the violation, which creates an inherent conflict of interest. In other words, very few law enforcement officers are willing to admit they made a mistake. Furthermore, determinations are not made in a timely manner. This is problematic because violations remain on a driver's or carrier's safety record and can negatively impact the employability of a driver and insurance costs for small motor carriers, among other consequences. We have had members spend thousands of dollars in legal fees over the course of many months just to have an obvious mistake corrected.

OOIDA supports the development and implementation of a federal DataQ appeals process that would provide transparency, consistency, and timely adjudication of challenges. We are therefore appreciative that the FMCSA has initiated a request for comments on improvements to the DataQ system (FMCSA-2023-0190). As

¹ Alex Leslie and Alexa Pupillo, *Causes and Countermeasures of Predatory Towing*, ATRI (Nov 2023), <https://truckingresearch.org/2023/11/causes-and-countermeasures-of-predatory-towing/>

² *Ibid.*

³ <https://www.transportation.gov/sites/dot.gov/files/2024-02/FTC%20FMCSA%20Comment%202.7.24.pdf>

FMCSA considers modifications, we believe the agency must establish a system where each reconsideration request is addressed by a different reviewer than the person who performed the initial review. This change will help to ensure a fair review, as the individual who issued the violation is unlikely to overturn their decision. We believe this change will also help to improve the initial citation process, since the issuing officer knows that any decisions they make will be subject to review by a different person, possibly a superior.

Ideally, OOIDA supports a model that would allow states to setup a five-member review board made up of two representatives of a state commercial motor vehicle enforcement agency, one representative of a state department of transportation, one representative of a motor carrier, and one representative of a driver. FMCSA has already identified states that use such a system and has recommended this as a best practice that other states should follow.⁴

NATIONAL CONSUMER COMPLAINT DATABASE

The National Consumer Complaint Database (NCCDB) is a system that is used by truckers and others to report when motor carriers violate safety regulations. FMCSA is responsible for this system, and unfortunately, many truckers find it nearly useless and have little confidence FMCSA takes action on any of the complaints they submit.

This system is critical for promoting safety, as it can help FMCSA identify carriers that might be pressuring drivers to violate federal hours-of-service or equipment maintenance regulations, among other concerns. Drivers need an effective system to help them protect themselves from carriers looking to take advantage of them and jeopardize safety. Not only is the system supposed to address individual violations, the findings from examining complaints could be used to identify trends or larger problems in trucking.

Congress recognized the concerns with the NCCDB and, as part of IIJA, required that the Government Accountability Office (GAO) examine the system and evaluate its effectiveness. GAO completed and issued its report in September 2023, and some of the most concerning findings include⁵:

- In contrast with DOT policy, FMCSA fails to make certain information from NCCDB public. This means that FMCSA may be “missing the opportunity to improve transparency and collaboration with industry partners.”
- FMCSA has failed to establish appropriate controls or procedures for collecting and investigating complaints. As a result, FMCSA may not be consistently carrying out reviews and may be jeopardizing their ability to respond to unsafe practices by motor carriers.
- FMCSA’s public website failed to follow leading practices for design and usability. Truckers have long complained that the site is difficult to use, especially on a mobile device, and GAO confirmed this specific concern.

GAO made a total of 14 recommendations to improve the system, all of which remain open today. One of the most frustrating parts of GAO’s report is that, despite identifying these serious issues, FMCSA isn’t demonstrating any urgency to fix them. In response to the finding that the agency has failed to implement controls and procedures to ensure appropriate review of complaints, *FMCSA said that it planned to update the NCCDB in Fiscal Year 2026*. This is beyond discouraging for truckers who have long complained about the system. Truckers are properly held to the highest standard when it comes to safety and compliance with regulations. Yet when the federal government finds that one of its own agencies is failing to live up to the standards necessary to promote safety, it’s apparently acceptable to tell truckers they’ll just have to wait a few more years until they get around to fixing the problem.

More generally, OOIDA maintains its concerns about the ambiguity of the name “National Consumer Complaint Database.” This title is misleading and does not signify a connection to the trucking industry in any way. OOIDA believes the NCCDB can help improve safety, but many drivers are unaware that the NCCDB is available for them to report violations of regulations, nor are they aware that coercion complaints can be handled through the NCCDB. We have long called for FMCSA to change the name of this system, to something such as “National Truck Safety Hotline and Consumer Complaint Database,” but FMCSA has consistently rejected this suggestion without explanation.

⁴ https://dataqs.fmcsa.dot.gov/DataQs/Data/Guide/DataQs_Users_Guide_and_Best_Practices_Manual.pdf

⁵ <https://www.gao.gov/assets/d23105972.pdf>

MINIMUM LIABILITY INSURANCE

According to the most recent federal research, the current required minimum level of liability insurance for motor carriers covers damages in 99.4% of crashes involving a CMV. If there were any other federal regulation that covered over 99% of cases, it's hard to imagine that there'd be any discussion of a need for a change.

Yet, there are members on this committee that want to increase the minimum insurance level by over 500%, from the current level of \$750,000 to \$5,000,000. This increase would cause insurance premiums to skyrocket and would be absolutely devastating for small businesses. It's unlikely that small carriers could afford this increase, and many would be forced out of business. As a way to afford this increase, some truckers may cut back on maintenance and repair costs, which jeopardizes the safety of their operations.

There is simply no need for this increase. There is no evidence that increasing insurance requirements will improve safety. There is no data showing that the current levels fail to cover the costs of crashes. In fact, the average crash costs only \$18,000 in damages. This Subcommittee and Congress should reject calls for increasing minimum insurance requirements.

AUTONOMOUS VEHICLES/AUTOMATED DRIVING SYSTEMS

Rampant speculation continues to grow regarding potential benefits of autonomous driving technologies. This is in large part because there is a complete lack of federal regulatory oversight on these technologies and the companies working to develop them. Despite unfounded forecasts and empty promises that automated vehicles will lead to zero deaths, there continue to be real-world situations in which automation has devastatingly failed. Unfortunately, current voluntary reporting requirements leave truckers and the public in the dark about the safety and reliability of autonomous technologies. OOIDA is frequently asked what truckers think about the development of autonomous technology and what it means for the future of their profession. To be frank: there's not a whole lot we can say about how the technology is performing or what exactly it means for truckers. We can only presume these vehicles are not ready for safe deployment without mandatory reporting on performance. OOIDA believes that any process to advance automated technology should be met with mandatory data transparency from manufacturers. This will help educate consumers, the industry, and regulators about the actual reliability of autonomous technology.

Over the last several years, DOT agencies have pursued respective rulemakings to "ensure" the safe introduction of ADS-equipped CMVs onto the nation's roadways. Many of the questions included in these proposals remain hypothetical in nature and OOIDA has questioned why DOT has chosen to focus on regulations that may or may not be necessary depending how the technology performs. These regulatory proposals seem destined to fail without more concrete data about how AVs will function and their impact on the industry.

CONCLUSION

Unfortunately, many of today's regulations are excessive and lack any connection to safety or are deliberately designed to inflict unnecessary costs and burdens on operators, especially small businesses, to reduce or eliminate competition. At their best, federal regulations can help achieve worthy and complementary objectives: promoting highway safety and supporting professional drivers and small business truckers. Congress and DOT must better prioritize regulatory reforms that clearly meet these important objectives.

Mr. CRAWFORD. Thank you, Mr. Pugh. Ms. Osborne, you are recognized.

**TESTIMONY OF BETH OSBORNE, DIRECTOR,
TRANSPORTATION FOR AMERICA (T4AMERICA)**

Ms. OSBORNE. Thank you, Chairman Crawford and Ranking Member Norton, for inviting me to today's hearing. As a former staffer for a T&I member, it is really fun to be here for once.

I am the director of Transportation for America. Our vision is a transportation system that connects people to jobs and essential services no matter how they travel, no matter a person's financial

means or their physical ability. My team works with States and localities across the country that have the same vision.

We analyze trends in the transportation system and current investments, and we have consistently found a gap between what the taxpayers are promised and what is delivered through the surface transportation program. The current approach allows agencies to prioritize expansion at the expense of repair, permits roadway designs that have proven dangerous, and puts people farther away from the places they need to go.

What is frustrating to me, who has been part of five reauthorizations and is gearing up for my sixth, is that very failure is often the rallying cry for more money to be poured into the same programs. This is a country of such creativity and innovation, yet we apply so little of it to the surface transportation program. I want to see that change.

Congress has given transportation agencies very broad latitude but has not provided new tools, clear goals, or accountability to the taxpayer. For example, States and metropolitan planning organizations are required to set targets for the number and rate of roadway fatalities and serious injuries, including a target for the number of nonmotorized fatalities and serious injuries.

In our latest report on the danger that those walking face on our roadways, "Dangerous by Design," we found that 13 States are currently setting a target for more fatalities and serious injuries than the year before. Even if they exceed that elevated target, there is no real penalty.

There is another category it targets that Congress calls "performance" of the National Highway System, an undefined and extremely broad term. U.S. DOT has included greenhouse gas emissions as one of those performance targets. What happens if a State misses their targets? Not a thing.

Some claim that under this rule, there will never be another highway built or expanded. But in Colorado, they have a more powerful regulation that requires projects that increase emissions to be paired with projects that will counter that increase. Guess what? They are building and expanding highways in Colorado.

Also, interestingly, our research finds that greenhouse gas emissions from transportation overwhelmingly come from urban areas. More rural States are actually doing quite well.

In general, we should not be just setting targets at all but also rewarding agencies for performing well and providing greater direction and support for those failing to progress. On individual projects, agencies make big promises, but rarely have to look back and see whether or not the projects they have built performed as intended. Imagine what we could learn and improve if we did.

Back to safety. We have already heard the safety numbers, I believe, from Ranking Member Larsen. But in 2022, 46,027 people died in motor vehicle crashes compared to 32,782 in 2012, 10 years before. That is a trend that is not only awful, it is at odds with our peer nations.

One reason for that is we have a one-size-fits-all approach to designing our major roadways. We built the interstate system to accommodate high-speed vehicle movement because we knew it was

impossible to do so safely on our surface roads due to conflict: street parking, cross-streets, driveways, and people.

But over the last 7 years, we have brought interstate speeds to many of our surface roads. Speed and conflict are a dangerous combination. Even at the speed limit, speeds are often too high for a driver to see and anticipate a conflict and react. When a driver inevitably fails, we blame them. We can certainly provide and prepare drivers more to behave safely and penalize those that don't. But if we had better roadway design, we wouldn't have to. Certainly, not as much.

And if Congress and the agencies funded by Congress participated more in safer design of our system, the users of it might not chafe as much at being regulated themselves. We could also make personal vehicle designs safer, getting rid of preposterous problems like big front blind spots. We all have a role to play.

I know I sound negative, but it is because I know we can do so much better. I hope we can talk about using guidance and regulation in a way that would support better outcomes and more accountability.

Thanks again for having me, and I look forward to hearing your ideas and receiving your questions.

[Ms. Osborne's prepared statement follows:]

**Prepared Statement of Beth Osborne, Director, Transportation for America
(T4America)**

Thank you, Chairman Crawford and Ranking Member Norton for inviting me to today's hearing. I am the director of Transportation for America, the transportation arm of Smart Growth America. My team's mission is a transportation system that connects people to jobs and essential services by all modes of travel, no matter people's financial means or physical ability. We do our work through direct technical assistance, research and analysis of the existing transportation system, and policy advocacy. In my role, I also manage the National Complete Streets Coalition, an Arts & Culture in transportation program, and a partnership with the University of Wisconsin's State Smart Transportation Initiative.

My team is currently working with states and localities across the country that share our goals. That work includes reviewing procedures, standards, regulations and performance measures of state departments of transportation, from Florida to Michigan, to modernize them and ensure they are protective of all users. We also conduct trainings and assist states and localities in using low-cost, quick-build demonstration projects to test out new interventions for improving safety, most recently in 10 communities in Alaska, California, Connecticut, and Tennessee.

We analyze trends in the transportation system and the results of our current investment approach to transportation. We use that information to identify and advocate for needed policy changes. Our analyses have found a sizable gap between what the taxpayers are promised by their elected leaders and what is delivered through the bipartisan surface transportation program: the current transportation funding system allows states to prioritize expansion over maintaining the roads they already have; utilize the same approach to roadway design that has made America's roads the most deadly in the developed world; and puts people farther away from the places they need to go, stymying access to opportunity.

Every time Congress begins its efforts to reauthorize the surface transportation program, we hear about the need to rebuild crumbling roads and bridges, improve roadway safety, and save people time by reducing congestion (as if there is no other way to do it). Eventually Congress, on a bipartisan basis, puts substantially more money in the same structure of programs that has existed since 1991, and that bill is signed by presidents of both parties. Congress and the president compliment themselves and talk about how more money in the same programs that led to the current predicament will lead to different results.

They don't. Five to seven years later, we start that process over, pointing to the same problems that were supposed to be fixed or at least improved by the last reau-

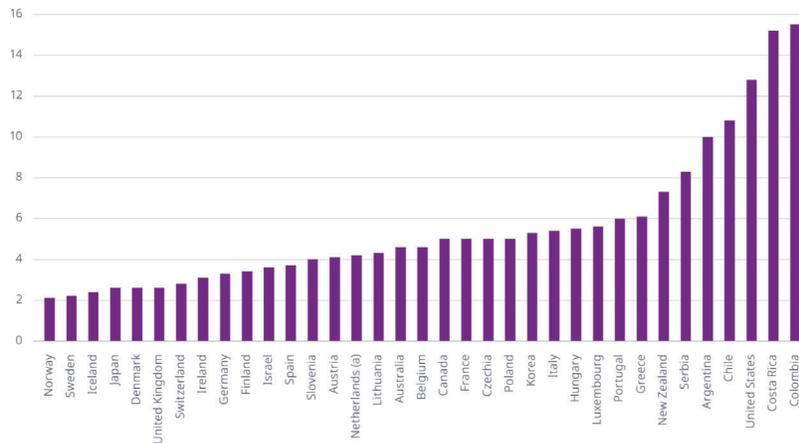
thorization. Our failure to address our stated goals is pointed to as the reason why more money is needed for the same programs—rinse and repeat—as if that’s the best we can do for the taxpayer.

I am old enough to have participated in five such cycles. I’ve watched this cycle for longer than most people on this committee have been in Congress, except Ranking Member Norton. It is frustrating watching us enthusiastically spend hundreds of billions of dollars for poor results and never consider we need to try a different tack.

Our safety results are abysmal. According to the National Safety Council, roadway deaths decreased 2% in 2022—but that was following an 11% increase in 2021 and an 8% increase in 2020. In 2022, 46,027 people died in motor-vehicle crashes compared to 46,980 in 2021 and 42,338 in 2020.

The United States has the most dangerous roads of all the developed nations. According to the International Transport Forum, an intergovernmental organization with 69 member countries from Albania to Uzbekistan, between 2012 and 2022, road deaths increased by 1.5% in the 35 countries with validated data. But then they actually include this sentence in their roadway safety report: “*If US data are excluded, overall road deaths in IRTAD countries fell by 14%.*” The US is single-handedly dragging the performance of the developed world down on roadway safety.

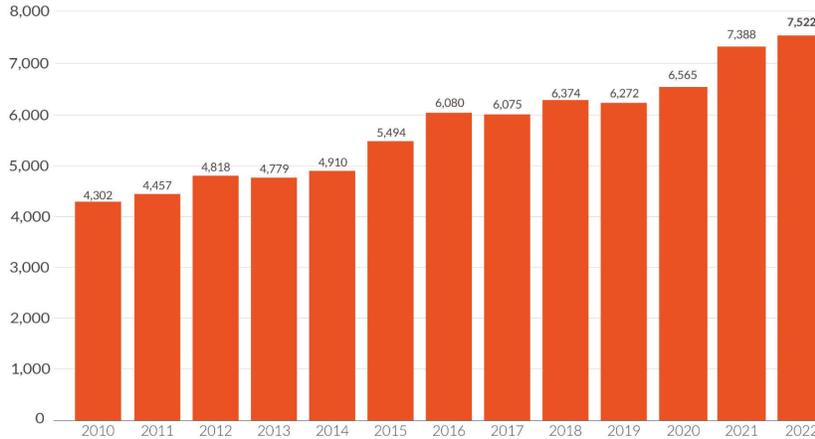
Figure 6:
Road fatalities per 100 000 inhabitants, 2022



Across those same countries, pedestrian fatalities decreased by 27.3%. But not in the United States. Our analysis of roadway danger for those walking on American roadways based on data from the National Highway Traffic Safety Administration, called *Dangerous by Design*, found that pedestrian fatalities are up. In fact, there has been a 75 percent increase in the number of people struck and killed while walking since 2010. Danger outside of a vehicle is getting consistently worse: The share of all traffic deaths that were people outside of vehicles hit the highest share in 40 years. Those 7,522 deaths are roughly the equivalent to more than three Boeing 737s full of people falling from the sky every month for a year. Because of how we design our roads, danger for people walking goes up when driving is up and when driving is down.

(The most dangerous Congressional Districts can be found here. [<https://smartgrowthamerica.org/dangerous-by-design/the-most-deadly-congressional-districts/>])

75 percent increase in the deaths of people walking since 2010

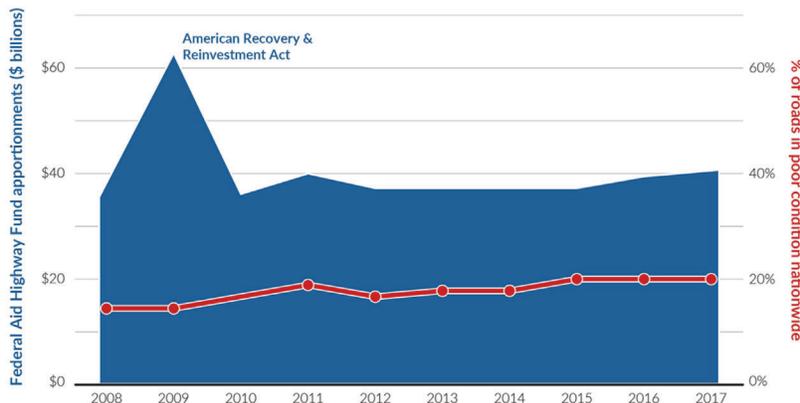


U.S. pedestrian deaths (2010-2022)

What about repairing our crumbling roads and bridges? The last time we looked at the state of repair of our roads, we found that while more money is being spent, it is not necessarily going to repair. In our report with Taxpayers for Common Sense, Repair Priorities, we found that states were spending as much on roadway expansion as repair and, as a result, between 2009 and 2017, the percentage of the roads nationwide in poor condition increased from 14 to 20 percent.

These investments in expansion don't just redirect funds away from much-needed investments in repair; they continually grow our annual spending needs, widening the gap. Every new lane-mile of road costs approximately \$24,000 per year to preserve in a state of good repair. By expanding roads, we are borrowing against the future. But the failure to invest in existing infrastructure and the decision to build more roads we can't afford to maintain are held up as reasons to take more money from the taxpayer (or increase the national debt).

Percentage of roads in poor condition vs. federal appropriations



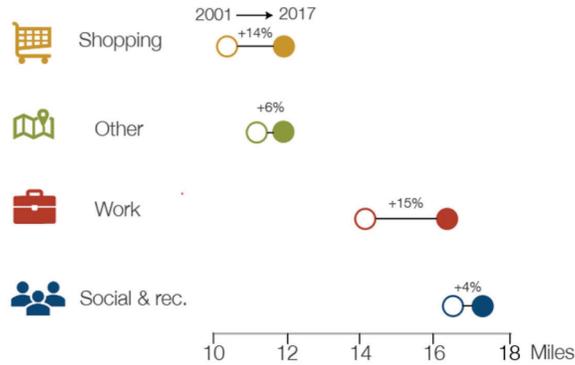
The Washington Post took a look at the issue in 2021 and found the same trend continuing: “Infrastructure plan calls for fixing the nation’s existing roads. Some states are still focused on expansion.” Thankfully, they were able to get the Federal Highway Administration to give them significantly more current data than they made available to the public and to us. My organization is looking at the spending under the IIJA and finding that these same spending trends continue into today. We will release our full findings in September, but our preliminary findings have already been made public.

We hear that the country must build more roads and expand roadways in spite of our lack of willingness to pay to keep them up because of the terrible congestion on our roadways. But our “solution” to congestion does not work. The United States has spent decades and hundreds of billions of dollars widening and building new highways. We added 30,511 new freeway lane-miles of road in the largest 100 urbanized areas between 1993 and 2017, an increase of 42 percent. That rate of freeway expansion significantly outstripped the 32 percent growth in population in those regions over the same time period. Yet this strategy has utterly failed to solve the problem at hand—delay is up in those urbanized areas by a staggering 144 percent—as we show in our report, The Congestion Con. Congestion is worse in all 100 cities, whether the population has increased or decreased, regardless of how much new roadway capacity was built.

Freeway capacity grew faster than population, yet delay exploded



What we are doing makes travel more expensive in terms of the actual cost of transportation and in terms of the amount of time needed to travel. Our focus on more and more highways has pushed development further out and spread it further apart. This makes trips longer so that even if they are faster, it is at best, a wash. In an analysis Transportation for America did with Third Way, we found household trips for commuting and other necessary tasks in 2017 were significantly longer on average than they were in 2001, 10 percent longer in urban areas and 12 percent in rural areas.



Average driving distance by trip purpose in rural areas

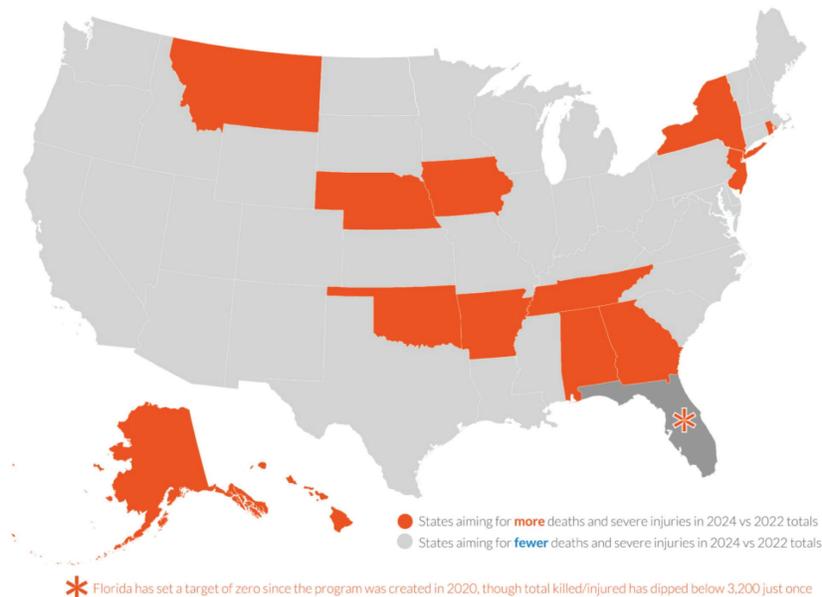
While rural trips have increased in length, rural travel per capita has not—which means people in rural America are likely giving up some trips. People have a finite budget for travel in terms of money and time.

