



NATIONAL STONE, SAND
& GRAVEL ASSOCIATION

November 7, 2023

Amy DeBisschop
Director
Division of Regulations Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S-3502
Washington, DC 20210

RE: Proposed Rule Defining and Delimiting the Exemption for Executive, Administrative, Professional, Outside Sales, and Computer Employees RIN 1235-AA39

The National Stone, Sand & Gravel Association (NSSGA) submits these comments on the Department of Labor's (DOL or the Department) proposal to raise the salary threshold for the executive, administrative, professional, outside sales, and computer employee exemptions from the overtime requirements of the Fair Labor Standards Act (FLSA).

NSSGA represents the aggregates and industrial sand industry, with over 9,000 facilities and more than 100,000 employees in high-paying jobs. This industry procures 2.5 billion tons of aggregates annually, which are crucial in sustaining our lifestyle and constructing our nation's infrastructure and communities. The products sourced by this industry are fundamental components required for building roads, airports, transit, rail, ports, clean water and energy networks.

As a signatory, NSSGA strongly supports the comments filed by the Partnership to Protect Workplace Opportunity (PPWO). The comments below provide supplementary information on how the proposed rule impacts our industry and our ability to supply the billions of tons of construction materials needed to build and maintain our infrastructure and communities.

For the 450 members of NSSGA, employees are family. This is especially true for many of the small businesses, which are family-owned enterprises and account for over 90 percent of our total companies. Across our industry, employees are compensated extremely well, and it is not uncommon to find multigenerational employees who work across our companies. Further, turnover rates are extremely low, as we are proud to provide a healthy work-life balance.



While the intention might be commendable, the ratification of the proposed rule, especially for smaller businesses is pronounced. A sudden 55 percent hike in the minimum salary threshold for overtime exemption poses a significant strain. It is worth noting that our industry prides itself on nurturing familial ties with their employees, often going above and beyond to offer competitive wages that reflect the dedication and hard work of their teams. Introducing such a steep increase, compounded by the unpredictability of automatic triennial updates, threatens financial volatility. Our industry thrives on predictability; frequent, automatic changes hinder our ability to strategically plan, potentially jeopardizing both stability and the well-being of their employees.

Sudden and unpredictable cost changes will have detrimental impacts. It will make sourcing and purchasing the materials we need to build homes and deliver modern infrastructure more costly and complex. This undermines the administration's commendable mission to advance our infrastructure and will dilute the historic investments achieved in the Infrastructure Investment and Jobs Act (IIJA), the Inflation Reduction Act (IRA) and the CHIPS Act. Considering the current inflationary environment, increasing costs and compliance needed to produce aggregates, asphalt and concrete harms taxpayers and the American public as we look to modernize transportation networks, deliver clean energy and water and remove congestion from our roads, ports, waterways and airways.

It is our view that the Department has failed to provide any evidence that the current regulations, which were last updated in 2019, are failing to protect employees. This is especially troubling, as our industry is one of many that is facing workforce shortages across all workforce sectors. Instead of issuing new rules that increase litigation, penalties and compliance cost, we feel the Department should prioritize working with employers to find ways to address the real workforce challenges facing our industry and overall economy.

As the Department reviews the proposed rule, we urge that maximum flexibility be granted to structure employee hours, career advancement opportunities for employees, and clarity for employers in classifying their employees under the FLSA.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Johnson', with a long horizontal flourish extending to the right.

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