



NATIONAL STONE, SAND
& GRAVEL ASSOCIATION

Written Statement for the Record

National Stone, Sand and Gravel Association

United States House of Representatives Committee on Transportation and Infrastructure hearing on

“The State of Transportation”

January 17, 2023

On behalf of the 450 members of the National Stone, Sand, & Gravel Association I am writing to thank the Committee on Transportation and Infrastructure for holding today’s hearing on “The State of Transportation”.

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 roads, railways, bridges, tunnels, water supply, sewers, electrical grids and telecommunications. The aggregates industry is working to deliver the billions of tons of construction materials needed to build the roads, bridges, tunnels, rail, transit, ports, energy facilities (including solar and wind), water conveyance systems, broadband capacity, and public works project funded through Congress’ 2021 adoption of the largest infrastructure investment in our nation’s history – the Infrastructure Investment and Jobs Act (IIJA). The State of Transportation is good but could be much better. For the past two years, we have supported rapid and efficient implementation of the IIJA and encouraged avoidance of policies not included in the IIJA being added to IIJA implementation. We are concerned that the historic investments included in the IIJA may not achieve the intended historic improvements to our transportation systems because of increased regulations and other Administration actions that advance policies not included in the IIJA. These additional regulatory burdens occur on top of workforce shortage challenges, increased inputs costs, including fuel, and wage increases.



Regulations

Federal Highway Administration Greenhouse Gas Performance Measure

On December 7, 2023, the Federal Highway Administration (FHWA) filed the final rule establishing national performance measures for reducing greenhouse gas emissions (GHG) associated with transportation. The rule amends 23 CFR Part 490 to add requirements for State DOTs and metropolitan planning organizations (MPOs) to establish declining carbon dioxide (CO₂) targets and methods for measurement. The rule adds GHG measures to the National Highway Performance Program (NHPP) performance measures that FHWA established in 23 CFR part 490 through prior rulemakings.

The FHWA's final rule relies upon "reinterpreted" legal authority in 150 U.S.C. 23 and 119 U.S.C. 23. The NSSGA filed comments in the FHWA docket for the rule arguing that no legal authority existed for the promulgation of the GHG Performance Measurement rule. We noted that Congress during the development of the IIJA, considered the issue of GHG measurement authority and rejected their inclusion.

The NSSGA supports the reduction of global GHG emissions and strongly believes the establishment of authority to reduce GHG within Title 23 must occur through an act of Congress, not a rulemaking. It is only through an enactment that the authority claimed in the proposed rulemaking can be established. Just as importantly, the Congressional legislative process provides critical benefits to the proposed authority, including bi-partisan political benefits, improved policy structure and program design.

Project Labor Agreements

On Dec. 22, 2023, the Biden administration published a final rule Federal Acquisition Regulation: Use of Project Labor Agreements for Federal Construction Projects. This rule implemented Executive Order 14063, which subjected federal construction contracts of \$35 million or more to anti-competitive and inflationary project labor agreements.

The NSSGA joined a diverse group of construction and business associations opposing the new rule and other policies pushing controversial PLAs on federal and federally assisted construction projects funded by taxpayers. In comments filed in opposition to the rule, we pointed out that PLA mandates artificially exacerbate a shortage of construction industry skilled labor; discourage competition from quality large, small, and disadvantaged construction businesses; and needlessly increase construction costs at the expense of significant recent taxpayer investments in infrastructure, clean energy and domestic manufacturing construction.

A PLA is a job site-specific collective bargaining agreement unique to the construction industry that typically requires companies to agree to recognize unions as the representatives of their employees on that job, use the union hiring hall to obtain most or all construction labor, hire apprentices from union-affiliated apprenticeship programs, follow union work rules and pay into union benefit and multiemployer pension plans that nonunion employees cannot access. This forces employers to pay



“double benefits” into their existing plans and union plans, puts them at a significant competitive disadvantage and exposes them to unfunded multiemployer pension plan liabilities. In addition, PLAs typically require construction workers to pay union dues and/or join a union if they want to receive union benefits and work on a PLA project. If they do not satisfy these stipulations, nonunion workers lose an estimated 34% of their wages and benefits to union coffers and benefits plans—making them the victims of wage theft.

Particulate matter

On January 6, 2023, the EPA announced a proposal to amend the National Ambient Air Quality Standard (NAAQS) for fine particle matter (PM). The NSSGA joined with the National Ready Mixed Concrete Association (NRMCA) and the Portland Cement Association (PCA), expressing deep concern over the proposed EPA PM standard that would lower the NAAQS particulate matter standard (PM 2.5) from 12.0 micrograms per cubic meter of air ($\mu\text{g}/\text{m}^3$) to within the range of 8.0 to 11.0 $\mu\text{g}/\text{m}^3$. Reducing the proposed PM levels from 12 $\mu\text{g}/\text{m}^3$ to the proposed 8-11 $\mu\text{g}/\text{m}^3$ might appear small in theory, but its implementation would result in a significant shift, hindering the achievement of the Biden administration's core Infrastructure and Investment Jobs Act (IIJA) objectives. Complying with the lower standard would force U.S. manufacturers to reduce operational hours, decreasing construction material output and potentially leading to layoffs. This shortage could cause construction delays, impeding the administration's \$550 billion infrastructure overhaul. Furthermore, this move could shift opportunities for supplying building materials to overseas competitors due to stringent U.S. emissions regulations, potentially disadvantaging American manufacturers.