If you have come this far with me, you may be wondering what this has to do with regulation. The point is that the federal spending and what we get for it is not regulated nor is there much oversight. There is very little transparency into where funding is allocated and there is rarely a report on whether a project delivered any of the benefits that were promised.

Just to analyze federal awards and what they're being spent on without a massive team, my team had to use AI to get through the federal spending information and, even then, we found that some states' reporting on their spending was very hard to understand. State reporting on their own spending is often even harder to parse.

Yet when the Federal Highway Administrator writes an unenforceable internal memo suggesting that the agency encourage states to use their authority to repair existing infrastructure and reduce emissions, some on Capitol Hill get very, very upset. If USDOT includes in their performance management regulation that states must set targets to reduce their greenhouse gas emissions (something most of them claim will happen in their environmental documents for individual projects), there is a lawsuit fighting it. This is in spite of the fact that there is no penalty for failing to hit a target the states set for themselves.

Actually, that is the case across the board. States get the same amount of money if they produce great results or terrible results, whether they hit their targets or not. As we point out in *Dangerous by Design*, 13 states have set targets for more people to be killed or injured while walking. There is no penalty for this, even if they exceed their elevated targets.



Where USDOT and FHWA do regulate, it often stifles innovation and stands in the way of efficiency, quality of life, public health, and the economy. And yet, this gets little-to-no attention on Capitol Hill. When we work with our partners at the state and local level, the street design engineers regularly cite federal rules and standards as the reason they cannot narrow lane widths, add color in the roadway, or slow traffic speeds. The current default approach to determining whether a new pedestrian crossing should be added requires a certain number of people to jaywalk to prove demand. If pedestrians proving the need for a crossing are hit, they will likely get blamed for jaywalking. It would be like requiring people to swim across a river to justify a bridge and then blaming people who drown or need a rescue.

This strange relationship with safety can be seen everywhere. Elected leaders and those running transportation agencies love to say that safety is their highest priority. We talk about the safe systems approach, which requires education, enforce-

ment, and design changes. Design change should be at the top of that list. However, just designing the roadway to make going the speed limit feel most comfortable is hard to do. We have standards that insist on adding wiggle room in case people exceed the speed limit, which is exactly what they do when that wiggle room is provided. Wider lanes and roads with building set back sends a strong message for drivers to go faster.

Two interesting things in this space. First, our procedure for designing roadways and speed limits results in raising speed limits if enough people speed. So, if we design the roadway for people who might speed and they do, we will raise the speed limit for them. Second, while this design is considered auto-centric, it is actually quite hostile to drivers, and we all know it on some level. Everyone knows of roads that feel like you should be able to drive faster than the speed limit allows. We even have a term for that: a speed trap.

If we designed our roadways to get the behavior we wanted, we would not need as much education on how to use them or rely as heavily on enforcement. Instead of addressing design failures, we blame drivers and pedestrians for their behavior—drivers for going above the speed limit but adhering to the design speed of the roadway, and pedestrians for crossing where there is no marked crossing because they haven't crossed enough there to prove the need for one.

Congress and USDOT have relied more heavily on regulating vehicle design, commercial drivers, and supporting police enforcement. There is a group that chafes at all of these options. Each group will tell us to trust roadway designers, vehicle designers, and drivers. That is what we have been doing. That's why our results are so bad, why we are being shown up by Chile, Serbia, and Hungary.

If safety is a priority (not even the top priority) then everyone is going to have to be a part of it, and that will mean having some constraints and inconveniences. DOTs will need to update roadway design approaches, vehicle manufacturers will have to design safer vehicles and drivers will have to be more attentive and drive more slowly. That means, we cannot just say why one idea is wrong. We need to talk about what we are going to do to get better results for the taxpayer and traveling public.

I thank you for your time and look forward to the committee discussion and questions.

Mr. CRAWFORD. Thank you, Ms. Osborne.

Prior to beginning Member questioning, I would like to make our witness panel aware that votes are anticipated to be called at 10:30 a.m. this morning. If this occurs, the subcommittee may enter into a brief recess. However, witnesses should be prepared to resume the hearing when the subcommittee reconvenes.

Again, thank you all for your testimony. I will now turn to questions from the panel. I recognize myself to begin.

Mr. Duit, in your written testimony, you outlined the American Road & Transportation Builders Association's opposition to the Federal Highway Administration's final rule to create a greenhouse gas performance measure. In addition to citing the administration's lack of statutory authority to promulgate such a regulation, your testimony says, quote, "This rule could impinge on State flexibility to select projects," end quote.

Could you expand on that and explain to this subcommittee what that means and what's at stake here?

Mr. DUIT. Yes, sir. Thank you, Chairman Crawford.

The rule requires State and local agencies to plan projects that meet the intended greenhouse gas goals or, at a minimum, contribute to declining greenhouse gas targets. This means that States and other transportation agencies may need to prioritize certain types of projects over others if they do not align with the prescribed GHG reduction targets.

The concern is that this could lead to a misallocation of resources, hinder State-specific transportation needs, and undermine

the flexibility that States have traditionally enjoyed in selecting and prioritizing transportation projects.

Mr. CRAWFORD. Thank you, Mr. Duit. As cochair of the Congressional Steel Caucus, it is important to me that this country has strong Buy America standards in place and supports the domestic production of steel as well as other construction materials. The Buy Clean initiative encourages manufacturers to adopt cleaner, low-carbon processes, and publish environmental product declarations or EPDs.

Mr. Bell, I have heard from constituents that there is confusion surrounding the Department's rollout of its low-carbon transportation materials program and no final decision on what the material requirements would be.

Does the SMA have concerns with that program?

Mr. BELL. Thank you, Congressman Crawford, and we appreciate your leadership and support of the steel industry.

Yes. The SMA has serious problems with it because it is not clear as to where we are going to end up here. You have one approach that is being adopted by the General Services Administration, and then you have Federal Highway that, to their credit, is taking a more collaborative approach and working with industry and other subject matter experts to determine what their Buy Clean policy will be.

The fact of the matter is, there should be existing EPDs for various product categories. And if you have the right EPD, it will show you what the emissions is and whether the steel is clean or not.

Mr. CRAWFORD. Thank you, Mr. Bell. I will yield the balance of my time and recognize Ranking Member Norton.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. Pugh, in your testimony, you expressed your strong support for a bipartisan bill that I sponsored with Congressman Ezell. H.R. 8505, the Household Goods Shipping Consumer Protection Act, restores the Federal Motor Carrier Safety Administration's authority to issue civil penalties against bad actors and enhances registration criteria.

How would this bill benefit small-business truckers and root out fraudulent actors in the freight industry?

Mr. PUGH. Yes. Thank you, Ranking Member.

Yes. This would be very helpful to our industry. Small-business carriers, it is almost at a crisis level now with brokers and fraud. And what we can see from this is, it would give FMCSA some teeth to go after these bad actors and these fraudsters, because that is one thing that they are lacking. This is the first step to give it.

Secondly, motor carriers forever have been required to have a physical address. These fraudsters and these brokers have not been. This will make brokers and these folks have to have a physical address, which every one of my members that I have seen that has gotten hit with one of these fraudsters has been at like a UPS box or some sort of fake mailbox or something like that.

We firmly believe that some of this stuff is even coming from other countries across the globe. So, yes, this is a very good bill, and we much appreciate your support in bringing this forward to help our members. Thank you.

Ms. NORTON. Thank you. Ms. Osborne, far too many people are dying on our roadways. Your testimony highlights that the United States has the worst road safety statistics compared to every other developed nation.

How do the regulations governing road design and traffic control limit our ability to build safer and more accessible roads?

Ms. OSBORNE. I appreciate that question. I will start by stealing from my friend and colleague at Strong Towns, Chuck Marohn, who wrote a book I highly recommend called, "Confessions of a Recovering Engineer," who points out that we try to make our roadways do everything, and, therefore, they kind of do everything poorly.

If we want a roadway to accommodate high-speed travel by vehicles, we need to regulate all points of entrance and exit. We need to clear that roadway of vulnerable users and of development. There shouldn't be cross-roads, there shouldn't be parking, there shouldn't be driveways.

If we want that roadway to be servicing of local businesses and neighborhoods, there are going to be lots of conflict points and, therefore, speeds need to be slow.

We try to do a hybrid of the two where we have high speed and conflict, and that leads to deadly conflict and consequences.

We also should set speed limits based on the speed we want to see and design the roadway accordingly rather than the way we do it now, which is we provide wiggle room so that people, if they do speed, can more safely do so, meaning that if they lose control of their vehicle, that they have wiggle room.

That added space encourages speeding. And then when enough people speed, we raise the speed limit. That is backwards.

And while there has been recent flexibility for States and transportation agencies to do something different, there has been no guidance. So, you can choose the traditional way where there is a lot of guidance, or you can make things up on your own. That is just not the right way to go about creating safe design.

Finally, I will say we need to reward those that make progress in safety and manage those who are not doing well, set more limitations on how they spend their dollars and make them be more accountable for it. We definitely should not spend \$50 billion a year for these bad results.

Ms. NORTON. Ms. Osborne, your testimony also discusses the lack of accountability and transparency in the Federal Highway program. You note that even nonbinding information-gathering efforts are fought in the courts and in the Congress.

Can you discuss the need for greater accountability and transparency and how States spend taxpayer dollars?

Ms. OSBORNE. Yes. I will just say quickly that we have done polling that shows a break in people's faith in what the surface transportation program produces, and that is because of past failures and lack of accountability. And if we want to be able to put more money into this program, we are going to have to close that gap.

Mr. CRAWFORD. The gentlewoman's time has expired. The gentleman from Minnesota, Mr. Stauber.

Mr. STAUBER. Thank you very much, Mr. Chair. I wanted to take just a couple minutes of my time.

Mr. Bell, in your statements you say the steel industry is a wonderful and glorious industry that has built careers, companies, communities, cities, and even civilizations.

You still agree with that statement?

Mr. BELL. Yes.

Mr. STAUBER. Further down in that same paragraph, you say, "modernization and further decarbonization of America's steel industry, which is already the cleanest in the world."

Do you still agree with that statement?

Mr. BELL. Yes.

Mr. STAUBER. Okay. Do you know which district I represent in Minnesota?

Mr. BELL. Yes. You are in the Iron Range, aren't you, Congressman Stauber?

Mr. STAUBER. I am. I am. Mr. Bell, I am extremely offended at your comments here today in your written statements. Trying to reduce the steelmaking of the blast furnaces. I can assure you, if we had a representative of U.S. Steel in Cleveland-Cliffs, they would disagree with you vehemently.

We built communities on the Iron Range. Our steelmaking, our mines, are who we are and our way of life. For you to come to our Nation's Capital and offend the people that I represent, Congressman James Oberstar, the transportation director, is rolling over in his grave right now because you are attacking our steel industry in northeastern Minnesota.

Our ports depend on it. We support the Soo locks. Other cities depend on it. Our steel—we need to all—we need to support, Mr. Bell, all domestic-making steel. Do not separate us. China is our adversary in steel, and you know that.

The recycled steel that you support, do you use any Chinese-made recycled steel?

Mr. BELL. No.

Mr. STAUBER. Are you sure?

Mr. BELL. Yes.

Mr. STAUBER. One hundred percent?

Mr. BELL. Yes.

Mr. STAUBER. One hundred percent American? Well, good for you. I am not sure I believe that, because China has been trying to take us down for a long, long time. They have tried to shut the Iron Range down for a long, long time.

All domestic steel we must support. U.S. Steel at Cleveland-Cliffs is our backbone of northeastern Minnesota. They support thousands of jobs, hundreds of secondary jobs, \$90,000- to \$100,000-a-year jobs in our steelmaking industry. Please do not come to the United States Capitol and attack our way of life and attack our steel industry.

The Iron Range helped us win two world wars. We made the steel that helped build America and continue to build America. I will not take a back seat when we talk about steel and we talk about mining.

I sit here every single week to have friends on the other side of the aisle try to take away our mining and our way of life. I will not let that happen. Again, we must support all domestic-made steel, and that includes recycling that you support. And I do, too.

Please do not allow this infighting. China is an adversary. They are trying to dump cheap steel in this country. We need to keep the tariffs on, and I know you support that. Would you please, please support all domestic-making steel. That means on the Iron Range of Minnesota. That is our way of life. Our communities, our jobs, our families, as you say. Our communities, our cities, our civilizations, as you say. It is our way of life. We do it better than anybody.

The jobs and opportunities that mining present in northeastern Minnesota are second to none, and I will share this with you in my last few minutes. Minnesota has the most mineral wealth of any State in this Nation with the exception of Alaska. And it is because of our Iron Range, and we have now found the biggest copper nickel find in the world.

Mr. Chair, I yield back.

Mr. CRAWFORD. The gentleman yields. Mr. Larsen.

Mr. LARSEN OF WASHINGTON. Thank you, Mr. Chair.

Mr. Duit, you note in your testimony that nearly 43,000 new construction industry jobs have been added since 2021.

Are you making the point that those are tied to the BIL?

Mr. DUIT. Yes, sir.

Mr. LARSEN OF WASHINGTON. Yes, they are. And that States have advanced at least one Federal-aid highway and bridge project in nearly every county across the country as well. That is your testimony, and that is a result of the BIL?

Mr. DUIT. Yes, sir.

Mr. LARSEN OF WASHINGTON. And the value—you didn't testify to this, but it is in your written—the value of State and local government projects breaking ground was up year to year, 27 percent in 2022 and another 9 percent in 2023. And that is as a result of the BIL?

Mr. DUIT. Yes, sir.

Mr. LARSEN OF WASHINGTON. Sure. Great. I just want to underscore the point that this discussion about regulations is one thing, but there is another part of the truth here, is that the Bipartisan Infrastructure Law has increased investment in roads, bridges, highways, construction, and it has increased jobs in that construction. And I say that one of the reasons we have 4 percent unemployment or lower for the single longest stretch since probably my life is, in part, because of the investments in the BIL, and I would like to keep it going.

So, we have got a chance to do that next year, or the next couple years, when we reauthorize it. So, you are making a great case for us to do that as we move forward, and I just—I want to thank you for that.

I want to move to Ms. Osborne. Since 2012, Congress has focused the Federal Highway program on outcomes and set goals, quote, to achieve a significant reduction in traffic fatalities and serious injuries on all public roads and to, quote, enhance the performance of the transportation system while protecting and enhancing the natural environment. That is since 2012. That is according to law directly.

But despite that investment and this renewed focus, traffic fatalities are, in fact, up; carbon pollution is, in fact, up; roadway congestion is, in fact, up.

So, in your view, how has the administration's regulatory agenda supported those goals, or not, for that matter?

Ms. OSBORNE. Thank you for the question.

Congress has not given the administration a lot of authority to steer spending more towards those goals or not. There is really little that the administration could do to orient particularly formula dollars towards those goals. They could use competitive grants even to a greater extent than they do now to do so reward those who are really succeeding in meeting those goals and steer spending more into the areas that some agencies are struggling with. Like, maybe an agency that is really struggling with their safety numbers, competitive grants would only be open for safety projects from that agency.

Many of the rules we are talking about today are meant to address safety. We are just trying to figure out how to do that well, and that is the right conversation to have with the practitioners to get a sense of what the real-world impact of them would be.

There is a lot we could do in light-duty vehicle design. We are seeing a larger and larger problem with the fact that drivers cannot see the road in front of them based on the way trucks are designed. Some of the solutions discussed is putting screens in cars so that people would have to take their eyes off the road to see the road in front of them. We would like to see a more practical and logical solution to that problem.

And we could help States modernize the way they approach transportation and, particularly, performance management. If you look back at the discussion in the 1950s when we were starting the Federal program, most people wanted to evaluate the effectiveness of the system based on whether or not people could reach their destinations no matter how they traveled, but especially on the newly built roadway system. And we just didn't have the statistics and the data, the technology to do that at the time. Now we have it, and we all carry it in our pockets in smart phones. We have cloud computing that can allow that kind of technology to measure hundreds of thousands of trips in just a couple of hours and really understand how every kind of investment impacts people's access, whether it is reducing congestion, improving transit service, creating more direct vehicle or bike-ped connections, and bringing the destinations people need closer to where they live.

Seeing something like that could be really transformative.

Mr. LARSEN OF WASHINGTON. Thanks. I appreciate it. Before I yield back, I just want to make a note that we had a hearing a couple weeks ago regarding the use of formula grants and competitive grant and the desire from some to have fewer competitive grants. Everyone is for roadway safety—I don't question that at all—but it does seem you are making somewhat of a case, if we just leave it to formula grants only, there is no guarantee investment will be made in roadway safety as opposed to if we had the competitive grants for roadway safety, we could better encourage the national policy in investment and infrastructure that actually takes into account safety.

Ms. OSBORNE. It is just one of the few places where reward is possible.

Mr. LARSEN OF WASHINGTON. Thanks. I yield back.

Mr. CRAWFORD. The gentleman yields. Mr. Yakym.

Mr. YAKYM. Thank you, Mr. Chairman, and thank you to all of our witnesses for being here today.

I am glad we are continuing our strong oversight of the Department of Transportation, an agency charged with administering over \$1 trillion of taxpayer money that is supposed to be designed to shore up our Nation's infrastructure. However, it seems that far too often, a cavernous bureaucracy at DOT headquarters bogs down decisions in redtape, distracts itself with issues outside of its mandate, and they ultimately allow important investments to be eroded away by inflation.

I have heard plenty of concerns from constituent stakeholders frustrated by confusing rules, inconsistent grant opportunity announcements, complex applications, and delays in securing grant agreements. One issue I have heard from construction companies in my district is uncertainty around Build America, Buy America requirements. I support Buy America where possible, but it seems like it is becoming a bureaucratic mess.

For example, for 2 years in a row, a local road-stripping company in my district has come in to talk about uncertainty over how the Federal Government treats the reflective glass beads that are laid on top of paint. OMB ruled that the beads are construction material, while the paint is a manufactured product.

If they are premixed before arriving at the job site, it is considered a manufactured product. But they are seldom premixed because it is more time-consuming, more expensive, and it doesn't work in all situations. That is not to mention that different States are applying classifications and documentation requirements differently as well.

There are easy fixes for all of this. For example, like getting the administration out of the weeds and out of this bureaucratic mess. But, like I said, the constituent company has come in 2 years in a row worried about this issue. That says to me to no one at DOT is in a position to fix this, and they don't seem to be in a hurry to do so.

It seems like the Federal Government is all too content to micro-manage these products and create all sorts of headaches for small businesses that are just trying to paint the lane markings on the roads. And that keeps the driving public unsafe during times of day in all weather conditions.

Mr. DUIT, can you speak to some of the issues you are seeing with the Biden-Harris administration stewardship of the Build America, Buy America requirements?

Mr. DUIT. Yes, sir. Thank you, Representative.

First of all, to reiterate, ARTBA fully supports Buy America. The problem is that, in the short term, some items are not made in the U.S. in adequate amounts or they might be specialty items only made in foreign countries for now. While U.S. manufacturing catches up, we have to pay a premium for whatever U.S.-made inventory is available, and that is on top of inflation.

If we can't find it, there needs to be a waiver request. Waivers can take a long time for approval, if they get approved at all. Meanwhile, we may have to delay or interrupt work on the project to get the issue resolved.

There are dozens of different items considered to be manufactured products. When we think of highway and bridge projects, we usually think of concrete, asphalt, steel, and so forth. But these days, we are using many electronic items, electrical, mechanical units, pumps, lifts, and so on. Think about the ITS systems for rest areas, traffic operation centers, and everything that goes into them.

FHWA is proposing that more than 55 percent of a manufactured product needs to be made in the USA. The problem is that someone like my company, as a contractor, would have to inventory all of the components that make up the manufactured product and certify where they are made. The manufacturer may not have that information.

One example is a generator. Literally, hundreds of small inexpensive components in there. Someone needs to go through all of those parts, figure out what they are worth and where they were made. The manufacturer's representative selling the generator may not have that information. If the contractor demands it, the manufacturer's rep will just sell the generator to someone else.

Mr. YAKYM. Thank you, Mr. Duit. In closing here, I do want to also point out, as my time is expiring, that in terms of some of the grant agreement delays as well, according to the Department of Transportation's own figures, there are only 148 out of 415 or 35 percent of RAISE grants agreements in place for awards that were awarded between fiscal years 2021 and 2023, and it is causing projects to drown in redtape, die on the vine, and being eaten away by inflation.

And so, I certainly call on the Department of Transportation to get these grant agreements in place so we can get the money out the door and these projects in place.

And with that, Mr. Chairman, I do yield back.

Mr. CRAWFORD. The gentleman yields. Mr. Johnson.

Mr. JOHNSON OF GEORGIA. Thank you, Mr. Chairman.

Mr. Bell, you have been subjected to a beat-down of proportions that I have not seen as a Member of Congress in the last 18 years, and you didn't even have a chance to defend yourself. You were beaten down like a piñata. And so, I feel kind of badly about that.

And it seems like you were beat down because of your representation of the Steel Manufacturers Association, which in your testimony, you talked about the two ways of production of steel, one being a traditional blast furnace, basic oxygen furnace production method, which is centuries old, extractive, coal-based, high emissions. That is the old way of making steel. And the Steel Manufacturers Association produces steel via a cleaner method.

And I suppose it was the extraction that you advocate against in your testimony, with the admonition that we should only have one standard, one emissions standard as opposed to two emissions standards. The one that you favor is the one that is cleaner and better for our environment.

Would you like to explain a little bit about why that method is best as we move forward in funding initiatives to move our country away from dirty energy and into a more cleaner situation?

Mr. BELL. Sure. Thank you, Congressman Johnson.

The EAF approach to steelmaking embraces the circular economy. What does that mean? That we use recycled steel to make new steel. That means we also use electricity from an energy grid that gets greener and greener every year. And as a result of that, we have a lower emissions profile than steel made the traditional route.

But for the purpose of this hearing, what is important to note, that when it comes to Federal Highway Administration and General Services Administration infrastructure projects, the integrated blast furnace producers do not make the products you need for Federal Highway and GSA projects. They don't make them. EAFs make 99 percent of those products that you use.

Mr. JOHNSON OF GEORGIA. Well, if I may interrupt you here again and again apologize that you had to suffer such a beat-down, but I hope you feel better about being able to explain a little bit about why you are here and why you are advocating for your position.

Mr. BELL. And I appreciate that opportunity. And, by the way, Mr. Stauber is a huge advocate for the steel industry. And, quite frankly, both integrated producers and EAF producers are the ones that are leading the way globally in cleaner steel production.

But, again, for the purpose of this hearing, Federal Highway infrastructure projects, the products that are needed to do those are not made by integrated producers. So, the reason we need a single standard is so it is easy to follow.

Mr. JOHNSON OF GEORGIA. Okay. All right. I may disagree with you on the single standard concept, but maybe one of my fellow colleagues will allow you to talk more about that.

I want to get to Ms. Osborne.

Ms. Osborne, considering the alarming statistic of approximately 42,795 road fatalities in the U.S. in 2022, with 12,151 of those attributed to speeding, the Department of Transportation has highlighted the crucial need for safer speeds in its national roadway safety strategy.

Could you elaborate on how technologies like automatic emergency braking systems can contribute to promoting safer driving speeds and reducing speed-related fatalities?

