March 30, 2017

Mr. Carter Halfman
U.S. Department of Commerce
Office of Policy and Strategic Planning
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Re: DOC-2017-0001-0001, Impact of Regulations on Domestic Manufacturing

Dear Mr. Halfman:

We are pleased to submit comments on the **Impacts of Regulation on Domestic Manufacturing**. We are heartened by the Trump administration's vision and leadership on transportation infrastructure and regulatory reform, particularly this effort to collect information on burdensome regulations to be updated or eliminated. We strongly agree that streamlining federal permitting and reducing regulatory burdens on industry will help the U.S. economy grow. The following outlines regulations, rules or other practices where the costs drastically outweigh small or nonexistent gains. Our staff is happy to discuss any of the following in more detail at your convenience.

As the National Stone, Sand and Gravel Association (NSSGA) is the leading advocate for the aggregates industry, we would like to make the following recommendations that we believe will assist our industry in growing the economy and creating jobs. The aggregates industry employs approximately 100,000 highly-skilled men and women. Our members – stone, sand and gravel producers and the equipment manufacturers and service providers who support them – are responsible for the essential raw materials found in every home, commercial building, road, runway and public works project from schools to hospitals. **Our customers are ultimately the taxpayers who fund our nation's infrastructure.** This industry works diligently to protect the health of our workers, the public and the environment, but we agree with the administration that too many burdensome regulations and red tape hinder business. We present some of the most burdensome here.

EPA – Waters of the U.S. Rule
Action Needed: Withdraw and replace EPA's WOTUS rule

EPA's Waters of the U.S. Rule (80 FR 37054) expands the jurisdiction under the Clean Water Act (CWA) to include areas suspected of only tenuous connections to navigable waters. The rule would make it even more difficult for aggregates operators to ensure a timely supply of aggregates for public works and other vital projects, and will impose costs that far exceed any benefits to the aquatic ecosystem.

NSSGA supports the Trump administration's intent to reconsider the rule and asks that it be replaced by a more sensible one that takes the environment and business certainty into account by only including waters with relatively permanent flow in Waters of the U.S., among other common sense changes.

MSHA – Workplace Exams Rule
Action Needed: Labor Department's Mine Safety and Health Administration (MSHA) should withdraw the Workplace Exams Rule

MSHA's Workplace Exams Rule (78 FR 5056) will impede operator efforts to effectively manage workplace safety. In addition to forcing operators to substantially alter work processes, the rule would also mandate substantial increases in paperwork. These operational concerns would be especially tough on small operators, and would raise the costs of compliance. While NSSGA appreciates the extension of the effective date, the rule should be withdrawn. The rule is redundant and would diminish an operator's ability to effectively manage an operation to maximize worker safety.

MSHA – Pattern of Violations Rule
Action Needed: MSHA should withdraw and replace the Pattern of Violations Rule

MSHA's Pattern of Violations Rule (82 FR 7680) is defective due to several failures to comply with the Administrative Procedures Act. It should be withdrawn and re-written so that all thresholds needed for being declared a "pattern" violator be explicitly described, and all Fifth Amendment protections (of due process) due operators are afforded.

OSHA/MSHA – Rule to Reduce the Workplace Exposure Limit for Crystalline Silica
Action Needed: Withdraw the 2016 crystalline silica rule

The 2016 crystalline silica rule (81 FR 16285) should be withdrawn because the agency did not meet its statutory burden during rulemaking. Alternately, OSHA should withdraw the rule's permissible exposure limit (PEL) for crystalline silica and replace it with the former general industry PEL. Notably, that limit is protective when enforced—and in fact it has contributed to a 90 percent or greater reduction in silicosis cases since taking effect in the early 1970s. Yet, OSHA cut that PEL in half by cherry-picking evidence to support its preordained conclusion and ignoring contrary evidence.

