



NATIONAL STONE, SAND  
& GRAVEL ASSOCIATION

June 16, 2025

The Honorable Sean Duffy  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue SE  
Washington, D.C. 20590

**Re: Department of Transportation. Notice of Proposed Rulemaking Docket DOT-OST-2025-07 (RIN 2105-AF32), "Administrative Rulemaking, Guidance, and Enforcement".**

Dear Secretary Duffy:

Thank you for the opportunity for the National Stone, Sand & Gravel Association (NSSGA) to comment on the Department of Transportation's (DOT) proposed rule to reinstate procedures and policy applicable to all guidance documents in all Operating Administrations at 49 CFR part 5, subpart C.

NSSGA supports the intent of the reinstatement of procedures governing the review, clearance and issuance of guidance documents in Subpart C of 49 CFR Part 5. As the regulatory regime at the Department of Transportation has increased in scope and complexity, we have seen an increase by Operating Administration's (OA) in their use of guidance, without needing attention to the proper development and use of OA guidance documents. Our member companies have been concerned that OA guidance practices should be more transparent, accountable and consistent.

#### Consistency and Transparency

We support the proposed Subpart C amendments that address the issue of consistency across all OAs. Regarding the procedures for review and clearance of OA guidance at 49 CFR 5.27, 5.29 and 5.35 we have the following comments.

We support the requirement that all OA guidance must be reviewed and cleared by the issuing OA's Office of Chief Counsel. Regarding OA guidance deemed "significant" under Sec. 5.37 and therefore subject to additional review and clearance by the Department's Office of General Council, we encourage consideration of the broader use of Sec. 5.37 (d)(4) than in the current version of the proposal.



As stated in the preamble to the proposed rule, DOT does “its best work when it is informed by robust public input, the best available data, and sound law and economics”. This sentiment should be reflected in earnest engagement with the regulated community subject to proposed guidance in advance to determine the accuracy of assumptions undergirding the proposed guidance. We suspect that industry data and economics input concerning the “significance” of OA guidance not being considered “significant” under Sec. 5.37 (a)-(c), would lead to an appreciation of concerns from DOT constituencies warranting OGC review of the proposed OA guidance.

We also believe a larger aperture on subsequent OGC review encourages proper development and use of OA guidance. We believe this is not only pertinent to a particular proposed OA guidance, but also to the larger “Body of Guidance” issued by the OA. Here our concern is awareness of the phenomenon where one guidance document produces the need for another, and so on. The DOT OGC is in a unique position of awareness of prior guidance in an OA but also across OAs. We believe this is an important aspect of consistency intended in the proposed rule.

We note that the proposal includes requirements under proposed Sec. 5.33 for “Good faith cost estimates”. We encourage consideration of our comment on Sec. 5.37(d)(4) practices to overlap with the requirements of Sec. 5.33. We agree that “the issuance of agency guidance may induce private parties to alter their conduct to conform to recommended standards or practices, thereby incurring costs beyond the costs of complying with existing statutes and regulations.” Engagement with industry in the development of cost estimates is critical for their accuracy and their achievement of “good faith”.

The proposed changes in Sec. 5.29 are encouraging and we support their intent. Poorly designed OA guidance, lacking correct citations to statutory or regulatory authority and written not in clear narrative hinder the intended purpose of the guidance. In particular, Sec. 5.29 (b)(5), (c)-(e) are needed and will improve the consistency of OA design, content, language and force and effect of guidance across OAs.

### Accountability

We support the proposed Subpart C amendments that address the issue of public accountability for proposed guidance. Central to achieving DOT’s “Best Work” across all OAs are “fair and sufficient opportunities to comment on guidance documents. The proposed Sec. 5.31 and 5.39 are meritorious steps towards achieving meaningful public engagement and the important perspectives they provide. Proposed Sec. 5.43 and 5.41 advance public accountability for issued OA guidance, creating an OA incentive to engage robustly in the requirements of 49 CFR 5.27, 5.29, 5.33 and 5.35.



We believe the intended public accountability could be further improved under Sec. 5.31 (c) by establishing a separate website notice and location requirements for guidance documents not yet issued and subject to the notice and comment under Sec. 5.39 and public requests for “reconsideration, modification, or rescission of guidance documents” under proposed Sec. 5.41. We perceive public comment to a rule not yet issued, and public comment on guidance already issues a sensibly two different categories of public accountability and thus more reasonable to present to the public in clear webpage formats each opportunity.

In conclusion, the NSSGA strongly supports the Department of Transportation’s proposed rule to reinstate procedures for guidance documents under 49 CFR Part 5, Subpart C. By enhancing consistency, transparency, and public accountability, the rule addresses critical concerns about the development and use of Operating Administration guidance. NSSGA urges the DOT to further strengthen the rule by expanding industry engagement, broadening Office of General Counsel review, and creating a clear, accessible platform for public comments. These steps will ensure guidance is practical, well-informed, and effective for all stakeholders.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michele Stanley". The signature is fluid and cursive, with the first name "Michele" being more prominent than the last name "Stanley".

Michele Stanley  
Interim CEO  
National Stone, Sand & Gravel Association