Ms. OSBORNE. I appreciate your question and do want to point out that some of the things we don't even look at is that even going the speed limit is often an unsafe speed. And we don't determine which crashes are caused by speed that actually meet or are under the speed limit, even though that is part of the danger as well.

We certainly need to look at ways to get people to comply with speed limits that are often set higher than they should be, but we should be also looking to make it more natural for people to behave the way we want them to by better roadway design. That just leads to drivers going the safer speed.

Mr. JOHNSON OF GEORGIA. Thank you. With that, I yield back.

Mr. CRAWFORD. The gentleman yields.

Ms. Maloy.

Ms. MALOY. Thank you, Mr. Chairman.

We are here talking about regulation in the transportation industry and building things. And we are a country that used to innovate and build things and now we just regulate.

Mr. Pugh, I am going to start with you. You said that long-haul trucking is one of the most heavily regulated industries in the country. You also said that truckers are growing frustrated with this administration and all the regulations.

If we have a different administration and we can change regulations, what would long-haul truckers like to see stripped out? I think in a post-*Chevron* world, we are going to be in a situation where Congress is making more of these decisions and hopefully unelected bureaucrats are making fewer of the decisions.

And you have our ear right now. What would you want Congress to know?

Mr. PUGH. I think first and foremost would be the speed limiter rule that has been floated around for the last couple years. Truckers already are way under pressure with hours of service, because they are regulated, of course, by the amount of time they can drive and the amount of time they are supposed to take a break.

So, if you add speed limiters into this—and, of course, drivers are paid by piecework. So, when you add speed limiters into this, this is just putting more pressure on drivers. It has also been proven that inexperienced drivers and newer drivers feel this pressure and oftentimes speed in places that they probably shouldn't be speeding, two-lane roads and construction and stuff like that. So, that is probably the first thing.

Flexibility, more flexibility in hours of service would be very helpful; and also an elimination of a rule, and that is the elimination of the overtime exemption for driver pay, because that was put in in 1938. I think it is a little dated.

Truckers should be paid for all the time that they work. They give away 20, 30 hours a week plus. Probably that would do better at managing speeds and a lot of other safety-related things that we talk about here and rules that we try to make. But a lot of these things we don't like to do because they are hard. So, thank you.

Ms. MALOY. Thank you.

Mr. Duit, same question: What regulations should we be looking at if Congress is making these decisions and not agencies?

Mr. DUIT. Thank you, Representative. Congress, including this subcommittee, has done a great job conducting oversight of the infrastructure law so far. But as we are halfway through it, I encourage you to keep up the law as implemented and make sure it is doing everything that it is intended to do.

Anything that we can do, contractors in general, we like the flexibility. Anything that we can have that gives us flexibility, gives the States flexibility, lets us do things in conjunction with the owner certainly is always a benefit to anything that we can do.

Ms. MALOY. Thank you.

Mr. Bell, same question: If Congress is making these rules instead of agencies, what do you need us to know?

Mr. BELL. I've got to tell you at the SMA, we have a preference for regulatory certainty over regulatory overreach. And we really

do believe that anything that Congress does needs to be followed and not circumvented by regulatory frameworks.

Ms. MALOY. I agree.

All right. Ms. Osborne, you have had the most time to think about it.

Ms. OSBORNE. Thank you. I would love to see a reduction of some of the regulations on more innovative roadway designs. When we work with States and local agencies, particularly on attempting more innovative quick build projects to try new interventions, they run into antiquated standards in both the Green Book and in the MUTCD that make it hard to try new things.

We regularly hear from roadway design engineers that they would like to do things like narrow lanes in order to make drivers know that is an area they should be going a little more slowly in.

But they have to go through very elaborate and long exceptions processes, which slows down their projects and raises the cost of them. And then that is held against the engineers in their performance reviews.

So, I would like to make it easier for them to do things that get the results that we want and deregulate some of those designs.

Ms. MALOY. Thank you. I am about out of time. I just want to wrap up by saying that I am looking forward to being in a different regulatory framework where we can go back and look at some of these regulations that may have been there since the thirties that don't make sense anymore.

So, I appreciate your time, appreciate you answering my questions.

And I yield back.

Mr. CRAWFORD. The gentlewoman yields.

Mr. García.

Mr. GARCÍA OF ILLINOIS. Thank you, Chair, Ranking Member, all of our witnesses.

We all share the goal of making our highways and transit safer, more efficient, and more accessible. I am glad to see that the Department of Transportation has made progress toward these goals in rulemakings, but there is plenty of work to do in the upcoming surface reauthorization bill.

Before I get into my questioning, I want to mention one such topic, which is the increasing number of truck crashes and fatalities. There has been a 49-percent increase in truck crash fatalities over the last 10 years, while it is true, thankfully, that in fatalities this is a small percent of a larger number.

FMCSA's most recent data shows over half a million truck crashes in 2021. Even though a small percentage resulted in deaths, that still amounts to over 5,000 deaths per year.

To those who contend that our insurance minimums do not need to be raised because only a small percentage of cases exceed the minimum, I would like to ask you to tell 5,000 families who have lost loved ones or sustained lifelong disabilities that they deserve to live in debt because they are part of a statistical minority.

On that note, I would like to reiterate a point Ms. Osborne made in her testimony about the upcoming surface reauthorization bill, that we cannot continue to fund the same systems and expect different outcomes.

Ms. Osborne, we are all aware of the 80/20 split that directs the majority of funding towards our highways over our transit systems. But as many transit agencies reach fiscal cliffs and highway congestion continues to worsen despite highway-widening projects, it is clear that deprioritizing transit isn't working well for anyone.

Question: How could transit parity improve these issues, and what can be done by Congress to address transit parity?

Ms. OSBORNE. I appreciate the question. We have spent the last 70-plus years building out a strong and integrated highway system, but we have not put the same attention into the other modes of travel.

One of our priorities is to invest in the rest of the system, to put the same level of focus on building out a strong transit system, passenger rail system, freight rail system and bike-ped system.

Putting more funding towards that effort is important, and especially as we basically busted the trust fund since so little of the trust fund is paid for by user fee and really isn't a trust fund anymore. The old rules about who is paying in and where the money should go hasn't been the case really since 2009, and it is time to update our priorities there.

I would also like to see not just on the transit system but on the roadway system, something I am hearing repeatedly from folks on the ground is that this program needs to be a part of the operations and maintenance of the overall system so that we can guarantee we get the most efficient outcomes of our investments.

Mr. GARCÍA OF ILLINOIS. Thank you. Investing in transit will help mitigate climate change by reducing gashouse emissions.

How does the FHWA greenhouse gas rule equip States to reduce carbon emissions, and why is it important for communities that experience disproportionate highway pollution? You have got about a minute.

Ms. OSBORNE. It is important to provide more sunshine into what agencies' intentions are and to give us a barometer to measure them by. We should not oversell it. It is just a sunshine law. Agencies set their own targets, and if they miss them, there is really no penalty for it.

But at the same time, we need not be overwrought about the damage it will do or how it will impact investments. In fact, if you look at most transportation agencies' environmental documents, benefit-cost analyses, their models show that expansion of highways will reduce emissions.

I don't think their models are very accurate, and we don't really test them or look back to see if they are correct. But, considering the fact that they claim it is going to be great for emissions, I am not sure why they are so concerned about then measuring them.

Mr. GARCIA OF ILLINOIS. Thank you so much. Chairman, I yield back.

Mr. CRAWFORD. The gentleman yields. Mr. Nehls.

Mr. NEHLS. Thank you, Mr. Chairman.

Mr. Pugh, good to see you. You have been in front of this committee before talking about some of the negative consequences of the speed limiter, this mandate. To remind the colleagues here, the DOT is considering limiting every single truck on the road to 60

miles an hour regardless, regardless of what the posted speed limit is.

In your experience, you've got a lot of experience behind the wheel of a big truck, right? Do you believe this mandate would actually reduce speeding on our roads or do you think that DOT is ignoring the unintended consequences of this rulemaking?

Mr. PUGH. No, I don't believe it is going to reduce—it will reduce speeding maybe on the interstate highways, but it is not—like I said earlier, more inexperienced newer drivers—and, unfortunately, we have this churning all the time in trucking.

When new people are coming in, it will cause them—and we have seen this. Motor carriers use these things now as a driver management tool, fuel management tool. If you look at the data, they are still getting speeding tickets—

Mr. NEHLS [interposing]. Right.

Mr. PUGH [continuing]. Speeding on the interstate. So, it is probably a two-lane road or a work zone.

Mr. NEHLS. And what does the safety data tell us about the risk for crashes when you have trucks that are—now we are forcing them, we are forcing them to travel below the posted speed limit or slower than the flow of traffic. What does the data say?

Mr. PUGH. There is plenty of data out there to show. But if there is a 10-mile-per-hour differential in speeds between traffic, that creates 227 percent more interactions between cars and trucks, which interactions is where we have accidents.

Mr. NEHLS. Aside from the safety concerns you related, what does this do to our Nation's supply chains? How would that affect it?

Mr. PUGH. Well, it is going to slow our supply chain down. It is actually going to have a reverse effect with congestion, because we are going to need more trucks to haul the same amount of freight that we are hauling now.

And with that being said, that is going to put more trucks on the highway which will be traveling 10 miles per hour below the speed limit or more in different sectors, which will again cause more congestion and more accidents.

Mr. NEHLS. Thank you.

Mr. DUIT, share with us some of your members' experiences with obtaining Build America, Buy America waivers. In my State, there is a good example. In my State, we applied for two BABA waivers the end of January, and we still are awaiting approval. We haven't heard anything.

How are the other States dealing with this with the DOTs? How do they deal with some of this?

Mr. DUIT. I would have to check to get a more—a better answer for all the other States, but I think my recollection—what I am understanding is I think everybody is having similar issues with regard to how it is being interpreted.

I mean, if you look at this—on the Buy America, this is an example from Florida [indicating a diagram]. This is one of our members, that this is a generator, a project that he had. He was required to go through, and they wanted to understand where every single part in this generator was made, how much it cost and then how that fits within the system.

I think things like that are just—there has to be some common sense applied I think would make the most sense on something like that.

Mr. NEHLS. I agree. We have to stop the silliness. We really, really do.

I yield back, sir.

Mr. CRAWFORD. The gentleman yields.

Mrs. Sykes.

Mrs. SYKES. Thank you, Mr. Chair, Chairman Crawford and Ranking Member Norton, for holding this hearing today. Grateful to be able to continue to talk about the transformative impacts of the Bipartisan Infrastructure Law and how we are implementing it with great administrative—sometimes great and sometimes not so great.

One thing I would like to talk about as a member of this committee. Ohio, we call ourselves the heart of it all. You can get to most of the country and Canada within an 8-hour drive, but we are also always concerned about the fact whether people are able to travel in and out of our State safely and want to just make sure as we are talking about these administrative rules, we are keeping safety in mind.

If people are not able to make it in and out of my State as they are traveling through—commerce, for a vacation, for leisure—we really are not doing something correct.

But I do want to direct our attention elsewhere for my questions and specifically around some workforce conversations.

So, following the enactment of the Bipartisan Infrastructure Law, Transportation for America released an article highlighting the need for workforce development as our Nation and our transit systems recovered from the COVID pandemic and the role that the Bipartisan Infrastructure Law has played in the process.

One of those programs is the low- and no-emission and bus facilities program. And among the requirements, the no-low program requires that grantees spend 5 percent of the award money on workforce development training, including apprenticeships and other labor-management training programs.

So, Ms. Osborne, as you have seen these grant programs such as this one improve our Nation's workforce—or, how have you seen it, and what can we do to make it better if it is not already working at the top of its ability?

Ms. OSBORNE. Thank you for your question. There is greater flexibility in the utilization of Federal funds for workforce development than I think a lot of agencies are aware. There is a lot more we can do to not just show them how they might utilize that flexibility but some of the most effective ways to do so.

I think we can do a lot more to share workforce development successes across the country rather than have everyone trying to reinvent the wheel, so to speak, in every place. But one thing we are doing now is analyzing the spending to date across the board, in terms of IJA's spending, to get a better sense of what we have gotten for expenditures.

Mrs. SYKES. Thank you, Ms. Osborne.

And if you could elaborate a little bit more about some of the recommendations that you have to improve this so that we can have that information and perhaps act on it.

Ms. OSBORNE. I am certainly happy to share any lessons we learn in doing analysis, particularly with regard to workforce. We don't have any particular recommendations on that today. But as we finish our analysis, I would be happy to work with you going forward.

Mrs. SYKES. Thank you very much.

Chairman, I yield back.

Mr. CRAWFORD. The gentlewoman yields.

Mr. Webster.

Mr. WEBSTER OF FLORIDA. Thank you, Mr. Chairman. I think my question is maybe for Mr. Bell.

The idea of using lower carbon products in the transportation arena is something that is happening, I guess. And I am wondering are these products tested for their longevity in kind of the wear and tear of transportation in actual existence when they get incorporated into some job or something? Are they checked for that, do you know, or tested out, as far as how well they will endure the rigors of a construction project?

Mr. BELL. Yes, Congressman, they are. And they are given information through the environmental product declaration on emissions, and then mill test certificates in terms of their strength and functionality.

Mr. WEBSTER OF FLORIDA. So, do you believe that other items, like glass or concrete or something like that, do they stand up to the rigors of that as well as it does for steel or some other product?

Mr. BELL. I can really speak only to steel. But one thing that we do know in terms of emissions, glass and concrete and other commodities don't have a dual standard to measure their emissions. But in terms of their strength, I can't speak to that.

Mr. WEBSTER OF FLORIDA. So, do you know—can you kind of just summarize the impact of adding these items into the mix, something that produces a lower carbon footprint, what that entails? Can you elaborate on that?

Mr. BELL. Well, I do know that if you measure the embodied carbon emissions of all commodities that are used in Federal Highway infrastructure projects, I think that that will be a good thing, because I think that way you will be able to build these projects with the best carbon footprint possible.

Mr. WEBSTER OF FLORIDA. But do you have kind of an idea of which—I mean, as far as you don't just look at that input. You also look at the longevity and endurance and so forth, other things.

Are there some tests that kind of prove out what is the sort of a number for that which includes all those things?

Mr. BELL. I am not aware of that. I can speak specifically to steel and I know that they are; but for the other commodities such as glass and concrete, I am not sure.

Mr. WEBSTER OF FLORIDA. Do you think that that would be a good thing to have before we step out into an unknown, an unknown usage of products until we find out what the longevity of those products would be?

Mr. BELL. I think it would be good, because it would improve our environmental footprint and safety. But as long as it can be done in a way that is not burdensome and that doesn't hinder free markets and follows legislation, I think we would be in good shape.

Mr. WEBSTER OF FLORIDA. Do you think there should be some kind of not exemption but maybe lenience towards small businesses and others who might have trouble putting all that together right away? Do you think there should be something that could sort of buy them into the whole program?

Mr. BELL. I think we should do as much as we can to support job creators. And small businesses are a very important part of that group, and I think that we need to look at that. Again, anything we do needs to make common sense and not be regulatorily burdensome.

Mr. WEBSTER OF FLORIDA. Can you name something that is for a small business that might be regulatorily burdensome?

Mr. BELL. Can you repeat the question, please?

Mr. WEBSTER OF FLORIDA. Can you name a particular product or something provided by a small business that might be regulatorily prohibitive?

Mr. BELL. I can't name anything right now. I can focus on the steel industry, and we go to great lengths to make sure that we provide the Government with the information we need on emissions as well as the product properties of the products we make.

Mr. WEBSTER OF FLORIDA. Thank you very much. I yield back.

Mr. CRAWFORD. The gentleman yields.

Mr. Auchincloss.

Mr. AUCHINCLOSS. Thank you, Chairman.

I appreciate the testimony from our witnesses.

Ms. Osborne, I particularly appreciate your work and your testimony. You have noted that while today we are spending more money overall on our roads, the money is not necessarily going towards repair.

In many cases, as you know, States are spending as much on expansion as they are on repair. And you rightly point out—and I want to emphasize—that, quote, “Every new lane-mile of road costs approximately \$24,000 per year to preserve in a state of good repair. By expanding roads, we are borrowing against the future.”

As Congress begins considering the next surface transportation reauthorization, how should we reprioritize formula funding to ensure that we are maximizing our existing roads and not expanding and inducing more vehicular traffic?

Ms. OSBORNE. Thank you for that question. To be clear, the \$24,000 per lane-mile is a number that we came up with from Federal Highways in 2019, so, that is probably awfully low. And the liability of building things has likely become more expensive.

This committee actually led the way in addressing this policy-wise. In the last reauthorization, there was bipartisan language added to your bill originally that said that an agency could build new infrastructure or expand infrastructure if they had a plan to maintain it throughout its useful life while improving the overall condition of their system.

It is something that is just good governance and common sense. Unfortunately, the Senate and the White House did not follow your excellent lead, and I would love to see that language come back in.

Mr. AUCHINCLOSS. There is a lot from the INVEST Act that I would like to see come back in for sure.

You have also noted that our current funding system does not prioritize access, whether that is access to economic opportunity, healthcare, family. The current formula incentive states to simply use more fuel—excuse me—the current formula incentivizes States to simply use more fuel, not to actually design a transportation system that connects people with the places they need to go.

How should we think about reevaluating that formula to prioritize access to jobs and services instead of simply inducing more vehicular-miles traveled?

Ms. OSBORNE. Yes. This is something I am very excited about, and I really think it could be transformative in speaking to the user experience and to access to economic opportunity.

For those that are not familiar with multimodal access, it is measuring the destinations people can reach when they travel. The way we measure the success of the transportation system right now is based on a proxy. That was the best thing we could do in the 1950s, which is to look at the speed of vehicles within an observed section, assuming that if we sped up vehicles within that observed section that people would arrive where they were going more quickly.

As it turns out, what we do often to speed up that travel actually extends the distance. Think about roadways where you have no left turn all the way down and you have to go out of your way to take that left turn.

We can measure that trip now. Virginia has really led the way in this and in doing so, I think really improved people's experience.

Mr. AUCHINCLOSS. And I am glad you brought up Virginia. Let's go one level deeper in granularity to describe what it is that Virginia has gone to quantify access to jobs and services within sort of a catchment area to help policymakers understand how effective their mobility policy is.

Ms. OSBORNE. They evaluate all new capacity projects on several items, including access to jobs and access to essential services. They measure those differently, because a job trip is expected and okay if it is a little bit longer and certainly does not—it is not treated the same way as, for example, a trip to the grocery. A 30-minute trip to a job is an acceptable amount of time. A 30-minute trip to a grocery is a public policy problem.

Mr. AUCHINCLOSS. So, is it modality-agnostic in the sense that—

Ms. OSBORNE [interposing]. It is.

Mr. AUCHINCLOSS [continuing]. Regardless of how you get there.

Ms. OSBORNE. It is not only modality-agnostic, it actually brings in distance and land-use decisions. So, if you move the things people need closer to homes or affordable housing closer to those things, you can get an access increase as well.

Mr. AUCHINCLOSS. And what types of places score higher on this metric? Is it single-family zoned, highway-centric, car-centric planning, or is it walkable mixed-use downtowns?

Ms. OSBORNE. On access to nonwork necessities, definitely more walkable mixed-use traditional communities.

Mr. AUCHINCLOSS. I yield back, Chair.

Mr. CRAWFORD. The gentleman yields.

Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. Duit, I heard you made the comment about good intentions. And we always have a saying around my crowd that the road to the poorhouse is paved with good intentions. A lot of folks who have good intentions, but they have no clue about what they are talking about. I think we find that a lot on this side.

I want to make another comment, too. In talking with a lot of the people in the construction business, it seems that a lot of your percentage of your cost that you have to put in there is due to permits and the waiting on permits and the fact that I think that good tort reform in this country would probably decrease a lot of those permit costs and speed up your projects overall.

So, I would like for you, if you have a comment, I would love to hear it. But otherwise, I think that is something that would be of great value, not just to your industry, but probably to all industries.

But what I want to get to is Mr. Pugh. Mr. Pugh, my Baptist in me wanted to stand up and cheer. Congratulations; 2.5 million miles safe driving. People don't realize that is 20 years on the average driver. That not only says a lot about you, but I think it says a lot about where our industry has gone with the availability, the technology out there, and the focus on being safe.

I know in my company, we want to be the most technologically advanced, the safest with the best employees, period. And we have a handful of a million milers out there.

I want to focus real quick, because there are some things that I have heard up here that I want you to make a quick comment on.

Number one, we heard there is a 76-percent increase in accidents at 75 miles or over in speed. I don't have a truck out there that runs 75 miles an hour. And if you actually looked at the data—AAA has even done this. They didn't want to admit it. But over 75 percent of the accidents out there are not the truck's fault. It is the four-wheeler, it is the car, the automobile's fault. With 98 percent of the trucking companies out there, 10 trucks or less, 95 percent of them are 5 trucks or less. A huge portion are owner-operators and independent drivers.

What would this increase that one of the colleagues on the other side of the aisle is pushing for liability insurance, what would it do to the trucking industry?

Mr. PUGH. It would, in short, put them out of business, a lot of the small guys, my members. We don't even know like how this be would charged. We don't know how insurance would withstand this, because there is really nothing out there to measure.

There has already been lots of liability insurance companies leave the market. We know as people leave the market and there is less competition, prices go up.

So, this could be disastrous to small business, to supply chains, to carriers even the size of yours.

Mr. COLLINS. I think it would be disastrous for the trucking industry, but it is nothing but a pay raise for trial lawyers. That is all it is.

Mr. PUGH. One hundred percent.

Mr. COLLINS. Let's move on. Rear impact guards, I would venture to say if we had a question in here, people don't even know what that is. What is a rear impact guard?

Mr. PUGH. It is the DOT bumper, for lack of better terms. When you see a semitruck going down the road, on the back of the trailer kind of a T-pattern thing or something like that, it is the rear bumper.

Mr. COLLINS. So, we have those, right?

Mr. PUGH. Yes, we do.

Mr. COLLINS. Is a rear impact guard to prevent the truck from injuring the car or from the car hitting the truck and being injured?

Mr. PUGH. It is to keep the car from entering completely in underneath the truck.

Mr. COLLINS. So, I think that puts a little more evidence to the fact that the automobiles out there cause the problem, and a lot of times we see that the trucking industry takes the hit.

Mr. PUGH. The trucking industry almost always takes the hit when—you are correct—over 80 percent of accidents are caused by the car.

Mr. COLLINS. So, automatic emergency brakes—man, I got a boatload of them I would love to get rid of—are they fail proof?

Mr. PUGH. No, they are not foolproof. We have constant false acts going on all the time, activations.

Mr. COLLINS. Go off when you go under a bridge or road construction sign, anything that may—

Mr. PUGH [interrupting]. I drove a truck back from Reno last year back to Kansas City. It was constantly going off for just—there was nothing around, in the middle of Wyoming and places—

Mr. COLLINS [interrupting]. Yet we got Federal bureaucracy out there, bureaucrats, Federal agencies, people that sit around here that think they know better, have no clue. I guarantee you, probably the majority of folks in this room don't have a CDL driver's license. They don't know that industry.

But since we are out there on the roadway in the motoring public, we are an easy target because people see us. I mean, you are scratching your head on what you think you might can get done this year. You are riding down the road. Oh, there is a big truck, let's see what we can do to that as well.

