



NATIONAL STONE, SAND
& GRAVEL ASSOCIATION

December 13, 2022

Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

Re: RIN 1235-AA43 Employee or Independent Contractor Classification Under the Fair Labor Standards Act

On behalf of the 400 members of the National Stone, Sand & Gravel Association (NSSGA) I am writing to take the opportunity to comment on the Department of Labor's (the Department), Wage and Hour Division's proposed rule "Employee or Independent Contractor Classification Under the Fair Labor Standards Act."

NSSGA represents aggregates producers and those who manufacture equipment and services that support the construction industry. Our members are essential to the work of this country, and we represent more than 2.56 billion tons of stone, sand and gravel produced annually in the United States. Our members employ more than 100,000 hard-working men and women, who are responsible for the essential raw materials found in every home, building, road, bridge and public works project.

Independent contractors are critical to the success of the aggregates industry and our nation. Independent contractors are utilized to move material from aggregates operations to job sites and perform a variety of functions and specialty services across the industry. A clear definition of independent contraction from the Department provides the confidence needed to hire workers that are essential to supplying every American community with the materials needed to build.

We are concerned with the proposed rule as it terminates the [January 2021 final rule](#) on independent contractor (2021 IC Rule) classification, which reduced the number of primary factors needed to consider whether a worker is an independent contractor or an employee. This additional complexity will make it harder for businesses in the aggregates industry to hire independent contractors at a time when we are facing an extreme labor shortage.

This proposed rule will add additional costs and requirements on construction material producers. Frequently, companies in the aggregates industry utilized independent contractors to haul construction materials to building projects. One small business in the industry estimated they organize 450 or more independent contractors daily to supply materials to their community. Under the complexities of the proposed rule, small business would be forced to pay additional taxes and fees that significantly increase



the cost of construction materials. This would occur at a time of high inflation and while the administration is seeking to implement the historic Bipartisan Infrastructure Law.

Further, because of the extreme labor shortage, many independent contractors currently have the opportunity to be hired as employees in the aggregates industry. However, independent contractors prefer their status and the opportunity to choose their work and schedule. This is especially true in the trucking industry where independent contractors routinely make up 50 percent or more of the workforce that hauls billions of tons of construction materials to job sites each year. Adding complexities and additional compliance costs to the classification of independent contractors could severely impact flexibility and increase the cost of materials that are used to build homes, schools, roads, energy, water, and all types of infrastructure our society relies on.

We are also concerned with the Department's decision to rapidly move ahead with the proposed rule, instead of waiting for a longer period to monitor the effects of the 2021 IC Rule. In just two years, we have been faced with changes, litigation and uncertainty surrounding the definition of an independent contractor. Providing more time to address the impacts of the 2021 IC rule is prudent instead of forcing another definitional change onto our industry that drives greater uncertainty.

For these reasons, we encourage the Department to maintain the 2021 IC Rule, as it gave clarity and certainty to employers in the aggregates industry who are working to build our nation.

Sincerely,

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

