The National Stone, Sand & Gravel Association (NSSGA), the National Ready Mixed Concrete Association (NRMCA) and the National Asphalt Pavement Association (NAPA) represent thousands of companies who are responsible for creating and supplying construction materials needed to build our infrastructure and communities. We strongly support the administration's goal of making historic investments to improve our outdated infrastructure and are working to efficiently supply the aggregates, asphalt and concrete needed to make the Infrastructure Investment and Jobs Act (IIJA) a reality for every American.

The construction materials industry is concerned with the proposed changes to Davis Bacon that will add significant complexities and regulatory costs, as we work to supply building materials to construction projects.

Transportation

The construction materials industry has strong concerns with the proposed expansion of Davis Bacon to cover transportation. The new rules add the term "transportation" to the activities covered by Davis Bacon and expand the coverage of Davis Bacon to cover transportation activities.

Since the inception of Davis Bacon, ''material suppliers'' have never been considered contractors or sub-contractors under and subject to Davis-Bacon standards. The proposed rule would complicate the long-held understanding by including transportation under the proposed rule, adding unnecessary complexity and regulations to material suppliers.

When delivering materials to a construction site, the individuals transporting the materials do not have control over where, when and how the materials are unloaded. In a perfect world the unloading time would not last long, but as is commonplace in construction, drivers, for a whole host of reasons not under their control, can end up waiting significantly longer than the current proposed *de minims* time. These wait times occur for reasons outside the control of the material supplier or even contractors. Traffic near construction sites often delays drivers on site. Further, by establishing a *de minimis* time, you will add unneeded pressure to haul and deliver materials on sites under a specific amount of time. Construction sites are complex, and it is imperative drivers and workers have the time and space to work safely. By establishing this new *de minimis* threshold on material suppliers there could be significant safety ramifications that have not been considered.

As well, being that many drivers all have Commercial Drivers Licenses (CDLs), many are required to keep an Hours of Service (HOS) log. The smallest amount of time drivers can log is in 15 minutes increments. Therefore, there would be an administrative record, and if the time on site is less than 15 minutes, they'll still have to log 15 minutes outside the *de minimis* definition.

Adding additional regulatory complexity of covering material suppliers through the expanded transportation standard:

- Would significantly reduce the purchasing power of federal infrastructure investment at a time when we are facing historic inflation.
- Would complicate the bidding process for many contractors and discourage many suppliers from participating in public works projects due to unreasonable requirements and costs that would be imposed on them.
- Would discourage and significantly reduce the ability of minority owned and small businesses from participating in any capital projects. Many small and minority-owned businesses do not have the resources and legal teams to comply with new, complex requirements.

We encourage the Department to make clear that material suppliers are not covered under the new transportation requirements. If the rule proceeds with the current confusing standards, suppliers will have significant regulatory compliance as each haul may be covered under the new standards. Every day, millions of material hauls go underway to supply the billions of tons of aggregates, concrete and asphalt to build our infrastructure.

Material Supplier

Further, the construction material sector is concerned with proposed changes to Davis Bacon that will add temporary material production facilities on job sites into Davis Bacon standards. Since the inception of Davis Bacon, ''material suppliers'' have never been considered contractors or sub-contractors under and subject to Davis-Bacon standards. However, the proposed rule creates a new definition of material supplier that would cause confusion and complexity to the material supply sector.

Under the proposed definition, suppliers that establish portable equipment on construction sites would now be identified as contractors. This is an unworkable standard and does not reflect the reality of the current work environment. Federally funded infrastructure projects require a significant amount of concrete, asphalt and aggregates material, in many cases millions of tons of product. To accommodate this demand, material suppliers will establish temporary crushers and material processing equipment on job sites to produce building materials that can used immediately at that construction site. This allows for recycling of old materials and reduces truck hauls to aggregates and production facilities that are miles away. This current model significantly reduces truck traffic, thereby reducing transportation emissions and keeps the cost of materials low.

If defined as contractors or sub-contractors, these mobile material suppliers will face great regulatory costs that will drive production further away from construction sites and increase the cost of materials. Further, this change will significantly reduce the ability to recycle materials on infrastructure projects and increase truck traffic and emissions, as longer hauls will be needed to source aggregates, asphalt and concrete. With the current workforce challenges facing the trucking industry, regulatory obstacles that move material production further away from job sites will only cause greater delay in our ability to efficiently supply needed construction materials.

We urge the administration and Congress to reexamine the proposed definition of material supplier and ensure portable processing and material production facilities are not considered contractors or sub-contractors under Davis Bacon.

Wage and Fringe Benefit Surveys

As proposed in the new rule language, the Department will revert to the language used prior to the 1982 changes regarding survey results – 30% versus 50%. Not only does this allow the responses from fewer companies/unions to have a larger influence on the wages and fringe benefits by position description, but it is also completely unnecessary. Contractors performing work on federally funded or federal-aid projects are required to submit certified payrolls via state agencies to the Department of Labor. The information needed to establish prevailing wages and benefits is already available to the Department and could be used to update wage and fringe benefit information quicker and more accurately than survey responses.

Along with the use of certified payrolls to establish minimum wage and fringe benefits by position description, the current position descriptions are outdated, confusing and absent of new roles on construction sites. Currently, political sub-divisions in the same state can have different positions for identical work. This creates confusion if surveys, and not certified payrolls are used. State agencies should be allowed to establish uniform position descriptions for use on their federally funded projects that complies with the intent of Davis Bacon.