I am out of time, but I wanted to add one more thing. Broker fraud, it is huge and it has been going on for decades, but I would like to add in there that we have another fraud going on out there too, and that is the towing industry.

The towing industry has been ripping off the trucking industry for decades. I know for a fact. I just saw one, a truck that had an accident by itself, ran off the interstate. The towing bill was \$78,000.

Mr. PUGH. I had a member who received a tow bill a couple of weeks ago in the State of Pennsylvania. They were charged \$9,000

heat and humidity charge with a 10-percent administration fee on top of that. It was well over a \$60,000 tow bill.

Mr. COLLINS. The most regulated, taxed, burdened industry in the world.

Mr. CRAWFORD. The gentleman's time is expired.

Mr. Carbajal.

Mr. COLLINS. Thank you.

Mr. CARBAJAL. Thank you, Mr. Chair.

Mr. Duit, our transportation sector is the largest source of greenhouse gas emissions in the United States. Your testimony notes your opposition to FHWA's greenhouse gas performance rule while stating that the American Road & Transportation Builders Association, ARTBA, is not opposed to reducing emissions.

How can we accurately reduce greenhouse emissions if we don't even measure the scope of the problem and potential solutions, and what specific policies does ARTBA support to lower greenhouse gas emissions on our roadways?

Mr. DUIT. Thank you, Representative.

The rule requires State and local agencies to plan projects that meet the intended greenhouse gas goals and at least minimum to create the declining of the GHG totals.

I guess it means the States and other transportation agencies need to prioritize certain types of projects over others, as I have mentioned, if they do not align with the prescribed GHG reduction targets.

The concern is that that could lead to a misallocation of resources and hinder State-specific transportation needs from one type of a project to a different type, because that specific type has a lower GHG reduction.

And I think the concern is that that is not necessarily doing what the States actually need to have done. They are doing what is needing to be done based upon the greenhouse gas emissions. With regard to reducing the greenhouse gas, I do not have a proposal for that that I am aware of within our association.

Mr. CARBAJAL. Mr. Duit, is there anything that ARTBA supports to lower greenhouse gas emissions on the roadways? Anything? Something? An iota?

Mr. DUIT. An iota? I will tell you what, sir. I will do some checking and get back with you if that is okay.

Mr. CARBAJAL. Thank you.

Mr. Duit, the Bipartisan Infrastructure Law has been a transformative investment for our Nation's roads, bridges, and infrastructure. In my district, we have seen nearly \$1 billion in Federal dollars from the Bipartisan Infrastructure Law, also known as BIL, for local projects. Your testimony highlights that there have been over 75,000 project commitments in the first 2 years of the BIL.

Since the Bipartisan Infrastructure Law's enactment, 43,000 new construction industry jobs have been created. As the president of a major construction company, how are you seeing the benefits of this law, this infrastructure law, play out across America?

Mr. DUIT. Thank you, sir. The infrastructure law has helped drastically. It has been a true blessing. I think it helps us—gives us—it gives contractors some clarity, and it gives us some time.

It is a 5-year bill, so that lets us go out and expend the money for equipment. It lets us hire people. It gives us the opportunity to grow our projects. I think it is a win-win.

It is good for the American people in that we have the ability to make more efficient, quicker ability to get goods and services to the market as well as keep people safe. But the more that we put into this, the safer we can make these roads over a period of time.

Mr. CARBAJAL. Thank you. Mr. Chair, I yield back.

Mr. CRAWFORD. The gentleman yields.

Mr. Kean.

Mr. KEAN OF NEW JERSEY. Thank you, Mr. Chairman.

Thank you to all of our witnesses for being here today.

In 2021, the FHWA released a memorandum encouraging States to prioritize projects to maintain existing infrastructure facilities before expanding capacity. While this memorandum was subsequently nullified by the FHWA as Congress was beginning its disapproval process, it would have marked a major shift in the long-standing Federal-State partnership under which States retain the autonomy to prioritize projects they needed most.

Mr. Duit, can you detail for us ARTBA's position on the December 2021 policy memo? What do you see as the importance of States prioritizing projects according to their own needs?

Mr. DUIT. Yes, sir. Thank you, Representative. A longstanding cornerstone of the Federal-Aid Highway Program has been State flexibility in project selection. That is because transportation challenges in Oklahoma are going to be different than they are in, say, Vermont, and States need that ability to respond accordingly.

Putting aside the fact that States are already spending nearly half of the formula dollars on repair and rehabilitation projects, this is another example of the administration trying to work outside the law. We applaud the FHWA for repealing the memo and will follow the law ensuring State flexibility.

Mr. KEAN OF NEW JERSEY. Thank you. Mr. Pugh, the Infrastructure Investment and Jobs Act explicitly required that the Department of Transportation consult with truckers about their experiences with automatic emergency brake systems prior to publishing a motor vehicle safety standard requiring this technology. In fact, truckers are the only stakeholders that were singled out in the law for specific consultation on this mandate.

A notice of proposed rulemaking was published in June of 2023. How do you think this consultation process went, and can you speak a little bit more about the process in general?

Mr. PUGH. Yes. As far as the AB process, they have not done what they said. They have not reached out to drivers or spoke with drivers at all. Also, since this has come out, NHTSA has also opened up an investigation on false activations of these products. So, they are continuing to move forward with a rule that they know they have a problem with, and they know these trucks have these false activations.

I have had members and we have had plenty of comments put out of drivers almost being put in an accident on bad roads and different things like that, and also being rear-ended because these things activate and someone is following too close in a car or something behind them and almost hits or does hit the truck.

I can't say this enough. I point this out all the time. Trucks are completely different from cars. And just because a technology works well in a car, in an automobile, does not mean that it is going to work well in a truck.

Every load—every type of truck is different as far as weights and how the product moves and stuff like that. You take a tanker, there is liquid in there moving the whole thing. So, the way you have to stop that is completely different from a load of paper towels in a van trailer.

Mr. KEAN OF NEW JERSEY. Thank you. I yield back.

Mr. CRAWFORD. The gentleman yields.

Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chair.

Thank you to our witnesses for appearing here today.

New Jersey's Eighth Congressional District is home to the largest port on the east coast. While we are very proud of this asset and all that it brings to our district and what it does not just for our region but our Nation's economy, we all see an incredible amount of truck traffic through our communities.

The port and trucking are both vital to our supply chain and our local and regional economies, but emissions from medium- and heavy-duty vehicles emit nearly 25 percent of transportation-related gas emissions.

We also know that transportation is the largest creator of emissions in the United States. Medium- and heavy-duty vehicles often operate in densely populated areas such as my district and can have adverse health impacts on the surrounding communities. Sadly, these impacts fall disproportionately on overburdened communities.

Ms. Osborne, first, welcome back. But can you tell us how does the FHWA's greenhouse gas performance rule work to reduce emissions along freight corridors and near ports?

Ms. OSBORNE. Well, I don't want to oversell the rule. It is a sunlight and tracking rule. It is a rule that requires States and metropolitan planning organizations to make clear to Congress and the taxpayer what their intention is in terms of controlling greenhouse gas emissions. If they fail to meet their self-set target, there is nothing that happens. But there is certainly better information to the taxpayer and to policymakers to determine how they feel about that.

You can't control something you don't measure. So, I think having folks do a better job of indicating what they expect to happen in terms of their investment package in terms of increasing greenhouse gas emissions is an essential first step to doing something about it.

Mr. MENENDEZ. Increase awareness. More information for communities to put pressure on those local actors to try to make those changes in a quicker fashion.

Ms. OSBORNE. Absolutely. And this is a program where finding good data is very challenging. In every report we have ever written about Federal spending, we have very long appendices that talk about the lack of recent data, comparable data, complete data.

And so, some of these tracking rules can help to provide just basic information about where the agencies themselves think things are going.

Mr. MENENDEZ. I just want to underscore that point because it is so important. There is a group in Elizabeth, New Jersey, called Groundwork. And they find unique ways, low-cost ways to collect data about the different challenges that their communities are facing.

And so, by having that additional data that groups like that don't have to source themselves, they can be even better advocates for their communities. So, it is incredibly important and something that even if there is no enforcement mechanism, I believe is still going to be helpful in achieving some of these goals.

Moving on to worker misclassification. Worker misclassification has quickly become a large topic of discussion across all sectors. We have heard quite a bit about independent contractor and employee classification in this committee as well as the independent contractor classification rule finalized by the Department of Labor at the beginning of this year.

Mr. Pugh, we know that the rule will be good for workers. It provides clarity and will help to ensure that workers are not deprived of Fair Labor Standards Act protections like minimum wage. However, some large corporate motor carriers have claimed that the rule will harm independent truckers and owner-operators that want to work as independent contractors.

What are your thoughts on what this new rule will mean for truckers and owner-operators that have worked as independent contractors and want to maintain that status?

Mr. PUGH. I feel and we feel that it will not change. If you are in a compliant lease, working for a carrier with a lease agreement, you will be fine just like you were prior to the last rule being passed.

Actually, this rule gives more clarity. It is easier to show that you are independent, in our opinion. And finally, it does away with allowing control, because if you are truly an independent contractor leased, subleased, or whatever to another motor carrier, you shouldn't be controlled as an employee, meaning speed limiters and driver fleet management tools like that must be put into your truck.

The prior rule allowed that and you could still be considered independent. We don't feel that if you are an independent driver or independent carrier and you have these kind of items, have to have them mandated or put into your truck by the carrier you lease to, that is a sense of control. This does away with that. So, we are good with the new rule.

Mr. MENENDEZ. I appreciate that and wish I had more time, but thank you all so much for coming.

Mr. CRAWFORD. The gentleman yields.

As you can see, there is a vote series underway on the House floor. Therefore, we shall stand in recess subject to the call of the chair.

[Recess.]

Mr. BURLISON [presiding]. The Subcommittee on Highways and Transit will reconvene the previously recessed hearing.

I now yield to myself for 5 minutes of questioning.

Mr. Pugh, good to see you today. Recently, the Supreme Court overturned the *Chevron* decision that would prevent agencies from ignoring congressional intent, and it takes away the agency's ability to loosely interpret statutes for rules.

Just in the past 2 years, we have seen some ridiculous rules come down from DOT and other agencies. This includes WOTUS, speed limiters for trucks, greenhouse gas emission rules, just to name a few.

Do you think that the regulations that were done, that these regulations have been made based on congressional intent?

Mr. PUGH. No, I don't think most of these have been made, some of these you are talking about, congressional intent at all. I think there are certain folks out there who want these kind of things, whether it is to take away independent or small businesses' advantage for a profit or something like that.

I mean, the speed limiter rule, FMCSA said that it will put small-business carriers at a competitive disadvantage to large motor carriers.

So, again, I think a lot of this stuff comes to serve special interest groups, who maybe don't have any experience in commercial trucking or they have it but they are just on the other side from, like, drivers and my folks.

Mr. BURLISON. Do you think that these rules will withstand a court challenge if they weren't clearly gaining congressional intent?

Mr. PUGH. Well, we would like to think they won't, but I think with this whole *Chevron* doctrine and this just passing, you know, I am not an attorney. I am a trucker. But we have attorneys that work for us, and I think this is going to take 10, 20 years maybe to see how this all plays out. We will see.

Mr. BURLISON. Hopefully, they get overturned.

Earlier this year, the EPA finalized its rule titled "The final standards to reduce greenhouse gas emissions from heavy-duty vehicles model year 2027 and beyond."

This is phase 3 of the greenhouse gas standards for heavy-duty vehicles, and it will force a significant number of trucks to become electric.

Can you expound on how this rule is going to impact your industry?

Mr. PUGH. It is going to devastate our industry. Again, as I said earlier, tractor-trailer trucks are way different than cars. And maybe this technology can be argued it works somewhat in cars, but it is far from mainstream with trucks. Trucks, right now, there is nowhere to really fuel them. No one really has a way to address how we are going to recharge these trucks.

Small-business carriers like myself, I park my truck at my house all the time. So, this means when I want to go home or park my truck, I need to put in a very expensive charging system in my truck.

Not to mention these trucks weigh 10,000 pounds more than their diesel counterparts, which means they will haul less of a payload, which means by hauling less of a payload, you are going to put more of these trucks out there. And, in fact, in my personal

opinion, they could have an opposite effect and actually cause more pollution.

Mr. BURLISON. Is this technology even available at this time?

Mr. PUGH. Not that I know of. I mean, there are trucks out there testing and companies out there have introduced them. But as far as—I don't know any carriers or anybody that is going out there and buying these things en masse, because, again, where do you fuel them?

There was a trucking company in Illinois that was going to get like 32 units for their company. The city reached out to them and asked them what they were doing, because they needed so much electricity. And they told them that they were putting in these electric trucks. And they said, well, you can't do it, because your trucks are going to draw more power than our entire city does from the power grid. We don't have the electricity to give you.

Mr. BURLISON. Yes. I think, in general, we have an energy demand problem in the United States, and this, I think, would only exacerbate that problem.

My final question is that I understand there is an attempt to impose an additional underride protection requirement on trucks. So, we have the rear protection, but this advisory committee looked at it and they are trying to require underride protection on the sides. How do you see that working?

Mr. PUGH. Right now, I don't see it working. First of all, there is not really good data even saying how many of these accidents there are and how much they would prevent.

There has not been any real-world testing. And the committee that you are speaking of that they threw together had way more safety advocates on it than it did trucking, and they didn't even come to a consensus at the end of this. And they ignored the facts of railroad crossings and off-road and other operational challenges of these underride guards.

Mr. BURLISON. Thank you. My time is expired.

I now recognize Mr. Moulton for 5 minutes.

Mr. MOULTON. Thank you very much, Mr. Chairman. Mr. Pugh, I would like to pick up on some of these questions we were talking about, speed limiters and how you mentioned that these are pursued by special interest groups. They can limit the ability of small businesses to compete, according to you.

How is that the—how does it hurt small businesses in trucking to have a speed limiter on your truck?

Mr. PUGH. Yes. Well, we have speed limits. We all know that. And to oversee—

Mr. MOULTON [interrupting]. I know we have speed limits. I am asking how speed limiters hurt small—

Mr. PUGH [interrupting]. Right. I am getting to that. I am answering your question. We have speed limits now. Small-business carriers like myself, they don't need driver management tools or fuel management tools like these are used by big carriers, these speed limiters. So, they can go the speed limit a lot of times where maybe the larger carriers cannot.

So, the problem is, if you put these on a small carrier, that is the one competitive advantage they have is that they can run the speed limit and get the loads there more quickly. If you take that

away from them, they have lost all competitive advantages now over their bigger carrier counterparts.

Mr. MOULTON. Okay, I understand that. That makes sense.

You mentioned that it must be special interest groups or whatnot who are pushing these technologies. In the last year for which we have data available, 20 percent of fatal truck crashes occurred over speeds of 70 miles per hour, resulting in about 1,000 deaths.

Now, if I care about those 1,000 people who died because of truck crashes that could have been prevented with speed limiters, does that make me a special interest guy?

Mr. PUGH. No. I think that we all care about crashes. There is no one in this world who cares more about highway safety than the American trucker. Myself personally, 2½ million miles, I am very proud of that. Truckers—

Mr. MOULTON [interrupting]. Well, if you care about trucker safety then you shouldn't be so concerned when you have an advisory committee that has a lot of safety advocates on it.

Speeding was a factor in 29 percent of traffic fatalities in 2022, killing 12,151 people, 12,151 Americans who lost their lives due to speeding.

In 2019, the National Highway Traffic Safety Administration estimates that the economic cost of speed-related crashes was about \$46 billion. The economic cost to all of us here in America, \$46 billion.

Ms. Osborne, does reducing the speed of vehicles have an effect on the chance of fatality in an accident?

Ms. OSBORNE. In general, when a driver is going at higher speed, their sphere of vision decreases, so, they are less likely to spot potential points of conflict. And the faster they are going, the less physics allows them to slow and stop their vehicle fast enough.

When you hit another vehicle or particularly a person at high speed, it is more likely to result in serious injury or fatality, especially as vehicles are getting bigger.

Mr. MOULTON. And, of course, we just talked about the effect, the value of speed limiters. It is a technology that has been introduced in Europe with no unintended consequences so far as the studies show. It is a technology that has already been adopted by many truckers here in the United States.

But bringing it back to the pedestrian level, which you have just mentioned, Ms. Osborne, research shows that a pedestrian is twice as likely to be killed by a vehicle traveling at 30 miles per hour compared to a vehicle moving at 20 miles per hour.

So, we are going off the highways here with truckers speeding and down to the local level. But how can we encourage these slower speed limits to increase road safety, to literally cut fatalities in half for crashes at that speed?

Ms. OSBORNE. Well, roadway design speeds are often different than speed limits. We design our roadways to accommodate higher speeds than the speed limit theoretically allows. And drivers pick up on that design more than they pick up on the speed limit, because you see the speed limit sign every half mile or so, but the design of the roadway is communicating with you all the time.

Mr. MOULTON. That makes a lot of sense.

Ms. OSBORNE. So, if you build the roadway widely, you get high-speed travel.

Mr. MOULTON. That is helpful. We are running short on time, so, I want to get to a couple more things.

Between 1993 and 2017, we increased freeway lane-miles by 42 percent. Congestion delays grew during that same period by 144 percent over the same period.

Ms. Osborne, do you believe that increasing highway capacity helps improve congestion?

Ms. OSBORNE. Looking at the record, it does not seem to. We find that in all of the 100 largest cities in the country, even the ones who had a reduction in population and an increase in lane-miles saw their congestion go up. So, we are clearly messing with the wrong lever.

Mr. MOULTON. Everybody knows this outside the United States of America, it seems, or maybe outside of this committee. It is a really important fact. Increasing highway capacity increases congestion.

Thank you, Mr. Chairman. I yield back.

Mr. BURLISON. Thank you. The Chair now recognizes Mr. LaMalfa for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman.

Mr. Pugh, we are talking about disparity of speed limits when you are on—we all have been on the freeway, and especially if it is two lanes going one direction, two lanes the other.

And so, I call them turtle races. I guess that may be a common phrase or not. So, you got one truck passing another truck, and they are stuck going 55 on that particular piece of freeway while cars can go 70.

So, talk a little bit about the difference in speed and what that does with drivers, the frustration, and then also just the disparity in speed, how that dynamic acts with safety in general, whereas if the trucks are able to go the same speed. Let's say they can all go 65 or 70 like in some States. What is the safer situation?

Mr. PUGH. Yes. I mean, first and foremost, there is plenty of data out there to show that a 10-mile-per-hour differential between trucks and cars creates 227 percent more times that they interact. Interactions, of course, is where we have accidents.

If we are really concerned about speed and which I talked to prior to you, if we really want to do something about it, instead of differentiating the speed between cars and trucks then lower the speed for everybody so everybody is going the same.

That is all we want. That is what our trucking wants is cars and trucks. So, if you are going to limit trucks to 60 then limit cars to 60, because it is proven over and over and over that all traffic traveling the same speed limit is the safest.

We are down to seven States now I think in this country that have speed differentials. I also think that a State probably should be deciding their speed limit, not an agency here in Washington, DC, because I feel like Montana probably has a better idea than Washington.

Mr. LAMALFA. I am from California, and we have a disparate speed there of 55 and 70 typically on I-5 I use a lot. And if we

leave it to California, it will probably just get dumber, but we will see.

But let's speak about the availability of trucks with these mandates going with EPA joining with CARB to basically outlaw diesel engines by a particular timeline and then going to much heavier—you said 10,000 pounds more.

I have seen as much as 16,000 pounds additional weight by two sets of batteries on a truck, which is one-fifth of the gross weight of a vehicle at 80,000 pounds additional weight.

Now, you take the diesel engine and the tranny out, and you probably have a different rear axle since they are all going to be driven at the wheels, I suppose. So, you are not really taking that much weight off the truck when you add all that electric.

So, anywhere, 10,000, 15,000, 16,000 pounds more weight, as you mentioned, we are going to have—we need 20 percent more trucks to do the same work. Does that seem about right as far as the gross weight?

Mr. PUGH. Yes, I would agree. I mean, I pulled a flatbed the majority of my career, hauled a lot of Mr. Bell's steel here out of the Ohio Valley. And we got paid by the weight. So, not only would I be able to haul less steel one time, I would make less money because I wouldn't be able to haul as much of a payload.

Mr. LAMALFA. And the steel guy has got to pay five trucks instead of four to get it hauled, right?

Mr. PUGH. Exactly.

Mr. LAMALFA. Yes. So, now, talk about availability of—especially to smaller trucking outfits. Like, on my farm, we have used trucks, and they are on the older side except for where the State has said I can't run my 2003 anymore. So, I had to have them 2011 or newer.

What does it mean when mom and pop truckers are going to be mandated to have vehicles that they can't afford, because they have to be a certain tier, a certain timeline? Emphasize that a little bit, would you please.

Mr. PUGH. That means these folks are probably going to go out of business, which is going to have another direct effect to highway safety, because you are taking some of the safest operators off the road.

These people, like myself, who own their own trucks, have their own businesses, most of them run used equipment. They don't want to buy new equipment. For one, the used older equipment, as you well know, is much more dependable. You can get along with it better and you can work on it yourself. And it is very expensive to own and operate—

Mr. LAMALFA [interrupting]. An average farmer trying to fix this electronic gear on a truck that you only get to use 5,000 miles, 10,000 miles a year or even the guy that hauls hay for us here. They don't put that many miles on so that a used truck that has 400,000 when they buy it is pretty useful to them.

So, lastly, this comment here that the more lane-miles you add, the more congestion you get. So, does that mean that we are going to have less congestion if we tear out lanes on the highway?

Do you want to take a stab at that, Ms. Osborne, as well as Mr. Pugh? Because that just doesn't compute for me, is that "let's make

it one lane, we ought to have zero congestion,” right? How the heck does that work?

Ms. OSBORNE. Sometimes we do see traffic evaporate as we shrink our roadways and shrink the footprint. I am just reporting on the facts. I am looking back at Federal data.

Mr. LAMALFA. Traffic will evaporate if you make the road smaller?

Ms. OSBORNE. We have seen that occur when the highways come down and a lot of—

Mr. LAMALFA [interrupting]. Is this because you frustrate people so much they don’t even want to use it?

Ms. OSBORNE. No, because it is just the principle of choosing the best path. People will choose different times of day rather than taking discretionary trips during the most congested hours, things like that.

Mr. LAMALFA. So, like, if there were less restrooms, would there be shorter lines for the restroom?

Ms. OSBORNE. Well, I love your restroom example, because it is like saying I should have seven bathrooms in my house because I will have a party one time of the year and I need to make sure no one stands in line.

Mr. LAMALFA. No, but a city has traffic all the time, have people going in and out for entertainment, moving products and all that. I just can’t believe we are sitting here saying that the more miles we tear out, the less congestion we are going to have with a growing population.

Ms. OSBORNE. The results of more miles have not been good.

Mr. LAMALFA. Pardon?

Ms. OSBORNE. The results of our strategy have not been effective.

Mr. LAMALFA. Well, if we are having more and more demand faster than we build, that might be one thing, but tearing out—anyway, I will yield back, Mr. Chairman. That is all I can do.