CEQ NEPA Phase 2

The White House Council on Environmental Quality (CEQ) has issued several actions that complicate the permitting process for large infrastructure projects under the National Environmental Permitting Act (NEPA). By broadening definitions, adding more criteria, and duplicative federal agency reviews, are hindering the development of infrastructure projects that seek to improve environmental outcomes. What is more frustrating is that these new actions run counter to the bipartisan NEPA reforms that were included in the Infrastructure Investment and Jobs Act (IIJA). Aggregates suppliers across the country crave certainty, as we work to supply the billions of tons of essential materials needed to improve roads; upgrade bridges; advance transportation systems and ports; and advance our modern energy infrastructure that will be funded by the investments provided by the bipartisan IIJA. This is especially important in the current economic environment where needless red tape will delay project implementation and drive-up costs of construction materials. On July 21, 2023, the Council on Environmental Quality (CEQ) proposed a “Bipartisan Permitting Reform Implementation Rule” revising its implementing regulations for the procedural provisions of the National Environmental Policy Act (NEPA), including amendments to NEPA contained in the Fiscal Responsibility Act.

The NSSGA supports the goals of NEPA to inform federal decision-making and the public’s understanding of the potential environmental impacts of federal actions to foster effective engagement in the federal decision-making process. A fair and efficient federal permitting system is essential for timely investment to meet a wide array of critical needs and is consistent with NEPA.



Recognizing that an overly complex federal permitting process often impedes critical projects, Congress included in the Fiscal Responsibility Act of 2023 (“FRA”), which significant amendments to NEPA to simplify NEPA’s overcomplicated, needlessly burdensome and often endless review process. The NSSGA joined coalition comments to CEQ’s Regulations Revisions Phase 2 (“Proposed Rule”) pointing out provisions of the proposed rule that were contrary to the clear congressional intent and explicit direction on the FRA NEPA amendments.

The Proposed Rule fails to respect the strong bipartisan spirit that drove the FRA’s NEPA amendments and fails to effectively improve and further reform the permitting process. While it adopts, as it must, elements of the FRA, many of its provisions contradict the FRA’s intent: to create a more efficient, predictable, and straightforward federal review process.

The Proposed Rule revises the existing NEPA regulations to drive substantive outcomes favored by this Administration’s policy priorities. This approach contravenes decades of case law, agency practice, and consistent government interpretation that achieved the fulfillment of NEPA’s intent through a rigorous process to enable informed and transparent decisions, all without tipping the scales in favor of particular substantive outcomes. Favoring such particular outcomes is short-sighted and re-orientes the application of a landmark statute in a fashion that ultimately is destabilizing and self-defeating. If finalized in its current form, the Proposed Rule would portend a never-ending cycle of regulatory reversals between Administrations, eroding public confidence and depriving the business community and the public of the predictability needed for substantial investment in long-term projects.

Supply Chain

Improvements to the reliability of rail service is an essential step towards improving the reliability of supply chains for aggregates. The NSSGA has supported actions by the Surface Transportation Board (STB) to improve service reliability, service consistency, and adequate local service. The NSSAG supports the STB’s proposed rule on “Reciprocal Switching for Inadequate Service”. This rule will hold rail carriers accountable, provide rail shippers some measure of relief from poorly performing incumbent rail carriers, and enforce, in the Board’s own words, “unambiguous, uniform standards...consistently applied across Class I rail carriers and their affiliated companies.” NSSGA continues to support this critical action and the NPRM as a whole, subject to the modifications NSSGA advanced in its comments. By providing reciprocal switching rules, aggregate shippers will be provided additional remedies for poor rail service. Further improvements to the efficiency and predictability of aggregate shipments are expected through soon to be announced amendments to STB’s Emergency Service Regulations. These amendments are expected to provide shippers with an accelerated process for remedies in urgent situations of service impedance.

Build America, Buy American Act

On August 23, 2023, the Office of Management and Budget (OMB) released the final guidance implementing the Build American, Buy America Act (BABAA) contained in the IIJA. The NSSGA led efforts to ensure the final guidance accurately reflected Congressional intent with regard to the limitation of domestic content procurement preferences for materials listed in section 70917 (c).



While the guidance did accurately reflect congressional intent for section 70917(c), challenges remain in the consistent implementation of BABAA at the state level. State DOTs are employing varying BABAA compliance certifications which are inconsistent from one state to another. States continue to vary in their classification analysis for manufactured products versus construction materials leading to procurement confusion and slowed contract lettings. Further guidance from FHWA with more granular direction to the State should be provided to improve consistent implementation and reduce confusion and delay.

Conclusion

In conclusion, the National Stone, Sand, & Gravel Association (NSSGA) extends its heartfelt gratitude to the Committee for the opportunity to testify and share insights on the current state of transportation. This hearing has been instrumental in highlighting the pivotal role of the aggregates industry in the development of our nation's infrastructure. As a key contributor to essential construction projects, our members face numerous challenges, including regulatory burdens, workforce shortages, and the complexities of implementing the Infrastructure Investment and Jobs Act (IIJA). The Association's concerns regarding the Federal Highway Administration's greenhouse gas performance measures, the enforcement of Project Labor Agreements, and the amendments to particulate matter standards in the National Ambient Air Quality Standards are intended to underline our commitment to environmental stewardship balanced with practical regulation. As an industry, we are appreciative of the committee's willingness to consider these important perspectives, which are vital for navigating the intricate intersection of regulatory, environmental, and legislative frameworks in advancing the nation's infrastructure goals.

