NATIONAL STONE, SAND & GRAVEL ASSOCIATION

Natural building blocks for quality of life

January 21, 2005

Mr. Brad C. Deutsch
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

SUBMITTED VIA ELECTRONIC MAIL

Dear Mr. Deutsch:

The National Stone, Sand & Gravel Association ("NSSGA") respectfully submits the following comments on the Notice of Proposed Rulemaking ("NPRM") regarding contributions to a trade association separate segregated fund ("SSF") made via payroll deduction by restricted class employees of member corporations. Additionally, NSSGA requests an opportunity to testify before the Federal Election Commission ("FEC" or "Commission") in favor of the proposed rule.

NSSGA represents the crushed stone, sand and gravel ("construction aggregates") producing industries. Our member companies produce 90 percent of the crushed stone and 70 percent of the sand and gravel consumed annually in the United States. Accordingly, NSSGA is the largest mining association by volume in the world *(U.S. Geological Survey)*. Thirty-three percent of our market is in residential construction, 31 percent is roads and highways and 36 percent is in public works such as airports, water treatment plants and schools, etc. A small portion of our products also go into the manufacture of glass, paint, pharmaceuticals, cosmetics, chewing gum, household cleansers and many other consumer goods.

NSSGA member companies have operations in approximately 70 percent of the nation's counties. We are also fortunate to have an affiliation with a network of 42 state aggregate and crushed stone associations across the country.

Currently, FEC regulations specifically provide that a member corporation of a trade association "may not use a payroll deduction or checkoff system for executive or administrative personnel contributing to the separate segregated fund of the trade association." 11 CFR 114.8(e)(3). It is important to note, however, that nothing in the Federal Election Campaign Act ("FECA") requires such an exclusion of a payroll deduction and checkoff system as pertains to trade associations and their member companies. Payroll deduction is already a permissible method frequently utilized by corporations and labor unions to receive contributions to their political action committees

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from those individuals eligible to donate. In fact, organized labor and corporations have had this privilege since the first regulations were issued under the Act in 1977.

In the nearly 30 years since this prohibition on payroll deductions to trade association PACs was first set in place by the Commission, advances in the way that individuals engage in financial transactions, reflected in a host of Advisory Opinions ("AO") issued by the Commission in response to such changes, have rendered this regulation outmoded. Payroll deduction, direct deposit and direct debiting have become commonplace for a host of transactions ranging from retirement account contributions and health insurance premiums to paying bills and making charitable donations. Paper checks are rapidly becoming a thing of the past with many of those still issued merely serving as hard copy receipts for electronic transactions.

FEC Advisory Opinion 2003-22 affirmed that executives of companies may already collect and forward contribution checks from their restricted class to their trade group's political action committee. Prior to that, the Commission concluded in AO 1999-35 that section 114.8(e)(3) does not bar the use of an Automatic Clearing House ("ACH") for the receipt of contributions to PACs, since the funds contributed are deducted from an executive employee's personal checking account at a bank. AO 2000-4 and AO 1998-19 held that member corporations were permitted to deduct contributions electronically to a trade association's SSF so long as those deductions did not come from employee payrolls.

Opening payroll deduction as an avenue for political contributions to a trade association's SSF is the next logical step in this evolution. It will provide individuals with more choices – all of which are voluntary as a matter of law. It is also a matter of fundamental fairness, removing an unnecessary blockade that lacks any sound policy rationale and unfairly singles out individuals who work for companies that belong to trade associations – a potential Equal Protection clause violation. Rectifying this discriminatory policy will help facilitate voluntary contributions from member companies' restricted classes by increasing the ease of participating in the political process which is a goal that all should encourage and applaud.

The overwhelming majority of NSSGA members do not have PACs. The very notion of a trade association is to allow businesses with similar interests, some large, but many small, to pool together their assets to further those very interests. A trade association PAC is merely an extension of that. Just as most of our association members do not hire their own lobbyists, instead relying upon the lobbyists employed by their association, the same can be said for these members and PACs. Given that so many members are smaller companies, it makes no sense for them – financially or politically – to have a PAC of their own when they can pool together their resources to have a greater impact. NSSGA's political action committee ("ROCKPAC") provides them with this opportunity

and is their main avenue for political participation at the federal level. The current prohibition on payroll deduction only serves to penalize these small businesses and it is time to level the playing field for them.

Thank you for your consideration of these comments. We look forward to working with the Commission to institute the sensible reforms on this issue that are currently before you.

Sincerely,

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