Mr. BURLISON. The Chair recognizes Mr. Van Drew.

Mr. VAN DREW. Thank you, Chair. Instead of implementing the mandates guaranteed in the Infrastructure Investment and Jobs Act, the Federal Motor Carrier Safety Administration is moving forward with a proposed speed limit mandate.

This rule would potentially limit trucks over 26,000 pounds—and I don’t have to tell you all, you know this already—to a single top speed of 60 miles an hour through the use of an electronic engine control unit, which is called ECU, that will be capable of governing a truck’s speed regardless of the speed limit.

On top of this, the Biden administration has been fast-tracking their woke climate change agenda, which is leaving the American people and the transportation industry dangerously vulnerable. It is going to create a lot of problems in the future.

In the next 10 years, the administration’s goal is to force more than half of the people into electric vehicles. But our power grid can’t take it. It is unreasonable. It doesn’t make sense. It is not an all-of-the-above approach, and it is not ready for this rushed implementation, which is purely for the sake of politics.

I have always believed that good politics is good Government. Well, this is bad Government, and it is bad politics. Our grid was

never designed to support a fully electric economy and the push far outpaces the demand for electrification.

A recent study commissioned by the Clean Freight Coalition stated that the price to build out the supporting charging infrastructure to fully electrify the trucking industry—everybody ready for this—would cost \$1 trillion. Not \$1 billion—\$1 trillion. A large burden of that cost being borne by who? Trucking fleets.

And, again, of course, if the trucking fleets are absorbing it, who is really ultimately going to be placed on the chopping block here? The American consumer. They are going to pay the price.

I am telling you, Americans, American citizens, American consumers are getting tired of it. They are tired of politicians coming up with crazy plans to fulfill their political agenda that accomplish nothing and, worse yet, actually hurt.

At the end of the day, both groups are going to pay more, and all the money that goes to this faceless entity that does nothing to help the American consumer or the trucker—and I would maintain the trucker and the American consumer are in this together, and they are in lockstep. Because if the trucker gets hurt, the consumer gets hurt.

Mr. PUGH, the trucking industry moves 72 percent of the Nation's freight with slim margins, again, as you know better than I do. What will be the impact to the trucking industry and, most importantly, the consumer if you are forced to electrify on the current timelines and the current proposals?

Mr. PUGH. Yes, thank you. And, if I may, the American trucker is getting a little tired of it, too, just like the American consumer. They are tired of being the guinea pigs for all of this stuff that comes out of the EPA. We were guinea pigs in 2008, we were the guinea pigs in 2011, and we are going to be the guinea pigs again.

And what's happened? Every time we have been a guinea pig, a whole sector of our industry got wiped out because they couldn't afford this—either couldn't afford it, or once they got it, it didn't work like it was supposed to, and they couldn't afford the maintenance to maintain it and to keep these kind of trucks on the road.

Truckers want clean air. We all want clean air and clean water, but let's let the free market figure this out. Free market always does better than Government heavy-handedness.

Mr. VAN DREW. Absolutely. You are absolutely right. I just want you to know that I believe the majority on this committee supports the truckers, supports the hard work that you do. I mean, Americans support it because, guess what? If you are not there moving goods across this great country of ours, the American people are the ones that are going to suffer, and they know how hard you work. It is a hard job. It is not easy, and we appreciate it.

There has also been legislation introduced to Congress that would increase the minimum required liability insurance level for motor carriers by more than 500 percent. Not 5 percent, not 50 percent—500 percent from the current levels of \$750,000 to \$5 million. This is, obviously, a tremendous increase that I suspect would have a major impact on trucking companies, especially the smaller ones.

This is a country of small businesses, but we keep—when I say “we,” I don't mean all of us in Congress, but there are some folks that keep forgetting about the basis of this country, which is hard-

working men and women who are small businesses. So, for once, we don't again do something to help the small businessmen, but maybe the one time we will.

Can you explain, Mr. Pugh, how the current system is working and what the effects of these proposed changes would have?

Mr. PUGH. Yes. I mean, the current system is working pretty well. There have been plenty of studies come right out of Washington that over 99.4 percent of all accidents are covered with the \$750,000 there is today. That is \$750,000, just for history, that was just sort of pulled out of the air. It wasn't like they did a study or anything to come up with it. And it continues to work, and it is covering.

I don't think there are too many laws or regulations here that come out of Washington, DC, that cover 99.4 percent of all things. And the other 0.6, they said there is no amount of money that could cover it. If you raise these minimums 500 percent, this is nothing but a sellout to all the trial lawyers who got the billboards all up and down the highways saying sue truckers, sue truckers, sue truckers. Can't go anywhere without seeing these billboards. Sue. You are in a truck accident; sue.

We forget that over 80 percent of these accidents are caused by the car, and the cars never carry enough insurance to cover the loss of the trucker. Nobody wants to talk about that.

Mr. VAN DREW. It is what you see on TV—and I am going to wrap up with this. American people are tired of it. Of course, the truckers are tired of it. And, you know what—I don't mean to be crude here, but we are tired of the hard-working average American in whatever job consistently being screwed by politicians. Thank you for your work.

I yield back.

Mr. LAMALFA [presiding]. The gentleman yields back. We have concluded our round of questions here, but I would allow a second round of questions for anybody that wishes to. I will have one myself. I recognize myself for 5 minutes; if there are others that would like to as well.

Let me come back to the automated devices. I am going to focus on Mr. Pugh once again here.

Now, in my personal life I get really tired of getting gonged out all the time because I left the key in the ignition or I am driving around my fields and don't have my seatbelt on as I am jumping in and out and irrigating, and you can't shut the damn things off. The dealer says, oh, it is a safety thing. Well, I have enough of a brain to figure out when I can do it safely or not.

But we are not given that credit, especially as truckers who put in lots of miles—many, many miles—as professionals. So, more and more things are being done to take away their discretion and their ability, especially mom-and-pop truckers that are maybe not covering the vast majority of miles or hours doing so.

So, again, we are talking about automatic emergency braking systems, the speed limiters we talked about, ELDs, which are not very highly favored by the smaller truckers. And then truck shutoff devices that automatically shut the truck off after reaching hours-of-service limits. Now, nothing mankind makes is perfect, so, these systems can all glitch.

I have to wonder about—and we are seeing this on automobiles, cars and pickups, that they glitch. And you have got automatic braking. If it detects you are too close to another car, and you are driving along and the car is jerking on you, trying to do things automatically for you. People aren't perfect, but neither are the devices.

So, Mr. Pugh, talk about—and a scenario I have heard about is that with automatic emergency braking systems, what if you are driving an 80,000-pound rig in an icy condition and something detects that we need to jam on the brakes? What does that do to upset the control of the truck in that situation or others that you know of that you can tell the committee here today?

Mr. PUGH. Yes. Thank you. Yes. In short, it will put you into a skid if you are not real careful or don't know what you are doing. That is where I point out the fact, as I said earlier, cars are much different than trucks. A truck is way longer. It is 65, 70 feet long, the tires are bigger, where the wheels of the tires are at on the road at the time. Then you add in the different kinds of loads.

If you are hauling a low load of pieces of pipe or something, it doesn't stand very high on your trailer, you have a lower center of gravity, that handles completely different than if you are hauling a giant single coil that weighs 50,000 pounds and is 6 feet tall but only 4 feet wide. You are a very high center of gravity, it is easy to tip.

Put liquid into the mix. If you pull a tanker—I pulled a tanker for a little bit. I generally said it felt like you were on a boat all the time, because as you are going down the highway, that stuff is in there sloshing. You are on an icy road and you hit the brakes or they automatically just lock up, and that chemical or something that is in that tanker comes forward, it is going to put you in a heck of a situation. You are going to be passing yourself.

Mr. LAMALFA. The trucker is thinking about that load as he is going, whereas the automatic device just wants to be automatic, right?

Mr. PUGH. Yes. I mean, as a trained trucker—

Mr. LAMALFA [interrupting]. Thinking about that in respect to a liquid and such.

Mr. PUGH. In my opinion, as a trained trucker—and this is what we should be looking at is training truckers instead of coming out with all kinds of electronic devices that dumb down the industry. Let's train the people behind the wheel to drive the truck.

I hauled frac sand for a long time down in West Virginia in the mountains. You have to know what you are doing to drive off-road and go up the side of a mountain. I mean, I was pulled up the side of a mountain with a dozer it was so steep. You can't make computers, in my opinion, that can do these kind of things.

And you know what, we all forget—and you said it yourself, Congressman—computers have bad days, too. I can't get my freaking phone to sync to my 2022 Ford pickup truck half the time, and I think that is pretty basic technology. But it doesn't work a lot.

But now we want to put all these things into trucks and say, hey, you are safer now. We teach pilots to fly the plane before we teach them to fly the plane with all the technology. Let's teach truckers to drive—

Mr. LAMALFA [interrupting]. Well, we had an issue with 737s that they had too much gadgetry on there they were relying on instead of the pilot knowing how to fly the plane, and I wholeheartedly agree with you on that.

The more automated it is, the easier it is for people to get lazy on automobiles. Truckers are pretty disciplined.

But talk quickly about the automatic shutoff devices for reaching hours of service. Now, since these things can glitch—my tractors glitch, my combines glitch. I mean, what kind of scenario would you see of a possible engine shutoff because it reaches hours of service while somebody is still actively driving? What's the possibility of that?

Mr. PUGH. To be clear, Congressman, I don't think there is really a device that shuts your truck off because you are nearing out of service. You do have the ELD in your truck which keeps track of your hours of service. And what that will do is once you go over, it is going to flag you in violation.

Mr. LAMALFA. Right.

Mr. PUGH. Where that becomes a problem, if I may, is drivers every day are left with a decision on whether they can park their truck in a safe place to take a break or be in violation to try to find a safe place.

We saw a tragic accident in Illinois 6 months ago where a bus hit a truck that was illegally parked. That trucker had to make that decision, and he was tired. So, he pulled off on that ramp to get a break because we don't have enough parking in this country.

I drove by that ramp last week going back to Kansas City from my home in Ohio visiting family. That ramp on Sunday morning at 8:30 in the morning, there were 10 trucks down that ramp and out along the side of that highway, that same ramp, because we still have nowhere to park these trucks.

Mr. LAMALFA. I have seen them. Yep. And then we still have the problem, are they carrying hazardous products or livestock that, you know, they got caught in traffic and they need an extra bit of time. There isn't that discretion to get to a location that is safe or be able to offload the livestock. Sometimes you need an extra hour. And then the rules come down so hard upon them.

So, in general, what we are hearing is that—and close on this, Mr. Pugh—we have a general regulatory direction that seems to take away the ability of the individuals to make good decisions, make safe decisions because Government is overriding and a device is overriding.

Is that the general feel of your drivers in your industry?

Mr. PUGH. Yes. I think that is a general feel. I think my drivers would like to start seeing commonsense regulation that is coming from experienced truckers. And instead of making regulations on a false fake driver shortage narrative, which is we have seen over and over and over, that is where this electronic stuff is. Because we keep saying we have this driver shortage that we don't have. We have a training shortage, we have a parking shortage, we have a pay shortage. We don't have no driver shortage.

So, let's keep people in this industry. Let's listen to the people who do the job.

Mr. LAMALFA. Yes. I have violated my own timeline here, so, I better yield back to the committee here.

I appreciate the answers and—so, with that, I don't see anybody else here who wants to go for a second round. So, no further questions from the committee, we will conclude our hearing for today. I would like to thank all of the witnesses for being here and for your testimony.

With that, the committee stands adjourned.

[Whereupon, at 12:01 p.m., the subcommittee was adjourned.]

SUBMISSIONS FOR THE RECORD

Letter of July 23, 2024, to Hon. Eric A. “Rick” Crawford, Chairman, and Hon. Eleanor Holmes Norton, Ranking Member, Subcommittee on Highways and Transit, from Alliance for American Manufacturing et al., Submitted for the Record by Hon. Eric A. “Rick” Crawford

JULY 23, 2024.

Honorable RICK CRAWFORD,
Chair,
Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, Washington, DC 20515.

Honorable ELEANOR HOLMES NORTON,
Ranking Member,
Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, Washington, DC 20515.

DEAR CHAIRMAN CRAWFORD AND RANKING MEMBER NORTON,

In advance of the Subcommittee on Highways and Transit July 24, 2024, hearing to examine pending regulatory and administrative issues at the Federal Highway Administration (FHWA), we write to highlight actions we believe necessary to ensure that federal Buy Clean policies are implemented in a way that enhances the competitiveness of domestic industry, creates good jobs for America’s workers, and reduces pollution by encouraging the use of low-embodied carbon (LEC) construction materials.

With the right implementing policies in place, a preference for LEC construction materials has the potential to incentivize and accelerate capital investments to support strengthening and decarbonization of domestic manufacturing across all of our industrial sectors. Effective implementation of this policy stands to support good jobs in communities around the country and reward companies producing cleaner goods while incentivizing fellow domestic competitors to follow suit.

FHWA has a key role to play in ensuring that the goals of a federal Buy Clean program are met. In March 2024, the FHWA announced the \$2 billion Low-Carbon Transportation Materials Grants Program (LCTM)—as authorized in IRA Section 60506 and codified in 23 U.S.C. 179—to fund procurement of low carbon materials, including concrete (and cement), glass, asphalt mix, and steel. Key details of the program are currently being formulated by FHWA. Thus, our organizations appreciate the opportunity to highlight several critical implementation recommendations necessary for the success of the Buy Clean program. This includes ensuring that incentives to decarbonize are accessible to all domestic firms, fully implementing Buy America policies, and providing clarity, consistency, and certainty for all stakeholders.

FHWA’S BUY CLEAN PROGRAM MUST DISTINGUISH BETWEEN PRIMARY AND SECONDARY STEELMAKING

To meet the goals of Buy Clean, FHWA must structure its program to foster competition among like firms by distinguishing between primary (integrated) and secondary (electric arc furnace, or EAF) steelmaking. Failing to do so risks undermining the intent of the policy by not incentivizing all segments of the industry to reduce emissions. Steel is produced using two distinct feedstocks: primary steel is predominantly produced from iron-ore pellets whereas secondary steel is produced predominantly from scrap metal. Both steel production pathways are critical for maintaining national and economic security, and to meet growing infrastructure demands. In some cases, each is distinctly necessary for different applications.

Given the typically higher emissions intensity of primary steelmaking, a single Buy Clean standard that compares the global warming potential (GWP) of primary steel to that of secondary steel fails to recognize that primary steelmaking will not

be replaced with secondary steelmaking. A single standard would not only adversely impact the climate goals of lowering carbon emissions, but also jobs—specifically union jobs throughout the integrated steelmaking supply chain—by excluding domestic primary producers from Buy Clean markets. Such an outcome further risks displaced production and thereby leaking emissions to countries with lower climate standards.

Distinct standards will push primary producers to compete with each other, leading to lower emissions, while fostering similar competition among secondary steel facilities. A single steel standard would give primary steel producers no incentive to decarbonize and would merely reward secondary producers for their existing business model. Congress clearly intended for the funding authorized in IRA Section 60506 to incentivize and accelerate capital investments in the strengthening and decarbonization of domestic manufacturing across all of our industrial sectors—not for it to exclude primary steel producers and their workers—including union workers—from decarbonization incentives. As longstanding and steadfast backers of Buy Clean policies, our organizations believe that FHWA must adhere to the clear congressional intent underlying this authorization.

Moreover, a bifurcated standard for steel would make FHWA’s Buy Clean program consistent with that of the General Services Administration (GSA), which, in cooperation with the Environmental Protection Agency (EPA), recognized this imperative by distinguishing between primary and secondary steel production processes. To ensure a clear standard is being set for all industry participants across the government, FHWA should incorporate in its solicitation criteria distinct standards for primary and secondary steel consistent with GSA.

BUY CLEAN MUST ACCOUNT FOR BUY AMERICA + BUY CLEAN COVERAGE DISCREPANCIES

The 2021 Build America, Buy America (BABA) Act in the Bipartisan Infrastructure Law (BIL) addressed loopholes, narrow agency application, excessive use of waivers, and weak federal enforcement by harmonizing and modernizing Buy America rules. BABA also expands coverage to more infrastructure materials, programs, and projects. While waivers are still available in select circumstances to overcome short-term market limitations, enforcing BABA fulfills the demand of taxpayers to close loopholes, provide more oversight, and better support U.S. manufacturing and good-paying jobs for workers across various sectors. Successful implementation of BABA will ensure that taxpayer dollars support U.S. supply chains, workers, and communities instead of foreign competitors while preventing leakage of jobs and emissions overseas.

Our organizations have urged that Buy Clean policies be implemented concurrently with full implementation of statutory Buy America requirements, as failure to do so could have negative outcomes for domestic manufacturers and American workers. Further, this would undermine our shared climate goals to grow a cleaner domestic manufacturing sector using the purchasing power of federal acquisition and federal assistance.

While federal assistance through FHWA is subject to Buy America policies, there are many instances when foreign sourcing is permitted—through policy loopholes, waivers or other policies that narrow their application. For instance, cementitious materials have been statutorily exempted as a “construction material” in BABA, meaning there are no equivalent domestic preferences in place for a variety of carbon-intensive materials like cement, concrete, and asphalt. A successful Buy Clean program that relies first on LEC materials produced by U.S. workers must account for these policy shortcomings.

ADDITIONAL BUY CLEAN IMPLEMENTATION ISSUES

Our organizations have highlighted a number of additional actions necessary to build on the success enjoyed to date and ensure these policies have a more meaningful and positive impact in the future. To ensure harmonization, clarity, consistency, and certainty, these recommendations include:

1. Prioritizing a consistent set of definitions for new or previously narrowly used terms in Buy Clean implementation and compliance;
2. Ensuring consistency of underlying datasets and threshold criteria;
3. Expanding the coordinating role of the Federal-State Buy Clean Partnership to avoid unworkable or conflicting policies;
4. Providing technical assistance, particularly to small- and medium-sized enterprises;
5. Improving communications around federal solicitations; and

6. Conducting broad stakeholder engagement, particularly with labor, environmental, other non-governmental organizations, and industry stakeholders.

Thank you for your consideration.

Sincerely,

ALLIANCE FOR AMERICAN
MANUFACTURING.
AMERICAN COUNCIL FOR AN ENERGY-
EFFICIENT ECONOMY.
BLUEGREEN ALLIANCE.
LEAGUE OF CONSERVATION VOTERS.

NATIONAL WILDLIFE FEDERATION.
NRDC ACTION FUND.
SIERRA CLUB.
THIRD WAY.
UNITED STEELWORKERS.

Letter of August 6, 2024, to Hon. Eric A. “Rick” Crawford, Chairman, and Hon. Eleanor Holmes Norton, Ranking Member, Subcommittee on Highways and Transit, from Jim Tymon, Executive Director, American Association of State Highway and Transportation Officials, Submitted for the Record by Hon. Eric A. “Rick” Crawford

AUGUST 6, 2024.

The Honorable RICK CRAWFORD,
Chair,

Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, United States House of Representatives, Washington, DC 20590.

The Honorable ELEANOR HOLMES NORTON,
Ranking Member,

Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure, United States House of Representatives, Washington, DC 20590.

DEAR CHAIR CRAWFORD AND RANKING MEMBER NORTON:

The American Association of State Highway and Transportation Officials (AASHTO) welcomes the opportunity to submit this letter for the record of the hearing entitled “Examining the Department of Transportation’s Regulatory and Administrative Agenda” held on July 24, 2024. AASHTO, representing state departments of transportation (state DOTs) in the 50 states, the District of Columbia, and Puerto Rico, is grateful to the Subcommittee on Highways and Transit for holding an important oversight hearing on the U. S. Department of Transportation’s (USDOT) regulations and implementation of the Infrastructure Investment and Jobs Act.

One key area of focus for the hearing was related to the use of regulations to reduce the tragic number of fatalities and injuries that occur each year on this nation’s roadways. State DOTs have no higher or more urgent priority than ensuring the safety of every user of our nation’s transportation system. State DOT employees work hard every day to keep their families, friends, neighbors and travelers in their states safe when using their transportation networks. Yet this country continues to experience a crisis in which too many users of our transportation system do not make it home safely. It is crucial to address this crisis using all means and methods at our disposal. As called upon by AASHTO President Craig Thompson, the state DOT community is harnessing all their data and best practices to significantly move the needle on safety across the country. AASHTO and our members believe achieving this goal is our shared responsibility and collaborative action offers our best opportunity to achieve it.

In order to resolutely and firmly reinforce the commitment of state DOTs’ to connecting places and communities with a transportation system free of fatalities and serious injuries, AASHTO held a highly successful Safety Summit in October 2023 that brought together a broad array of transportation stakeholders to discuss strategies and steps that can be taken together to achieve this commitment. To continue this momentum, another edition of the Safety Summit is planned for this October. AASHTO also strongly supports the priorities outlined in the USDOT National Roadway Safety Strategy and proudly served as a First Mover among the Allies in Action.

In addition, AASHTO’s Board of Directors passed the Safety Resolution in November 2023 which established AASHTO’s Safety Action Plan, that:

- Promotes sharing notable practices, tools, policies, and other resources among states.
- Promotes a coordinated and consistent data-driven decision-making approach to road safety throughout the project lifecycle.
- Prioritizes resources that need to be developed by AASHTO or others to assist state DOTs in institutionalizing safety.

- Identifies actions for AASHTO councils and committees to undertake individually or jointly to implement and enhance the plan.
- Establishes new partnerships to further promote a culture of safety.

When looking at advancing safety through performance management and target-setting, AASHTO and its members acknowledge and appreciate that what we measure matters, with the nation's state DOTs serving as primary stewards of the federal performance management framework that was enacted in 2012 under the Moving Ahead for Progress in the 21st Century (MAP-21) Act. Since initial implementation began in 2013, with the full effect of the federal law and subsequent iterations of the Federal Highway Administration's regulations being in place since 2018, state DOTs have delivered on the Congressional intent of the performance management provisions—which is to provide a consistent framework to measure the performance of the transportation system.

Under state DOTs' leadership, the national performance management framework has been implemented in a manner that advances a safer and more efficient transportation system while minimizing undue regulatory burdens on states. Given the scale and complexity of this framework, there continue to be recognized challenges to further accomplish a safer and more efficient transportation system, an area in which the state DOTs and USDOT continue to address through their longstanding partnership.

Target setting—including for MAP-21's safety performance measures—is a significantly data-driven and multidisciplinary process that seeks to close the gap between the policy goals and real-world outcomes in a strategic manner. Congress recognized in 23 USC 150 that this strategic approach required target-setting flexibility that best meets the unique needs of each state, which are impacted by a wide range of constraints and opportunities affecting their specific transportation system. Available funding, legislative mandates and priorities, and issues identified through the public involvement process can factor into states' planning and target-setting. In addition, population growth, a growing economy, and increased international trade are expected to result in growing passenger and freight movement, all of which can impact performance measures both on aggregate and per-capita basis—sometimes in different directions. Consequently, it is essential that states and metropolitan planning organizations (MPOs) have the flexibility to set targets, including targets that have performance holding steady or, in some situations, declining. This flexibility is critical to state DOTs to balance the breadth of performance measures they must address.

