

March 23, 2021

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

Re: Opposition to NPRM to Withdraw Final Rule – RIN 1235-AA34

Dear Ms. DeBisschop,

On behalf of the Intermodal Association of North America (IANA), a leading transportation trade association representing the combined interests of the intermodal freight industry, I am writing to express our opposition to the Department of Labor's proposal to withdraw the final rule on Independent Contractor Status under the Fair Labor Standards Act, RIN 1235-AA34.

IANA's membership roster of over 1,000 corporate members includes not only intermodal and over-the-road motor carriers but also railroads (Class I, short-line, and regional), water carriers and stacktrain operators, port authorities, intermodal marketing and logistics companies, and suppliers to the industry such as equipment manufacturers, leasing companies, and technology firms. IANA's associate (non-voting) members include shippers (defined as the beneficial owners of the freight to be shipped), academic institutions, government entities, and non-profit trade associations.

Motor carriers are crucial participants in the nation's intermodal network, especially under the current conditions of unprecedented import cargo volumes. For over 35 years, the prevailing business model for motor carriers supporting intermodal freight movements by water and rail, often referred to as "drayage", has involved the use of independent contractors as drivers. With an estimated 80 percent of intermodal truck drivers classified as independent contractors – many of which are small, minority-owned businesses – this business model is indispensable to the intermodal transportation and drayage industry. By offering operational and financial flexibility to intermodal motor carriers, this model allows drivers to adapt and respond to natural volatility in the intermodal transportation market.

As proud, independent business owners, drayage drivers can express their freedom of choice by personally investing in, and operating, their own company. These small business owners earn a Commercial Driver's License, invest in a tractor, and bear the associated operating costs attributable to registration, licensing, insurance, and fuel. They also invest a significant amount of time developing their knowledge of and complying with federal and state safety regulations.

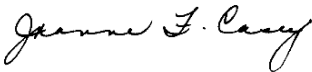
Owner-operators can determine the number of motor carriers they choose to work with and freely enter into multiple contractual arrangements. This permits the individual driver, or independent contractor, to make daily operating decisions as to their availability to perform drayage services. Each owner-operator makes a conscious decision to remain an independent contractor, but also has the freedom to choose to seek full-time employment in the trucking industry at any time.

The final rule offered much-needed guidance, clarity, and consistency to the classification of workers in the intermodal industry. Adopting the revised economic reality test, with a focus on the nature and degree of the worker's control over their work and the worker's opportunity for profit or loss, would simplify compliance for both businesses and workers. Straightforward, clear and transparent federal guidance streamlines otherwise conflicting interpretations of worker status and reduces costly litigation.

In summary, IANA urges the Department to refrain from withdrawing the final rule established under RIN 1235-AA34. The independent contractor model supports vital motor carrier operations within the intermodal industry, which are of increasing importance given the current and anticipated volumes of import cargo entering the United States at major West and East Coast ports. This model has served both the industry and drivers well for decades. The final rule would provide clear and consistent standards to determine employee or independent contractor status under the FLSA and offers independent contractors the continued flexibility and freedom to invest in and operate their own businesses. By tailoring schedules and opportunities to accommodate individual needs, independent owner-operators provide safe, efficient, and cost-effective service that contributes to our nation's economic growth.

Thank you for allowing IANA to share its views on the Department's proposal to withdraw the final rule on Independent Contractor Status under the Fair Labor Standards Act. Please let me know if you or your staff would like to discuss our position in further detail.

Sincerely,

A handwritten signature in cursive script that reads "Joanne F. Casey".

Joanne F. Casey
President and CEO
Intermodal Association of North America