The rule, if it takes full effect, will cost regulated industries at least $2.45 billion annually with no offsetting benefit to employees; this cost is ultimately passed on to the taxpayers who fund infrastructure. If MSHA enacts a similar rule—as it intends to do—the cost to aggregates facilities would likely reach tens or hundreds of millions of dollars. Moreover, most commercial laboratories cannot consistently measure workplace air samples with the accuracy required by statute. Inaccurate lab results may lead employers unwittingly to overlook excess exposures or to expend resources, reducing already compliant exposures. Unjustified penalties from regulators could also increase.

EPA—Toxic Substances Control Act (TSCA) Risk Evaluation
Action Needed: EPA's Chemical Risk Evaluations should be based on sound, up-to-date science and exclude *de minimis* conditions of use.

EPA's scoping and risk evaluation for "asbestos" (81 FR 91927 and 82 FR 6545) should precisely define asbestos and asbestos-containing material to be consistent with Congress's longstanding definitions in Title II of TSCA.

NSSGA prevailed in a lawsuit against OSHA after the agency in 1986 erroneously altered its definition of asbestos to include common rock fragments that have not been shown to present the health hazards associated with asbestos exposure. OSHA's incorrect definition mischaracterized many aggregates producers' products as containing asbestos. EPA should precisely define asbestos based on its chemical makeup, physical and morphological properties, appropriate methods, criteria for identification, and other relevant factors.

EPA's scope of risk evaluations should interpret the term "conditions of use," or construe its obligation to review the conditions of use for selected substances, to exclude products to which asbestos is not intentionally added and that may unintentionally contain or contact trace amounts of naturally occurring asbestos.

Generally, EPA should not exclude relevant data from a risk evaluation simply because it is published after the date the risk evaluation begins. Otherwise, risk evaluations, which may take several years, will not be based on the "best available science" as TSCA requires (§ 26(h)).

FWS-Endangered Species Act Process and Rules Reform
Action Needed: Re-propose some of the ESA rules finalized by the previous administration and incorporate objective standards

NSSGA believes that the protection of endangered species is an important public policy issue, and supports a scientific approach to protection, while balancing the need for continued economic growth. During the Obama administration, several changes were made which will make a difficult process even more difficult and costly with questionable environmental benefit, such as the expansion of critical habitat beyond statutory limits. Endangered Species Act (ESA) consultation can stop projects in their tracks and add enormous costs to permitting job-creating new operations.

The Section 7 consultation by the Fish and Wildlife Service (FWS) is open-ended, lacking procedural guardrails that can be relied upon to define the scope, sequence and timing of agency review and action. Permits in the U.S. take far longer to obtain than other developed countries like Australia and Canada, and the ESA is major culprit. The Obama administration's change in definition of critical habitat goes well beyond the clear language and intent of the ESA to include areas which may be habitat someday. This change effectively makes land off limits to

development by requiring costly mitigation. As with other regulatory burdens, these costs are passed along to the taxpayers who fund most infrastructure projects.

EPA – Regulation of Small Stationary Engines at Area Sources
Action Needed: Revise rule to exempt aggregates operations

EPA's rule for reciprocating internal combustion engines (RICE) sets strict emission limits and requires performance tests and onerous recordkeeping (40 CFR 63 Subpart ZZZZ). EPA's success in air quality improvement has typically come from regulating very large or mobile sources; regulating very small sources is of limited value in comparison to the high cost to comply. The impact of emissions from smaller engines are limited to the immediate vicinity of the emission source; therefore, this rule is not needed to protect public health beyond the property lines of a facility. Previously unregulated small engines at tens of thousands of facilities, including aggregate operations, requires costly testing and upgrades, with very little positive net impact on overall air quality. While many aggregates operations have paid to upgrade their engines, the required recordkeeping and testing is an unnecessary burden.

Under your administration, we look forward to government that works with industry to make America great again. The goal of reducing burdensome regulations is one we fully support. We can be reached at (703) 526-1060 / mjohnson@nssga.org.

Sincerely,

Michael W. Johnson
President & CEO