AASHTO has consistently stated that state DOTs must maintain the ability to set targets for improving, declining, or constant performance because an important function of performance management is to answer two broad questions:

- What performance can be achieved? In other words, what type of performance level can be achieved given the resources available?; and
- What resources are needed? In other words, how much funding is needed to achieve a certain performance level?

Improving targets may or may not be achievable depending on many factors, including trends in the state, the economy, and the level of autonomy the state DOT has to impact activities that could support target attainment. In addition, FHWA's guidance on performance management and target setting states that:

“The FHWA strongly discourages the use of aspirational targets. In 23 CFR 490.101, a target is defined as a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by FHWA.

Setting aspirational targets that are not data-driven, realistic, or achievable does not align with the performance management framework or the stated congressional policy to improve project decision-making through performance-based planning and programming ...”¹

And:

“FHWA strongly discourages using aspirational targets or TZD [toward zero deaths] targets for setting annual targets ...

States and MPOs should ensure their annual targets are data-driven, realistic and achievable. Setting aspirational or TZD targets that are not data-

¹FHWA Transportation Performance Management Frequently Asked Questions, Target Setting, *Should aspirational targets be used as performance targets?*, available at <https://www.fhwa.dot.gov/tpm/faq.cfm>. Accessed 9/28/2022.

driven, realistic or achievable does not align with performance management framework or the stated congressional policy to improve project decision-making through performance-based planning and programming (23 U.S.C. 150(a)) . . .

The Statewide and Metropolitan Transportation Planning Rule (23 CFR Part 450) also requires States and MPOs to take a performance-based approach to planning and programming, linking investment decision-making to the achievement of performance targets in the Statewide Transportation Improvement Program (STIP) and the Transportation Improvement Program (TIP) (23 CFR 450.206 & 23 CFR 450.306). It may be difficult to demonstrate how investments contained in the STIP and TIP link to achievement of targets if the targets are aspirational or not data-driven. This requirement applies to safety targets in addition to other performance areas.”²

Safety will always be the highest priority for state DOTs. AASHTO remains extremely concerned with the increases in roadway fatalities and serious injuries in recent years, and state DOTs are doing all they can—including through performance management—to improve real world outcomes and most importantly, save lives.

Thank you for the opportunity to provide input, and please reach out to Joung Lee, Deputy Director-Chief Policy Officer, with any questions.

Sincerely,

JIM TYMON,
Executive Director,

American Association of State Highway and Transportation Officials.

Letter of July 24, 2024, to Hon. Eric A. “Rick” Crawford, Chairman, and Hon. Eleanor Holmes Norton, Ranking Member, Subcommittee on Highways and Transit, from Kristen Swearingen, Vice President, Legislative and Political Affairs, Associated Builders and Contractors, Submitted for the Record by Hon. Eric A. “Rick” Crawford

JULY 24, 2024.

The Honorable RICK CRAWFORD,
Chairman,

Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit, U.S. House of Representatives, Washington, DC 20515.

The Honorable ELEANOR HOLMES NORTON,
Ranking Member,

Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit, U.S. House of Representatives, Washington, DC 20515.

DEAR CHAIRMAN CRAWFORD, RANKING MEMBER HOLMES NORTON AND MEMBERS OF THE U.S. HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE’S SUBCOMMITTEE ON HIGHWAYS AND TRANSIT:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 67 chapters representing more than 23,000 members, I write to thank you for holding a hearing on “Examining the Department of Transportation’s Regulatory and Administrative Agenda.” This hearing is vital to ensuring the U.S. Department of Transportation conforms with congressional intent. It also provides the U.S. House of Representatives the opportunity to evaluate DOT’s policies and priorities, which have a significant impact on infrastructure projects nationwide.

Since Pete Buttigieg became secretary of transportation in January 2021, he has played a significant role in promoting the Biden-Harris administration’s sweeping environmental and labor initiatives rather than prioritizing efficient and economical infrastructure improvements. Specifically, through notice of funding opportunities and regulations, Secretary Buttigieg has implemented policies that discriminate against businesses and workers in favor of special interests. Rather than welcome all American businesses and workers to participate on infrastructure projects, the DOT stripped the ability of many small businesses to compete fairly for projects.

² FHWA Q&A on Safety Performance Measures Final Rule, HSIP Target Setting, *May States or MPOs establish aspirational or Toward Zero Deaths (TZD) annual targets when those targets are not reasonably achievable in the time frame represented by the target (annually) to meet the requirements of the Safety Performance Management (Safety PM) rule?*, available at <https://safety.fhwa.dot.gov/hsip/spm/faqs.cfm>. Accessed on 9/28/2022.

ABC is extremely concerned with the trajectory of Secretary Buttigieg's DOT. Most critical for ABC and our members are the determinantal rulemakings that the DOT advanced along with the stipulations its has placed on taxpayer-funded infrastructure projects highlighted below:

- *National Electric Vehicle Infrastructure Standards and Requirements:* On Feb. 28, 2023, the DOT's Federal Highway Administration released a final rule that establishes the National Electric Vehicle Infrastructure Formula Program. This rule implements provisions of the Infrastructure Investment and Jobs Act, signed into law in 2021, which include \$7.5 billion for electric vehicle charging stations (including \$5 billion over five years to install EV chargers mostly along interstate highways). The intent of the program is to support the installation of 500,000 electric vehicle chargers across the country by 2030 as part of a domestic push to shift away from gas-powered vehicles. As part of the rule, DOT requires all electricians working on electric vehicle supply equipment either be certified by the International Brotherhood of Electrical Workers' Electric Vehicle Industry Training Program or be a graduate or recipient of a continuing education certificate from a government-registered apprenticeship program with a focus on EVSE installation approved by the U.S. Department of Labor in consultation with the DOT. This discriminatory rulemaking disregards ABC's comments on the proposed rule, which expressed concern the rule would prohibit qualified contractors from building EV chargers and bottleneck workforce development. As of July 23, reports indicate that only seven of 500,000 electric vehicle charging stations have been constructed with the \$7.5 billion in federal investment available through the FHWA's National Electric Vehicle Infrastructure Formula Program.
- *Rebuilding American Infrastructure with Sustainability and Equity Grant Program:* The RAISE Grant Program provides federal assistance to state and local government entities for the purpose of major surface transportation infrastructure projects. At least \$2.275 billion in funding appropriated by the Infrastructure Investment and Jobs Act and other funding sources is available. Unfortunately, the DOT attempted to steer these funds toward applicants that require project labor agreements on their projects by including specific language in the notice of funding opportunity indicating that PLAs will increase applicants' scores for "partnership and collaboration," improving their chance of receiving RAISE funds. ABC has consistently and vigorously opposed government-mandated PLAs and PLA preferences on federal government and federally assisted construction projects, as well as state and local government infrastructure projects. PLAs needlessly increase costs, chill competition and steer hundreds of billions of dollars' worth of construction projects funded by taxpayers to well-connected special interests, i.e., construction unions and contractors signatory to specific construction unions party to a PLA.
- *Additional Grant Opportunities:* Despite the negative impact of language and policies promoting PLA mandates and preferences, ABC has identified a significant number of federal agency grants issued by the Biden-Harris administration similar to the RAISE Program—totaling more than \$270 billion for infrastructure projects procured by state and local governments. These preferences and mandates will increase costs and reduce competition on federally assisted construction projects. Specific to the DOT, ABC has identified 25 federal grant opportunities since 2022, totaling more than \$51 billion, that include project labor agreement preferences. These DOT preferences provide grant applicants preferable treatment, by increasing the score regarding economic competitiveness and partnership. In addition, others clearly state that projects with PLAs will be prioritized. The misguided pro-PLA objectives advanced by Secretary Buttigieg's DOT are wide reaching and extend to the following: RAISE Grants NOFO, Bus/Bus Facilities NOFO, Combined NOFO, Small Shipyard Grants NOFO, Carbon Reduction Program Guidance, Safe Streets and Roads for All NOFO, Natural Gas Distribution Infrastructure Safety and Modernization Grant NOFO, Bridge Investment Program NOFO, Port Infrastructure Development Program Grants NOFO, RAISE NOFO, All Stations Accessibility Program NOFO, Ferry Programs Combined NOFO, Reconnecting Communities Pilot Program NOFO, Wildlife Crossings Pilot Program, Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation Program, Combined NOFO FY2023–2024, Department of Transportation Bridge Investment Program, Large Bridge Project Grants and the Department of Transportation RAISE Grants FY 2024 NOFO.

The DOT policies under the Biden-Harris administration prevent some of the best and most experienced federal contractors from pursuing federal construction contracts funded by taxpayers for no other reason than because these large and small businesses are not willing and able to sign a union agreement. By mandating PLAs, the Biden-Harris administration is steering work toward its special interests, which comprise 10% of the industry, at the expense of taxpayers and free enterprise.

To prevent the DOT from including pro-PLA language within its discretionary grant programs, ABC urges you to co-sponsor H.R.1209, the Fair and Open Competition Act, to ensure federal and federally assisted contract awards occur through a fair and competitive bidding process that allows all qualified contractors to compete on a level playing field based on merit, experience, quality and safety to deliver the highest-quality projects at the best cost.

ABC appreciates the opportunity to comment on the committee's vital oversight of the DOT. It is essential the committee encourages the DOT to prioritize our nation's infrastructure over radical policy initiatives.

ABC members stand ready to build America's infrastructure in the 21st century.
Sincerely,

KRISTEN SWEARINGEN,
Vice President, Legislative and Political Affairs,
Associated Builders and Contractors.

**Statement of the National Association of Small Trucking Companies,
Submitted for the Record by Hon. Eric A. "Rick" Crawford**

The National Association of Small Trucking Companies (NASTC) appreciates the subcommittee's holding this hearing to examine the Department of Transportation's (DOT) regulatory and administrative agenda. Regrettably, the Biden-Harris administration's DOT has wielded an even heavier hand than the Obama administration did. And the costs and burden of this regulatory morass fall disproportionately harshly on small trucking firms.

NASTC is a member-based organization whose 14,000 member companies range from a significant segment that operates as a single-power-unit, owner-operator model to carriers having more than 100 power units; NASTC members average 12 power units. These companies mostly operate in the long-haul, over-the-road, full-truckload, for-hire, irregular-route sector of interstate trucking. NASTC members come from the largest segment of America's long-haul trucking: small motor carrier businesses. They are representative of the vast majority of our nation's commercial motor carriers, those having fewer than 100 power units.

Recent estimates quantify how much the regulatory burden costs the U.S. economy. The National Association of Manufacturers says the total cost is \$3.1 trillion annually.¹ In its analysis, the Competitive Enterprise Institute says the current administration has been much more regulatorily active than its immediate predecessor administrations.² CEI's report puts total compliance costs and economic effects due to federal regulations at \$2.1 trillion annually. DOT ranks third "most active rule-producing executive branch" agency in the U.S. government for FY 2023. President Biden in three years has averaged 87 highly significant rules per year; in four years, President Trump averaged 72 annually, including more than 50 deregulatory actions that reduce the costs regulations impose; President Obama, over eight years, averaged 69 completed economically significant rules annually; over his eight years, President George W. Bush averaged 49 completed economically significant rules per year.

Furthermore, regulatory ping pong is alive and well, including at DOT. The Obama administration proposed a host of trucking regulations. The Trump administration withdrew many of them. The Biden-Harris DOT revived those regulatory proposals, such as the speed limiter rulemaking and the safety fitness determination (SFD) rulemaking. NASTC opposes these regulations.

As we have expressed to the committee many times before, mandatory speed limiters would create rolling traffic jams and increase congestion, frustration, and risky driving tactics—leading to more highway accidents, injuries, deaths, and property loss. Meanwhile, it would deprive small carriers of the ability to drive the speed limit on highways, as opposed to the governed trucks of the megacarriers as a means to control their fuel costs. This would raise costs of operation.

¹ <https://nam.org/issues/regulatory-and-legal-reform/cost-of-regulations/#crains>

² <https://cei.org/studies/ten-thousand-commandments-2024/>

The SFD rule would further confuse the issue that the Compliance Safety Accountability's (CSA) subjective, spottily data-based, unfair-to-small carrier ratings have completely failed to achieve since its initiation in 2010. If this administration's Federal Motor Carrier Safety Administration (FMCSA) were serious about ensuring carrier safety, it would implement the idea NASTC has advocated for several years now: Scale up the new entrant virtual safety inspection such that bi- or triennial safety "audits" are conducted on every carrier with DOT authority (i.e., FMCSA would oversee sufficient numbers of contractors to conduct audits of half or one-third of the population of interstate motor carriers each year); each "audit" should result in issuance of a Satisfactory safety rating, unless objective evidence leads to subsequent investigation; FMCSA should provide extensive due-process measures to ensure a carrier can efficiently, promptly take measures to warrant and expeditiously receive at least a Conditional rating within five days.

Another regulatory burden is the automatic emergency braking (AEB) mandate. This was enacted in the infrastructure law. AEBs in heavy vehicles will cause more wrecks than they prevent. The technology is far too premature to use at scale, much less to mandate on commercial vehicles.

These regulations were rejected over the years since CSA was initiated, and resurfaced under each Democratic administration. They should be rejected now and in the future (and the AEB mandate repealed).

In addition, the Biden-Harris administration threatens trucking and its ability to perform the vital role it plays in our supply chains through several other lines of regulatory assault. One is the Environmental Protection Agency's phase 3 greenhouse gas standard. The EPA reaches the height of absurdity with such an unachievable, unrealistic GHG requirement. This obviously is part of the administration's zealotry for forcing America, including the trucking industry, into all-electric vehicles. The administration's ultimate goal, the elimination of internal-combustion vehicles, faces an American public that rejects that destination.³ Moreover, the cost is prohibitive. The Roland Berger firm has estimated that infrastructure costs alone for fully switching trucking to electric power would cost \$1 trillion.⁴ Then the extra weight of electric batteries translates into less freight that a single tractor-trailer could haul, requiring many more vehicles on the road to carry the same amount of freight larger capacity rigs carry today. Such absurd regulatory burdens will carry unreasonable costs that will necessarily be passed along to shippers, warehousemen, distributors, wholesalers, retailers, and consumers.

Finally, there is the heavy-handed regulatory excess of the administration's assault on the independent contractor model. The Biden-Harris Department of Labor is pursuing policies that would essentially federalize the California AB5 law and its "ABC test" for worker reclassification. Blue-collar entrepreneurs in the trucking sector opt for independent-contractor status. Yet, the Biden administration seeks to impose AB5's reclassifying independent owner-operators as "employees" on the entire United States. Land Line reports, "California has made an adversary out of many in the trucking industry ... [and is] driving truckers out of the state."⁵ AB5's B prong (The service is performed outside the usual course of the business of the "employer.") is impossible for most independent contractors, including those in trucking, to meet.

It would be bad enough if these regulatory measures were enacted by Congress. The end-running of the legislative branch, abuse of administrative authorities, and overreaching regulatory processes corrupt the functioning of our government and make the governed cynical toward the federal government. The data in the findings of the above-cited and other studies show that this administration has been overly energetic with administrative actions that foul up the separation of powers, the constitutional checks and balances, and the accountability of the regulatory and administrative state.

We can assure the subcommittee that the Biden regulatory burden and cost are felt in the small trucking sector. Just in our relatively small population of companies, almost 4,000 member companies have closed or suspended their authority. In addition, we feel that almost all of these regulatory overreaches have violated the spirit and true meaning of the Administrative Procedure Act.

³ https://www.wsj.com/articles/joe-biden-electric-vehicle-mandate-gas-powered-cars-2032-epa-c2a72414?st=zpwhzjf3qa9p5v7&reflink=desktopwebshare_permalink

⁴ https://www.cleanfreightcoalition.org/sites/default/files/2024-03/RB%20Study%20Report_final%5B111225%5D.pdf

⁵ Mark Schremmer, "AB5 creates 'hurdle' for truckers, California Trucking Association leader says," Land Line (April 13, 2023) (<https://landline.media/ab5-creates-hurdle-for-truckers-california-trucking-association-leader-says/>).

This reregulation onslaught aimed at small businesses and the trucking industry has accelerated, it seems, as regulators have lost sight of our way of life, our economy, and our future. To the administration's shame, based on just-released fatality numbers for 2021, since CSA's implementation in 2010, raw fatality numbers have skyrocketed from 3,675 in 2010 to 5,788 in 2021, and from 1.3 per 100 million miles travelled to 1.9 per 100 million miles travelled those same years. And, for the first time in history, over 1,000 occupants of large trucks, almost all being professional CDL holders, lost their lives in highway accidents.

Letter of August 6, 2024, to Hon. Eric A. "Rick" Crawford, Chairman, and Hon. Eleanor Holmes Norton, Ranking Member, Subcommittee on Highways and Transit, from NATSO, Representing America's Travel Plazas and Truckstops, and SIGMA: America's Leading Fuel Marketers, Submitted for the Record by Hon. Eric A. "Rick" Crawford

AUGUST 6, 2024.

The Honorable RICK CRAWFORD,
Chairman,
Highways and Transit Subcommittee, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC 20515.

The Honorable ELEANOR HOLMES NORTON,
Ranking Member,
Highways and Transit Subcommittee, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC 20515.

RE: Letter for the Record of the Highways Subcommittee Hearing, "Examining the Department of Transportation's Regulatory and Administrative Agenda."

CHAIRMAN CRAWFORD AND RANKING MEMBER HOLMES NORTON:

NATSO, Representing America's Travel Centers and Truckstops, and SIGMA: America's Leading Fuel Marketers (together, the "Associations")¹ appreciate the House Transportation and Infrastructure Highways and Transit Subcommittee (the "Subcommittee") for convening a hearing on the Department of Transportation's ("DOT's") regulatory agenda. The Associations are concerned that the Department of Education, in conjunction with DOT, plans to propose a rule that would expand the definition of a vending machine under the Randolph-Sheppard Vending Facility Program to allow electric vehicle ("EV") charging at Interstate rest areas.²

Any administrative action that would allow for EV charging infrastructure to be installed at rest areas on the Interstate right-of-way would be in direct contravention of longstanding, clearly defined statute.³ Congress most recently reaffirmed this position under the Infrastructure Investment and Jobs Act of 2021 ("IIJA").⁴

Federal agencies do not have the authority to circumvent Congress and should therefore dispense with any impending regulatory action that would allow for commercial services at Interstate rest areas, including EV charging infrastructure.

I. THE RANDOLPH-SHEPPARD VENDING FACILITY PROGRAM

The Randolph-Sheppard Act of 1936⁵ authorized the Vending Facility Program to provide blind business owners with remunerative employment and self-support through the operation of vending facilities on federal and other property. Randolph-Sheppard was intended to enhance employment opportunities for trained, licensed blind persons to operate vending facilities. More than simply providing passive income from vending machines on federal property to blind individuals, Randolph-

¹NATSO currently represents approximately 5,000 travel plazas and truckstops nationwide, comprising both national chains and small, independent locations. SIGMA represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel. Together, the Associations represent approximately 90 percent of retail sales of motor fuel in the United States.

²See the Biden Administration's Unified Agenda of Regulatory and Deregulatory Actions, "Amendments to Definitions Under the Randolph-Sheppard Vending Facility Program and Related Provisions of That Program and to the State Vocational Rehabilitation Services Program", currently "pending review" by the Office of Management and Budget, RIN 1820-AB83, available at <https://www.reginfo.gov/public/do/eoDetails?rrid=616662>.

³23 USC 111. Agreements relating to use of and access to rights-of-way-Interstate System.

⁴P.L. 117-58 (2021).

⁵P.L. 74-732, as amended by P.L. 83-565 and P.L. 93-516; 20 U.S.C. Sec. 107 et seq.

Sheppard is a success because it provides blind entrepreneurs with the opportunity to own and operate their own business.

II. THE REST AREA COMMERCIALIZATION BAN AND VENDING MACHINE EXCEPTION

When Congress created the Interstate Highway System in 1956, Congress and community leaders recognized that highways could potentially decimate local businesses, jobs, and tax bases as motorists bypassed cities and towns. Congress therefore included language prohibiting Interstate System rest areas located along the right-of-way from offering commercial services. As a result, a robust off-highway business environment emerged at the Interstate exchanges. Since its enactment, Congress has repeatedly and consistently upheld the ban on offering commercial services on the Interstate right-of-way, including the recently enacted IJJA.

The Surface Transportation Assistance Act of 1982 added a narrow exception for vending machines, with a priority given for such machines operated by blind business owners pursuant to Randolph-Sheppard.⁶ This provision provided meaningful support to the blind community without undercutting the commercialization ban's underlying purpose of protecting off-highway communities.

The Vending Machine Exception directs that:

“Such vending machines may only dispense such *food, drink, and other articles* as the State transportation department determines are appropriate and desirable [emphasis added].”

Congress approved the Vending Machine Exception with the intent that vending machines would offer limited food and beverage products, or other tangible articles, and that the exception would not undercut the general prohibition on offering commercial services, including automotive (i.e., refueling) services, at Interstate rest areas.

III. THE VENDING MACHINE EXCEPTION IS FOR INCIDENTAL PRODUCTS

The Vending Machine Exception was created to allow motorists to purchase incidental products at rest areas. When the exception was enacted, vending machines only provided snack food and beverage products such as candy bars, potato chips, and canned or bottled beverages. These types of products are incidental; the public would not stop at rest areas with the sole purpose of buying such products from vending machines. Instead, motorists stopping at the rest area for a *different* purpose (i.e., to stretch or use the restroom) will purchase something from a vending machine upon arrival. Were more robust food offerings to be made available, such as sit-down or take-out restaurants, motorists would bypass the vending machines and elect to purchase those options, undercutting nearby off-highway businesses and communities in addition to the vending machine operations of blind merchants at rest areas.

Purchasing incidental products at a rest area merely supplements the motorist's brief stop; it poses no threat to off-highway businesses and localities. Off-highway businesses have continued to thrive in the time the Vending Machine Exception has been in place. Had Congress provided a broader exception to the rest area commercialization ban (such as encouraging motorists to stop at the rest area with the *primary* purpose of automotive services or purchasing food), it would have effectively overturned the Interstate rest area commercialization ban, undercutting off-highway businesses and localities. The Vending Machine Exception therefore must be limited to items that *do not directly compete* with off-highway businesses and localities so that the exception does not swallow the broader prohibition against commercializing the Interstate right-of-way.

IV. THE VENDING MACHINE EXCEPTION DOES NOT ALLOW FOR EV CHARGING

Statute is unambiguously clear that the Vending Machine Exception is not a mechanism to allow EV charging infrastructure in the Interstate right-of-way. Such a change in policy requires an act of Congress. As noted above, Congress recently considered, and rejected, this change in policy.

The Vending Machine Exception allows vending machines located along the Interstate right-of-way to “dispense food, drink, and other articles as the State transportation department determines are appropriate and desirable.” The Federal Highway Administration defined vending machines in policy guidance issued in 1992 as follows:

⁶P.L. 97-424, enacted Jan. 6, 1983, at 96 Stat. 2106 [hereinafter the “Vending Machine Exception”].

“A vending machine is a coin or currency operated machine capable of automatically dispensing an article or product.”⁷

Both the law and long-standing agency-established definitions make clear the intent behind the Vending Machine Exception is to provide articles and products to motorists as they briefly stop at an Interstate rest area. No reasonable interpretation of the law would allow for EV charging infrastructure to fall under the definition of a vending machine.

