

NSSGA®

NATIONAL STONE, SAND
& GRAVEL ASSOCIATION

September 29, 2023

Brenda Mallory
Chair, Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Re: Notice of Proposed Rulemaking: National Environmental Policy Act Implementing Regulations Revisions Phase 2 (88 Fed. Reg. 49924, July 31, 2023)

Dear Chair Mallory,

The National Stone, Sand and Gravel Association (NSSGA) would like to take this opportunity to provide comment in response to the Council of Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) Implementing Regulations Revisions Phase 2 proposed rule ("Proposed Rule").

NSSGA members consist of stone, sand and gravel producers; industrial sand suppliers; and the equipment manufacturers and service providers who support them. With upwards of 9,000 locations, the aggregates industry produces 2.5 billion tons of materials used annually in the United States. Aggregates are the building blocks of our modern society and are needed to construct and maintain communities, roads, railways, bridges, tunnels, water supply, sewers, electrical grids and telecommunications.

Our members support and work to achieve the public policy goals of NEPA as we work to deliver the critical construction materials necessary build our nation's infrastructure. Our members will need to supply billions of tons of construction materials to fulfill the promise of the Infrastructure Investment and Jobs Act (IIJA), the Inflation Reduction Act (IRA), CHIPS and Science Act and additional Administration efforts to modernize our infrastructure. We are proud of our successes working within the NEPA framework, while at the same time supporting efforts to improve NEPA to avoid needlessly long and unnecessarily complex review.

Concerning the Proposed Rule, NSSGA supports the analysis and recommendations contained in the U.S. Chamber of Commerce lead Coalition Comment. We encourage CEQ to adopt the recommendations laid out by the broader business community in the Coalition Comment. Our industry is heavily regulated at the federal, state, and local level. These regulations are ever changing, and many times are contradictory, causing significant delay and expense for approving projects. Our industry is facing greater regulatory uncertainty, as federal agencies work to implement a vast array of costly and complex permitting changes that will place new burdens and complicate our ability to access and supply materials.

The Proposed Rule, as currently drafted, would add new requirements that will increase delay and add additional complication to permit applications. Changes to the Purpose and Policy of the current regulations will substantially alter the purpose and process requirements of NEPA. The Proposed Rule replaces environmental impact review process as the driver of decision making with new requirements intended to achieve the policy goals of CEQ.



Among the new requirements contained in the Proposed Rule, CEQ seeks to add an “environmentally preferable” alternative which would replace as a practical matter NEPA’s statutory focus on “significance determinations”. The proposed “environmental alternative” constitutes an effort to ensconce outcome preferences into NEPA, inconsistent with the NEPA Statute.

We expect more delay and confusion to result from CEQ’s addition of a requirement to consider the “global” effects of a project in addition national, regional and local effects. This new requirement, untethered to the NEPA statute and undefined, also alters the current analysis by requiring consideration of all four levels of impacts, as opposed to the current practice which allows a choice among the current three most pertinent to the project. Determining what a sufficient “global” effect consideration review constitutes, as well as the requirement to review all three levels of current consideration, will complicate and delay NEPA analysis.

These proposal changes, and others discussed on the Coalition Comment, which attempt to fundamentally change NEPA practice inconsistently with the NEPA statute, stand in stark contrast to Congress’ legislative enactments addressing the inefficient and lengthy NEPA process. We share the bipartisan views of those in Congress that believe that environmentally sound stewardship and decision making is not required to take multiple years and decades. The additional complexity proposed in the Proposed Rule will add additional time delay to NEPA analysis, make the process less predictable and force the cancellation of projects in the public interests without providing beneficial additional information to decision makers.

As recently as this summer, Congress included in the Fiscal Responsibility Act (FRA) provisions to address NEPA inefficiencies and delay. The Proposed Rule would ignore the primary efficiency changes passed by Congress of listing circumstances where NEPA is not triggered. This provision was intended to address agencies undertaking overly complex reviews unnecessarily and that provide no additional benefit to decision makers but slow the NEPA review. The Proposed Rule subverts this enactment.

Our industry and its members’ efforts to supply the construction materials critical to this nation’s infrastructure, housing, water systems and other essential projects will be materially harmed if the changes to NEPA in the Proposed Rule are implemented. We strongly urge CEQ to carefully review and implement the changes to the Proposed Rule contained in the Chamber Lead Coalition Comments.

Sincerely,



Michael W. Johnson
President and CEO
National Stone, Sand & Gravel Association