EV charging is an automotive service. Installing EV charging infrastructure at an Interstate rest area would be akin to installing a self-service gas pump in the same location. Both require a motorist to insert currency into a machine that dispenses transportation energy to refuel their vehicle. Congress made its intent clear in 1956 that automotive service stations should not be located in the Interstate right-of-way. This includes the electrified vehicles of today, just as it has included vehicles that are fueled by other alternative fuels, including biomass-based fuels and liquid hydrogen fuel.⁸

V. INSTALLING EV CHARGING INFRASTRUCTURE AT REST AREAS WILL LEAD TO BROAD COMMERCIALIZATION

The installation of EV charging infrastructure at Interstate rest areas will lead to broad rest area commercialization. Motorists today typically use the Interstate rest area to quickly use the restroom and grab refreshments from the vending machines operated by blind business owners before returning to their journey. If motorists stop at an Interstate rest area to charge their vehicle, they will be required to wait for 20–30 minutes without any of the services that a private business might offer. Permitting EV charging at rest areas would inevitably lead EV users, over time, demanding further erosion of the commercialization ban to enable them to purchase food and beverages at rest areas while they charge their vehicles.

VI. IMPLICATIONS FOR PRIVATE SECTOR EV CHARGING INVESTMENTS

The Associations’ members are actively engaging in the National Electric Vehicle Infrastructure (“NEVI”) grant program, which was created under IIJA. The NEVI program has the potential to prompt private sector investments that will enable recharging to look and feel similar to the existing on-the-go refueling experience. Our industry has invested heavily in the personnel necessary to navigate states’ different application processes and criteria, along with the intellectual capital necessary to engage in opaque electricity markets and regulatory regimes that were not designed to drive private capital toward EV charging stations.⁹

If EV charging were made available at rest areas, it would undermine our industry’s existing and prospective investments in EV charging. It will also discourage future participation in federal EV charging grant programs.

VII. CONCLUSION

We appreciate the opportunity to submit our concerns about DOT’s efforts with the Department of Education to expand the definition of vending machine in the Randolph-Sheppard Vending Facility Program and allow EV charging at Interstate rest areas. Our industry has demonstrated to this Subcommittee its willingness to invest in whatever refueling technology our customers want, including electricity. Regulations such as the proposal to amend the Vending Machine Exception will undermine off-highway businesses and communities and slow private investment in alternative fuels.

Sincerely,

NATSO, REPRESENTING AMERICA’S TRAVEL PLAZAS AND TRUCKSTOPS.
SIGMA: AMERICA’S LEADING FUEL MARKETERS.

⁷Federal Highway Administration, Federal Aid Policy Guide—Non-Regulatory Supplement. Transmittal 6: Vending Machines in Interstate Rest Areas and Abandonment of Interstate Rest Areas (Oct. 5, 1992) *available at*: http://www.fhwa.dot.gov/real_estate/right-of-way/policy_and_guidance/0752sup.cfm. This definition is virtually identical to the Department of Education’s definition of “vending machine” under the Randolph-Sheppard Act. *See* 34 C.F.R. 395.1(y).

⁸*See* 102 Congressional Record, Senate, May 29, 1956, at page 9207, adopting the amendment to prohibit “automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System.”

⁹*See* Testimony of NATSO and SIGMA before the Subcommittee on April 30, 2024, *available at* https://transportation.house.gov/uploadedfiles/04-30-2024_ht_hearing_-_kim_okafor_-_testimony.pdf.

CC: The Honorable Sam Graves, Chairman, House Transportation and Infrastructure Committee
 The Honorable Rick Larsen, Ranking Member, House Transportation and Infrastructure Committee

Letter of July 23, 2024, to Hon. Eric A. “Rick” Crawford, Chairman, and Hon. Eleanor Holmes Norton, Ranking Member, Subcommittee on Highways and Transit, from Catherine Chase, President, Advocates for Highway and Auto Safety, Submitted for the Record by Hon. Eleanor Holmes Norton

JULY 23, 2024.

The Honorable RICK CRAWFORD, Chair,
 The Honorable ELEANOR HOLMES NORTON, Ranking Member,
Committee on Transportation and Infrastructure,
Subcommittee on Highways and Transit, United States House of Representatives,
Washington, DC 20515.

DEAR CHAIR CRAWFORD AND RANKING MEMBER NORTON:

Thank you for convening tomorrow’s hearing, “Examining the Department of Transportation’s Regulatory and Administrative Agenda.” Advocates for Highway and Auto Safety (Advocates) respectfully requests this letter be included in the hearing record.

MOTOR VEHICLE CRASHES ARE A DEVASTATING AND COSTLY PUBLIC HEALTH CRISIS

In 2022, an average of 116 people were killed every day on roads in the U.S., totaling just over 42,500 fatalities.ⁱ An additional 2.38 million people were injured.ⁱⁱ This represents a 29 percent increase in deaths in just a decade.ⁱⁱⁱ Early projections for 2023 traffic fatalities remain at a similar historic high level; nearly 41,000 people are estimated to have died that year.^{iv} Tragically, 7,522 pedestrians and 1,105 bicyclists were killed in 2022, representing a 57 percent and 48 percent increase respectively in the past decade.^v

Truck crashes continue to cause exceedingly high loss of life and injuries. In 2022, 5,936 people were killed and over 160,000 people were injured in crashes involving large trucks.^{vi} Since 2009, which was a historic low, the number of fatalities in large truck crashes has increased by 76 percent.^{vii} In that same timespan, the number of people injured in crashes involving large trucks increased by 117 percent.^{viii} In fatal two-vehicle crashes between a large truck and a passenger motor vehicle, 96 percent of the fatalities were occupants of the passenger vehicle.^{ix}

Several leading behavioral issues continue to be leading factors in traffic fatalities including alcohol-impairment, speeding and lack of restraint use.^x Driver distraction

ⁱ Overview of Motor Vehicle Traffic Crashes in 2022, NHTSA, Apr. 2024, DOT HS 813 560. (Overview 2022).

ⁱⁱ Overview 2022.

ⁱⁱⁱ Traffic Safety Facts 2021: A Compilation of Motor Vehicle Crash Data, NHTSA, Dec. 2023, DOT HS 813 527, (Annual Report 2021); and Overview 2022; [comparing 2013 to 2022].

^{iv} Traffic Safety Facts: Crash Stats, Early Estimate of Motor Vehicle Traffic Fatalities in 2023, NHTSA, Apr. 2024, DOT HS 813 561.

^v Overview 2022; and Annual Report 2021.

^{vi} Overview 2022.

^{vii} Overview 2022 and Annual Report 2021. Note, the 76 percent figure represents the overall change in the number of fatalities in large truck involved crashes from 2009 to 2021. However, between 2015 and 2016 there was a change in data collection at U.S. DOT that could affect this calculation. From 2009 to 2015 the number of fatalities in truck-involved crashes increased by 21 percent, and between 2016 to 2022, it increased by 27 percent.

^{viii} Overview 2022 and Annual Report 2021. Note, the 117 percent figure represents the overall change in the number of people injured in large truck involved crashes from 2009 to 2022. However, between 2015 and 2016 there was a change in data collection at U.S. DOT that could affect this calculation. From 2009 to 2015 the number of people injured in truck-involved crashes increased by 59 percent, and between 2016 to 2022, it increased by 19 percent.

^{ix} Insurance Institute for Highway Safety (IIHS), Large Trucks. See: <https://www.iihs.org/topics/fatality-statistics/detail/large-trucks#comparison-of-large-truck-and-passenger-vehicle-crashes>.

^x National Center for Statistics and Analysis. (2024, April). Overview of motor vehicle traffic crashes in 2022 (Traffic Safety Facts Research Note. Report No. DOT HS 813 560). National Highway Traffic Safety Administration.

is also known to be a principal cause of motor vehicle crashes.^{xi} In 2022, alcohol-involved crashes claimed the lives of 13,524 people, speeding-related traffic crashes killed 12,151 people, and 11,302 people killed in crashes did not buckle up, when restraint use was known.^{xii} This dangerous road epidemic is predicated on dangerous roadway design (See 2024 Dangerous by Design report). Additionally, in 2021, the most recent year for which data is available according to the Non-Traffic Surveillance (NTS) system, an estimated 3,990 people were killed in non-traffic motor vehicle crashes, an increase of 26 percent from 2020.^{xiii} And, since 1990, at least 1,098 children have died in hot cars, including 14 children this year.^{xiv} These issues are persistent, and the solutions are known and available, yet remain underused, underfunded, or unregulated and therefore not required as standard equipment in vehicles.

The financial impact of motor vehicle crashes on our economy and our families is staggering. Conservatively, the annual economic cost of motor vehicle crashes is approximately \$340 billion (2019 dollars).^{xv} In comparison, the budget for the modal agencies within U.S. Department of Transportation (DOT) responsible for roadway safety in 2024 is only a little more than 20 percent of that figure, at \$74.8 billion.^{xvi} Essentially, every person living in the U.S. pays an annual “crash tax” of over \$1,000. These crashes negatively impact businesses as well. According to the Network of Employers for Traffic Safety, the total cost of crashes to employers is more than \$72 billion (2019 dollars).^{xvii} Moreover, the total value of societal harm from motor vehicle crashes in 2019 was nearly \$1.4 trillion.^{xviii}

FEDERAL SAFETY STANDARDS HAVE SAVED HUNDREDS OF THOUSANDS OF LIVES

The National Highway Traffic Safety Administration (NHTSA) has estimated that between 1960 and 2012, over 600,000 lives have been saved by motor vehicle safety technologies.^{xix} Advocates always has enthusiastically championed rulemaking for innovative vehicle safety technologies shown to prevent injuries and deaths because it is effective. In 1991, Advocates led the coalition that supported enactment of the bipartisan Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991^{xx} which included a mandate for front seat airbags as standard equipment. As a result, by 1997, every new car sold in the United States was equipped with this technology and the lives saved have been significant. Airbags have saved an estimated 50,457 lives from 1987 to 2017, according to NHTSA.^{xxi}

Advocates continued to support proven lifesaving technologies as standard equipment in all vehicles in other federal legislation and regulatory proposals. These efforts include: tire pressure monitoring systems;^{xxii} rear outboard 3-point safety belts;^{xxiii} electronic stability control;^{xxiv} rear safety belt reminder systems;^{xxv} brake

^{xi} Blincoe, L., Miller, T., Wang, J.-S., Swedler, D., Coughlin, T., Lawrence, B., Guo, F., Klauer, S., & Dingus, T. (2023, February). The economic and societal impact of motor vehicle crashes, 2019 (Revised) (Report No. DOT HS 813 403).

^{xii} National Center for Statistics and Analysis. (2024, April). Overview of motor vehicle traffic crashes in 2022 (Traffic Safety Facts Research Note. Report No. DOT HS 813 560). National Highway Traffic Safety Administration.

^{xiii} National Center for Statistics and Analysis. (2024, April). NonTraffic Surveillance: Fatality and injury statistics in non-traffic crashes in 2021 (Report No. DOT HS 813 539). National Highway Traffic Safety Administration.

^{xiv} 2024 Hot Car Deaths, Kids and Car Safety, available here: <https://www.kidsandcars.org/hot-cars/2024-deaths>

^{xv} The Economic and Societal Impact of Motor Vehicle Crashes, 2019, NHTSA, Dec. 2022, DOT HS 813 403. (Economic and Societal Impact 2019).

^{xvi} U.S. DOT, FY 2025 Budget Highlights.

^{xvii} Network of Employers for Traffic Safety (NETS), The Cost of Motor Vehicle Crashes to Employers—2019, March 2021, prepared by Ted R. Miller and A. Scott McKnight, Pacific Institute for Research and Evaluation.

^{xviii} Economic and Societal Impact 2019.

^{xix} Lives Saved by Vehicle Safety Technologies and Associated Federal Motor Vehicle Safety Standards, 1960 to 2012, DOT HS 812 069 (NHTSA, 2015); See also, NHTSA AV Policy, Executive Summary, p. 5 endnote 1.

^{xx} Pub. L. 102–240 (Dec. 18, 1991). Statistics are from the U.S. Department of Transportation unless otherwise noted.

^{xxi} Traffic Safety Facts 2018, A Compilation of Motor Vehicle Crash Data, DOT HS 812 981, NHTSA (Nov. 2020).

^{xxii} Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. 106–414 (Nov. 1, 2000).

^{xxiii} Anton’s Law, Pub. L. 107–318 (Dec. 4, 2002).

^{xxiv} Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109–59 (Aug. 10, 2005).

^{xxv} *Id.*

transmission interlocks;^{xxvi} safety belts on motorcoaches;^{xxvii} rear-view cameras;^{xxviii} safer power window switches;^{xxix} advanced driver assistance systems (ADAS);^{xxx} impaired driving prevention technology;^{xxxi} enhanced vehicle hood and bumpers to better protect vulnerable road users;^{xxxii} systems to address the issue of unattended children in vehicles;^{xxxiii} and, advanced head lamps.^{xxxiv}

Requiring proven safety technologies as standard equipment in vehicles also promotes traffic safety equity for new car buyers, the next generation of used car buyers, other vehicle occupants and road users outside the vehicle when the rulemaking includes them, as it should when applicable. Rulemaking accelerates fleet penetration and amplifies the safety benefits of the technology while curbing its cost due to economies of scale.

Advocates also publishes an annual *Roadmap to Safety* report. This comprehensive tool provides a guide for communities, state legislatures, governors, Congress, and the DOT on how to reverse the trend of skyrocketing deaths and injuries on U.S. roads.

In stark contrast to the effectiveness of federal standards and proven safety technology, voluntary agreements have been found to be wholly ineffective. In fact, Congress rejected voluntary standards over 50 years ago when it passed the National Traffic and Motor Vehicle Safety Act in 1966. As the Senate Committee Report stated, “The promotion of motor vehicle safety through voluntary standards has largely failed. The unconditional imposition of mandatory standards at the earliest practicable date is the only course commensurate with the highway death and injury toll.”^{xxxv}

Voluntary agreements typically produce weak, limited outcomes that do not represent the best practices and state-of-the-art technology or systems. For example, the voluntary agreement announced by automakers in September 2019 on technology to prevent hot car deaths of children prolonged the timeline to get this equipment into new cars even though it is available at a very minimal cost now.^{xxxvi} The agreement also failed to include the important component that the systems must detect and alert to the presence of children who have been unknowingly left in or gained access to hot cars.^{xxxvii} Over two decades ago, in April 2001, General Motors (GM) announced it would equip its new cars with technology that “can detect motion as subtle as the breathing of an infant sleeping in a rear-facing child safety seat” with the intent to begin rollout in 2004.^{xxxviii} Yet, to date GM, and most other original equipment manufacturers (OEMs), still do not equip vehicles with such a safety system, and systems it does install only monitor the vehicle’s rear doors instead of using a sensor to detect the presence of a child. In fact, Kids and Car Safety has documented hot cars incidents involving seven children who have died in vehicles equipped with door sequencing features.^{xxxix} Since 1990, nearly 1,100 children have died in hot car incidents and at least another 7,500 survived with varying types and severities of injuries, according to data collected by Kids and Car Safety.^{xl}

Most recently, the U.S. DOT issued a Final Rule on automatic emergency braking (AEB) for light vehicles which supports this position, “Voluntary measures are intended to supplement rather than substitute for the FMVSSs, which remain

^{xxvi} *Id.*

^{xxvii} Moving Ahead for Progress in the 21st Century (MAP-21) Act, Pub. L. 112–141 (Jan. 3, 2012).

^{xxviii} Cameron Gulbransen Kids Transportation Safety Act of 2007, Pub. L. 110–189 (Feb. 28, 2008).

^{xxix} *Id.*

^{xxx} Infrastructure Investment and Jobs Act, Pub. L. 117–58 (Nov. 15, 2021).

^{xxxi} *Id.*

^{xxxii} *Id.*

^{xxxiii} *Id.*

^{xxxiv} *Id.*

^{xxxv} Committee Report on S. 3005, The Traffic Safety Act of 1966, June 23, 1966, at 271, 273, 274.

^{xxxvi} Leading Automakers’ Commitment to Implement Rear Seat Reminder Systems, Alliance of Automobile Manufacturers, Inc. and Association of Global Automakers, Inc. (Sep. 2019).

^{xxxvii} *Id.*

^{xxxviii} General Motors News Release, “General Motors Announces Important New Technology to Help Save Children Trapped in Hot Cars,” (April 26, 2001).

^{xxxix} Information documented by Kids and Cars Safety available at: https://www.kidsandcars.org/document_center/download/Hot-car-deaths-in-vehicles-with-end-of-trip-reminder-alerts.pdf

^{xl} 2024 Hot Car Deaths, Kids and Car Safety, available here: <https://www.kidsandcars.org/hot-cars/2024-deaths>

NHTSA's core method of ensuring that all motor vehicles can achieve an adequate level of safety performance.”^{xli}

THE INFRASTRUCTURE INVESTMENT AND JOBS ACT (IIJA) MUST BE IMPLEMENTED WITH EXPEDIENCY AND THOROUGHNESS

Commonsense solutions were advanced by this Subcommittee during the consideration of the Infrastructure Investment and Jobs Act (IIJA).^{xlii} These include provisions and robust appropriation levels to advance the Safe System Approach (SSA) and Complete Streets policy which undertake a holistic method to improve safety for all in the roadway environment. Vehicle safety technology and roadway infrastructure improvements designed to upgrade safety have great potential to complement each other, ensure redundancy and save lives. For example, the IIJA authorizes safety upgrades to the Highway Safety Improvement Program (HSIP) which will help to protect vulnerable road users, such as infrastructure features that calm traffic and reduce vehicle speeds, separate road users to minimize conflicts, and deter dangerous driving. It also includes provisions requiring AEB for passenger motor vehicles and large trucks.^{xliii} According to the Insurance Institute for Highway Safety (IIHS), AEB has the capability to reduce car front-to-rear crashes with injuries by 56 percent and large truck front-to-rear crashes by 41 percent.^{xliv} NHTSA estimates that requiring AEB on light vehicles will save at least 362 lives and mitigate 24,321 non-fatal injuries annually.^{xlv} In addition to curbing the physical and emotional toll on families, the ripple effect of crash reductions is wide-ranging and results in less damage to infrastructure, less congestion caused by crashes, less crash related costs, and less expenditure of first responder and health care resources, among others.

While Advocates lauds NHTSA for issuing a Final Rule earlier this year that requires passenger vehicles be equipped with an AEB system that detects pedestrians, the agency must promptly complete the rulemaking requiring AEB on heavy vehicles as well as other required rules to save lives and meet the deadlines set by Congress.^{xlvi} These include rulemakings involving advanced impaired driving technology; systems to address the issue of unattended children in vehicles leading to pediatric heatstroke; technology to curb driver distraction and automation complacency; lane departure warning and lane keeping assist systems; adaptive driving beam headlamps; upgrades to hoods and bumpers to better protect vulnerable road user safety; updates to the New Car Assessment Program (NCAP); seat belts for limousine passengers; strengthening seatback safety standards; and, automatic shutoff and keyless ignition systems. Additionally, numerous safety rulemakings mandated by Congress in laws preceding the IIJA are exceedingly overdue.^{xlvii}

ADDITIONAL SAFETY SOLUTIONS MUST BE ADVANCED

Several bills introduced in this Congress would help address the unacceptable death and injury toll on our Nation's roads and should be enacted without delay. These include: Complete Streets Act (S. 3670/ H.R. 7082); DOT Victim and Survivor Advocate Act (H.R. 8349); End DWI Act (H.R. 8213); Pedestrian Hazard, Awareness and Safety Expansion (PHASE) Act (HR 6111); Save Our Pedestrians Act of 2024 (H.R. 7191); She Develops Regulations In Vehicle Equality and Safety (She DRIVES) Act; and, Sarah Debbink Langenkamp Active Transportation Safety Act (S. 3964/ H.R. 1668).

Congress should take additional actions to address the public safety crisis on our Nation's roads. The IIJA permitted federal funding for automated enforcement (speed and red-light cameras) in work and school zones.^{xlviii} Congress should include high injury networks and continue to encourage the use of this technology to address dangerous driving behaviors. Further, drugged impaired driving poses a significant threat to roadway users. Establishing roadside testing technology, accelerating research to determine a causal link and a standard for cannabis impaired driving, and substantial funding for law enforcement training can all help to address this deeply concerning and growing issue.

^{xli} 89 FR 39686 (May 9, 2024).

^{xlii} Pub. L. 117-58 (2021).

^{xliii} Pub. L. 117-58, § 24208 (2021).

^{xliv} IIHS, Real World Benefits of Crash Avoidance Technologies (Dec. 2020).

^{xlv} 89 FR 39686, 39687 (May 9, 2024).

^{xlvi} 89 FR 39686 (May 9, 2024).

^{xlvii} See Attachment A.

^{xlviii} Pub. L. 117-58, § 24102 (2021).

Unfortunately, several misguided measures introduced in this Congress would harm public safety and thus, should not become law. These include: the MOVE Act (HR 7496); Safer Highways and Increased Performance for Interstate Trucking (SHIP IT) Act (H.R. 471); Ceasing Age-Based (CAB) Trucking Restrictions Act (H.R. 267); Deregulating Restrictions on Interstate Vehicles and Eighteen Wheelers (DRIVE) Act (H.R. 3039); Licensing Individual Commercial Exam-takers Now Safely and Efficiently (LICENSE) Act (S. 1649/ H.R. 3013); Safe Routes Act of 2023 (S. 1818 /H.R. 2493); proposed 91,000 lb. pilot program for commercial trucks (HR 3372); and, Sections 131–134 and an adopted amendment (Clyde En Bloc) in the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2025 (H.R. 9028).

CONCLUSION

Thank you for your consideration of these crucial issues. We look forward to continuing to work with you to improve safety on our nation's roadways.

Sincerely,

CATHERINE CHASE,
President, Advocates for Highway and Auto Safety.

CC: The Honorable Sam Graves, Chair, U.S. House of Representatives Committee on Transportation and Infrastructure
The Honorable Rick Larsen, Ranking Member, U.S. House of Representatives Committee on Transportation and Infrastructure
Members of the U.S. House of Representatives Committee on Transportation and Infrastructure



ADVOCATES
FOR HIGHWAY
& AUTO SAFETY

Vehicle Safety Rulemakings Mandated by the Infrastructure, Investment & Jobs Act (Pub. L. 117-58)

Statutory deadlines to issue final rules are in **red**.

All dates provided by agency for rulemaking actions are per the Spring 2024 Semi-Annual Regulatory Agenda.

- **Light Vehicle Automatic Emergency Braking (AEB) with Pedestrian AEB**
 - Mandated in Section 24208.
 - NHTSA issued NPRM in June 2023.
 - NHTSA issued Final Rule in May 2024.
- **Minimum Performance Standards for Lane Departure Warning and Lane-Keeping Assist Systems**
 - Mandated in Section 24208.
 - NHTSA estimates that an NPRM will be issued in April 2025.
- **Heavy Vehicle AEB (DUE – November 2023)**
 - Mandated in Section 23010.
 - NHTSA issued NPRM in July 2023.
 - NHTSA estimates Final Rule will be issued in January 2025.
- **Advanced Impaired Driving Technology (DUE – November 2024)**
 - Mandated in Section 24220.
 - ANPRM issued in January 2024.
- **Rear Designated Seating Position Alert (Hot Cars) (DUE – November 2023)**
 - Mandated in Section 24222.
 - NHTSA estimates that an NPRM will be issued in April 2025.
- **Reduction of Driver Distraction**
 - Mandated in Section 24209.
 - Requires research on driver monitoring systems.
- **Seatback Safety Standards**
 - Mandated in Section 24204.
 - NHTSA estimates that an ANPRM will be issued in July 2024.
- **Amend FMVSS No. 108 For On-Vehicle Headlamp Testing (DUE – November 2023)**
 - Mandated in Section 24212.
 - NHTSA estimates that an NPRM will be issued in March 2025.
 - Final Rule to permit adaptive headlamps issued February 2022.
- **Hood and Bumper Standards**
 - Mandated in Section 24214.
 - NHTSA has yet to initiate rulemaking.

- **Automatic Shutoff and Keyless Ignition Systems (DUE – November 2023)**
 - Mandated in Section 24205.
 - NHTSA estimates that a Supplemental NPRM will be issued in May 2025.
- **New Car Assessment Program (NCAP)**
 - Mandated in Section 24213.
 - NHTSA issued RFC in March 2022.
 - NHTSA issued RFC on pedestrian crashworthiness tests in May 2023.
- **Underride Protection**
 - Mandated in Section 23011.
 - Final Rule on rear guards issued in June 2022.
 - NHTSA issued ANPRM on side underride guards in April 2023.
- **Seat Belts in Limousines (DUE – November 2023)**
 - Mandated in Section 23023.
 - NHTSA estimates that NPRM will be issued in April 2025.

Letter of July 18, 2024, to Hon. Sam Graves, Chairman, and Hon. Rick Larsen, Ranking Member, Committee on Transportation and Infrastructure, and Hon. Eric A. “Rick” Crawford, Chairman, and Hon. Eleanor Holmes Norton, Ranking Member, Subcommittee on Highways and Transit, from Institute for Safer Trucking and Road Safe America, Submitted for the Record by Hon. Eleanor Holmes Norton

JULY 18, 2024.

The Honorable SAM GRAVES,
Chair,
Committee on Transportation and Infrastructure, U.S. House of Representatives.
 The Honorable RICK LARSEN,
Ranking Member,
Committee on Transportation and Infrastructure, U.S. House of Representatives.
 The Honorable RICK CRAWFORD,
Chair,
Subcommittee on Highways and Transit.
 The Honorable ELEANOR HOLMES NORTON,
Ranking Member,
Subcommittee on Highways and Transit.

DEAR CHAIRS GRAVES AND CRAWFORD AND RANKING MEMBERS LARSEN AND HOLMES NORTON,

We write to express our serious concerns regarding the Department of Transportation’s (DOT) continued delay in implementing two critical rulemakings essential for improving truck safety on our nation’s roads: the requirement for automatic emergency braking (AEB) on all new large trucks, and the mandate for speed limiters in large trucks weighing 26,001 pounds or more.

These delays could not have come at a worse time. In 2022 alone, truck crash fatalities reached a staggering total of 5,936 and injuries exceeded 160,000. These alarming figures continue a trend of worsening truck safety since 2009. Unfortunately, the DOT has continued their troubling trend of inaction and delay.

The pushback of the AEB rule for large trucks is extremely troubling. Congress recognized the necessity of this safety technology when they mandated its use as part of the Infrastructure Investment and Jobs Act (IIJA) in 2021. By reducing impact speeds or preventing the crash entirely, AEB could be the difference between life and death in instances of driver fatigue, distraction, and impairment.

In addition, the DOT has been deliberating on the implementation of a heavy vehicle speed limiter rule since petitioned in 2006, so it strains the credibility of the agency that the government has had insufficient time to move this rule forward. Speed limiters are a vital and proven tool in ensuring that large trucks operate at

safe speeds, which directly aligns with one of the five pillars of the Administration's Safe System Approach: Safer Speeds.

The DOT's inaction not only is counter to their own Safe System Approach, but more alarmingly puts the lives of countless Americans at risk. It is imperative that we hold the DOT accountable for these delays and urge them to expedite the rule-making processes for both AEB systems and speed limiters in large trucks.

We respectfully urge the Subcommittee to question the DOT on the reasons behind these delays and to advocate for the swift implementation of these critical safety measures. The lives lost to truck crashes are not just statistics; they are beloved family members, friends, and community members whose deaths could be prevented with timely and effective regulatory action.

Thank you for your attention to this pressing issue and for your commitment to improving truck safety on our nation's highways.

Sincerely,

INSTITUTE FOR SAFER TRUCKING.
ROAD SAFE AMERICA.

APPENDIX

QUESTION FROM HON. DINA TITUS TO TIM DUIT, PRESIDENT, DUIT CONSTRUCTION COMPANY, INC.; ON BEHALF OF THE AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION (ARTBA)

Question 1. Your testimony notes that roughly 900 fatalities occur in and around transportation construction worksites every year. Unlike most transportation projects, infrastructure solutions to protect work zones are not permanent and need to take into account the temporary and often mobile nature of a roadway construction site. Furthermore, a tow truck driver is killed every six days due to the dangers they face on the front lines. That's why I have been a longtime supporter of a House resolution, which passed out of this Committee, to promote "move over" laws.

For construction workers, what specific types of projects or safety interventions should Congress consider funding to reduce fatalities and ensure a safe workplace?

ANSWER. The safety and welfare for all those who work or travel on America's transportation network are the highest priorities for the American Road and Transportation Builders Association (ARTBA).

Safety efforts are part of—and must be aligned with—a comprehensive approach that includes operations, maintenance, education and emergency response efforts. Congress can play an important role in protecting roadway workers by implementation of the following initiatives:

1. The Infrastructure Investment and Jobs Act placed a significant emphasis on protecting "vulnerable road users" or VRUs. Subsequently, the U.S. Department of Transportation has required states to include protections for VRUs in their state Strategic Highway Safety Plans (SHSP). While roadway workers are by definition VRUs, very little recognition is being given to them on the SHSPs. Congress could provide more direct support for worker protection as VRUs.
2. We have seen significant improvements to pedestrian safety in school zones thanks to the use of speed safety cameras and increased law enforcement. Congress should consider more aggressive support for these applications in roadway work zones, as well.
3. Congress created the National Work Zone Safety Information Clearinghouse to create improved information and communication about the need for work zone safety. The resources devoted to the operation have dwindled and not kept up with inflation. Increased funding for the Clearinghouse, particularly focused on driver awareness and speed compliance, is needed to keep pace with the increasing numbers of work zone related fatalities and injuries.
4. The Highway Safety Improvement Program (HSIP) should remain focused on infrastructure safety activities, while also supporting collaborative safety strategies and worker protection.
5. Positive protection, wherein a physical barrier divides a work zone from traffic in specific situations, is an effective means of worker protection. Congress should consider policies that include clear definitions and more consistent application of positive protection to encourage its greater use on highway construction projects.
6. Congress should support efforts to study and address mental health rates in the U.S. construction industry. Currently, suicides in the industry are more than four times the national average. Devoting resources to improving total worker health is also important to ensuring a safe workplace.

QUESTIONS FROM HON. STEVE COHEN TO WILLIAM “LEWIE” PUGH,
EXECUTIVE VICE PRESIDENT, OWNER-OPERATOR INDEPENDENT
DRIVERS ASSOCIATION (OOIDA)

Question 1. The Infrastructure Investment and Jobs Act (IIJA) directed the U.S. Department of Transportation (DOT) to implement rules on rear and side underride guards. OOIDA has expressed strong opposition toward these devices.

Considering the physical size and weight mismatch between commercial motor vehicles and passenger vehicles, as well as between commercial motor vehicles and vulnerable road users, how does OOIDA propose to address the gory dangers of underride accidents without placing all responsibility on victims?

ANSWER. This question unfortunately demonstrates a major disregard for the safety of truckers, who are also victims of underride crashes. Truckers are not immune to serious injury or death in an underride crash simply because they are operating larger and heavier vehicles. In fact, according to the Bureau of Labor Statistics, operating a commercial motor vehicle (CMV) is one of the top 10 most dangerous occupations for Americans. We are disappointed a long-time member of the House Transportation & Infrastructure Committee doesn't better appreciate the safety risks our members face when they are involved in collisions of any kind.

Your question erroneously states IIJA “directed the U.S. Department of Transportation (DOT) to *implement rules* on rear and side underride guards” [emphasis added]. While IIJA included an enhanced rear underride guard requirement, which OOIDA supported, the bill only required additional research and feasibility assessments involving side underride guards. The legislation provided DOT the opportunity to develop performance standards only “if warranted”, but by no means directed DOT to implement any rules on side underride guards.

This is an important distinction to make, as DOT was also directed to provide your Committee with a determination as to whether the Secretary intended to develop performance requirements following the additional research and assessment. DOT deferred this determination until it received recommendations from the Advisory Committee on Underride Protection (ACUP) and completed an analysis of the comments received on its Advanced Notice of Proposed Rulemaking (ANPRM). While all these factors have been completed, DOT has not advanced the rulemaking. Considering the department has a long history of declining to pursue such mandates due to their inherent impracticality and analyses that consistently show costs would dramatically outweigh safety benefits, coupled with the defective and clearly biased final report produced by the ACUP's ‘majority’ members, we anticipate DOT will ultimately determine performance standards remain unwarranted.

We likely agree CMVs are involved in crashes with passenger vehicles at an unacceptable rate, but it's important to remember the Commercial Vehicle Safety Alliance estimates 70% of these crashes are caused by the passenger vehicle driver. Therefore, it stands to reason passenger vehicle drivers are likely responsible for an even larger portion of underride crashes due to the nature of these accidents. When discussing the responsibility for reducing underride crashes, we believe stakeholders must better prioritize safety policies targeting those most commonly responsible for collisions. We find it remarkable that leading proponents of side underride guard mandates remain focused almost exclusively on unproven, impractical, and cost-prohibitive crash mitigation proposals, with little to no attention paid to preventing underride crashes from occurring in the first place.

This glaring oversight is perfectly illustrated by the ACUP's ‘majority report’. In IIJA, Congress explicitly directed ACUP to “provide advice and recommendations to the Secretary on safety regulations to *reduce underride crashes* and fatalities relating to underride crashes” [emphasis added]. Unfortunately, the ‘majority’ members of ACUP were so predisposed to produce a report that featured a side underride guard mandate they nearly forgot about the first objective you prescribed entirely—reducing underride crashes. For example, the ‘majority report’ says nothing about the need to improve passenger vehicle driver training, especially involving how to safely share the road with CMVs, and only recommends flashing light mandates for trailers when addressing the growing problem of distracted driving, which is unquestionably insufficient. Considering these proponents have continuously reached legislative and regulatory dead-ends in their quest to impose a clearly unworkable and ineffective mandate, we find their lack of interest in crash prevention solutions striking.

Question 2. The Advisory Committee on Underride Prevention was convened to advise the DOT on underride crashes, but it appears that the only proposal that the

“majority” and “minority” agreed on was that more research and analysis are required.

How can Congress help encourage parties with such divergent opinions to reach actionable conclusions?

ANSWER. First, Congress is unquestionably responsible for the failure of the ACUP. Over our objections, you deliberately authorized an unbalanced panel of stakeholders and tasked them with reaching consensus on ways to reduce underride crashes and fatalities related to them. At the time, we warned that purposely granting such an advantage to biased, inexperienced, and unqualified advocates would jeopardize the panel’s ability to achieve its mission of developing a concise, data-driven report that garnered consensus support among participants and stakeholders.

ACUP conducted a series of public meetings on various underride topics beginning in May 2023. Over the course of these meetings, ACUP predictably failed to work in a collaborative and consensus-driven fashion. Safety advocacy representatives brazenly manipulated their numerical advantage in membership to approve a motion to redefine “consensus” as a simple majority that minimized opposing viewpoints of other ACUP participants. As a result, the Committee was forced to produce a ‘majority’ report and a dissenting ‘minority’ report along with individual letters of concurrence and/or non-concurrence rather than a single, unified document. This represents a complete and total failure of the ‘majority’ members to follow crystal clear Congressional direction. If these advocates can’t be compelled by a sympathetic Congress to work in a collaborative manner to achieve their goals, we struggle to understand why you’re asking truckers how parties with such divergent opinions can reach actionable conclusions.

If you genuinely want to develop solutions supported by diverse stakeholders, our advice is you stop pacifying and empowering those who not only continue to display an open hostility to collaboration with industry, but have gone so far as to redefine the term “consensus” to advance their single-minded objectives.

OODA recognizes that both truckers and the driving public share responsibility for reducing underride crashes, as well as potential injuries and fatalities resulting from them. Demonstrating this, our 2019 letter to you outlining our priorities for surface transportation reauthorization (ultimately IIJA), explained, “we support the establishment of an enhanced rear underride guard on the manufacture of new trailers”. Our support for this requirement was rooted in the fact the equipment would improve safety in a cost-effective manner, without presenting operational challenges or safety concerns for truckers. Enhanced rear guards are a reality today because all stakeholders agreed their installation was a practical solution. Clearly, there are opportunities for stakeholders to work together to improve underride safety.

QUESTIONS FROM HON. STEVE COHEN TO BETH OSBORNE, DIRECTOR, TRANSPORTATION FOR AMERICA (T4AMERICA)

Question 1. Over 22,000 students take school buses in Memphis, Tennessee, and most walk to school bus stops. Unfortunately, the city tops the list of those that are Dangerous by Design for pedestrians. Furthermore, laws defining illegal passing around school buses and stop-arm violations vary from state to state and are not consistently enforced.

Question 1.a. How can roads be designed to support the safety of students when they get on and off school buses?

Question 1.b. How can we invest in school bus safety while balancing other priorities like increasing accessibility or minimizing congestion?

ANSWER to 1.a. & 1.b. My organization has been writing about the need for changes to street design for a long time—the first edition of Dangerous by Design came out in 2009. Despite the discouraging trends in pedestrian safety, our message remains consistent. In order to make environments safer for people walking, we need to actually change our environments. The data are clear that improving street design to slow cars, reduce conflict points, and provide proper and consistent infrastructure for pedestrians is the only way we’ll move the needle on safety.

This is the point of Vision Zero: roadway design impacts behavior, and high speed is only appropriate on a separated roadway, not around cross streets, stopping vehicles, pedestrians, and especially school children.

Streets that are designed for speed enable, if not outright encourage, reckless driving behavior. And these are the places where people are killed while walking, biking, and rolling. In the same way that we know what design interventions can save lives, we know what street designs contribute to the rising fatalities. A driver

traveling 45 mph on an arterial road will find it hard to see the arm on the bus go up and react in time to stop for the school children crossing. That is because the road is not designed for stops: it is designed like a highway and drivers react appropriately. On some level we know this, so enforcement seems unfair, as the roadway design is unfair, setting the driver up to make an error.

If we want a child to be safe on the street when they get off the school bus, streets need to be redesigned and repurposed to provide safe, accessible, and convenient places for people walking. Using medians, curb extensions, and pedestrian refuge islands can achieve this while simultaneously delivering important cues to drivers on how to safely navigate the space. FHWA has really good guidance on pedestrian safety countermeasures. We know what to do. We don't do it because people fear it will lead to slower vehicle movement and congestion, which is a higher priority than the safety of the people using the transportation system. We are going to have to face and own it or reckon with it if we want different results.

What is interesting is that the U.S. is terrible at providing smooth, convenient, predictable auto travel. Trip lengths have increased across the board and congestion is far worse today than 30 years ago. Congestion isn't even the right goal, access to jobs and essential services is the point. If people could get where they needed to go in 10 minutes with traffic or in 50 minutes with no traffic, almost everyone would choose the former (and the latter is vastly more expensive). Access to jobs and essential services (schools, groceries, banks, etc.) can be addressed by improving vehicle movement, transit service, walking and biking or economic development (build more jobs and stores, and build some closer to people that don't have them close by). The choice isn't congestion v. safety: it is speedy vehicles v. safety with better access to the things we need.

QUESTIONS FROM HON. COLIN Z. ALLRED TO BETH OSBORNE, DIRECTOR, TRANSPORTATION FOR AMERICA (T4AMERICA)

Question 1. Ms. Osborne, you're likely aware that Artificial Intelligence, or AI, has emerged as a useful tool across all industries including in the transportation sector. In fact, in May 2024, DOT published a request for information on the "Opportunities and Challenges of Artificial Intelligence in Transportation." Are you concerned about the impacts of potential AI regulations on the transportation sector? How can we ensure appropriate regulation without suppressing innovation?

ANSWER. Artificial Intelligence in transportation, like many new tools and technologies, has the power to transform the way we travel, the efficiency of the transportation system and how our communities are designed. However, if we want any tool or technology to accomplish a particular goal, we need a policy that steers it in that way. Tools have no capacity to deliver any particular outcome without that policy. Automobiles were the new technology a century ago and yet the transportation system varies across U.S. cities and the world, based on how that tool was deployed.

My organization is currently using AI to evaluate how federal funding under the Infrastructure Investment and Jobs Act (IIJA) will impact GHG emissions. AI allows us to go through 50,000 projects with a small staff. We will use that same technology to see how current spending will affect the state of repair of our roads and bridges among other outcomes. AI can help us determine how many places people can reach by all modes of travel too. But the AI does not inherently know that this is the goal.

Many have concerns about the safety of AI in vehicles, both in terms of hacking and the vehicle operating in a way that endangers people in and around those vehicles. I have to leave the issue of hacking to others. But in terms of safety, I fear that we program the AI to prioritize vehicle movement, just as we have in all other rules, designs and procedures. As a result, our current transportation system is the most unsafe in the developed world (by a lot)—and yet we have all the technologies that others with much safer roads do. Without a change in our policies and designs, AI will likely help us build more of what we have been building with more of the same results, but faster.

Recognizing that, it seems safe to proceed carefully, testing the impact of AI deployment. It is not as if we are risking holding back an outcome that only AI can identify or know. It is our job to test how well it works in enacting our priorities rather than test every possible application without a sense of what we are trying to accomplish.

My concern is that, in AI (and in automation more generally), people see what they want to see. For some, an automated vehicle is a way to give more people access to a private automobile; while for others, it is a way to reduce the number of

cars on the road. Though contradictory, both sides see the future they wish for. AI as the Rorschak test of transportation futures.

AI will only produce the outcomes we want to the extent we deploy it to do so. And that brings us to the core of the problem with our transportation system: our national transportation policy is, currently, to send money to the states to build transportation things. Throughout my career, we have been able to agree on little more. AI will not chose our priorities for us. We have to do that.

QUESTIONS FROM HON. DINA TITUS TO BETH OSBORNE, DIRECTOR, TRANSPORTATION FOR AMERICA (T4AMERICA)

Question 1. In 2022, 235 people were killed on roads in Clark County, Nevada, with 85 of those deaths resulting from excessive speeding. The Department of Transportation has listed safer speeds as a top objective of its National Roadway Safety Strategy.

DOT has also proposed additional actions to mitigate fatalities from high speeds, but what more can the administration be doing to protect all road users?

ANSWER. Speeding is incredibly dangerous, but we forget in the country that many legal speeds are just as dangerous. Sixty-three percent of pedestrians—nearly two-thirds—are killed on roads posted for speeds of under 50 mph. These roads are often in busy activity centers that lack sufficient protection for people on foot.

Fundamentally what this country gets wrong is thinking we can have highway speeds in areas with lots of conflict points—driveways, cross streets, on-street parking and vulnerable users. We knew when we built the Interstates that this was impossible which is why we built the Interstates with managed entrances and exits and no development adjacent, cross streets, driveways or vulnerable users. Now we design the danger right in and this is allowed by federal rules and adopted design guides, like the MUTCD and AASHTO Green Book. FHWA does not need to adopt standards and guides that permit dangerous conditions. In fact, they should do the opposite.

As Chris McCahill stated in a guest post in our latest *Dangerous by Design* report, “Preventing pedestrian deaths requires a paradigm shift in thinking about traffic speeds and road design. In major activity centers and anywhere people might be walking, speeds above 30 mph pose an exponentially greater risk. *That means it is not just the responsibility of drivers to obey speed limits, but it is also up to road designers to set appropriate target speeds that both support lower limits and encourage slower driving.*” (emphasis added)

If we want people to drive the speed limit, we need to design our roadways in a way that makes that speed limit the easiest speed to travel. Current practice is to design roadways for 10–15 mph higher than the posted speed limit, assuming that people will speed. And that is exactly what we get. If we want people to travel a safe speed then we need to set safe speed limits and then design for that speed.

Some specific strategies for speed management that USDOT recommends:

- Developing and implementing jurisdiction-wide speed management programs and plans.
- Outlining how to set safe, consistent, and enforceable speed limits based on the presence of all road users and context and not just drivers’ operating speeds.
- Applying proven safety countermeasures to help achieve safe speeds for the safety of all roadway users.
- Improving crash data report forms with targeted reporting of speeding-related crashes that provides consistency and focuses on identifying contributing factors.
- Deploying enforcement through transparent high-visibility activities, educational programs, and awareness campaigns rather than a strictly enforcement focus.
- Considering equity in speed management decision making.

The Vision Zero approach is: the faster the traffic, the more separated the roadway needs to be from oncoming traffic and conflicts. That means high speed roadways need to be fully separated from the community, and roadways in the community need to be slow. The in-between is the unsafe zone where the United States lives and we get predictable results. As Strong Towns says, our roads are the transportation equivalent of a futon, which is not a particularly good bed or sofa. Our roadways designed to try to do everything are not particularly good at moving traffic swiftly or serving the local community effectively and safely. FHWA could require the community it funds to choose one of the safe options (fast and separated or slow

and integrated), but it would be easier with Congressional direction and backing. Sadly, I do not think that is forthcoming on either side of the aisle.

Question 2. Transportation remains the largest economic sector creating carbon pollution in the United States.

Why is it important for states to calculate emissions and set targets to understand their impact on climate change?

ANSWER. You can only address what you measure. My organization covers the importance of measuring the performance of the transportation system in terms of climate in Driving Down Emissions. The U.S. simply will not meet our transportation climate goals if we don't know where the problems are, but it is clear that many people do not want us to address emissions from vehicles, whether we are talking about greenhouse gas emissions or criteria pollutants that harm human health (and they tend to go together).

Beyond that, Congress is taking hundreds of billions of the American taxpayers' hard earned money, and those taxpayers deserve to know what they are getting for it. Nothing should be hidden from them. I am reminded of a quote from the musical "1776" when Stephen Hopkins is told he is the deciding vote on whether the Continental Congress will debate a resolution on independence: "Well, I'll tell you, in all my years, I never seen, heard, nor smelled an issue that was so dangerous it couldn't be talked about. Hell yes, I'm for debating anything!" That is how I feel about measuring the impacts of transportation. I have never seen, heard or smelled an issue that was so dangerous it couldn't be measured and reported to the taxpayer. And I look with suspicion on anyone who is not willing to do so, much less block this information. Hell yes, I'm for measuring anything!

○