

October 6, 2020

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: Support for 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 support for the Department of Labor's proposed revisions to the interpretation of independent contractor status under the Fair Labor Standards Act (FLSA), 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. 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, 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 them 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 choice 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 proposed rule will offer 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, will simplify compliance for both businesses and workers. Straightforward, clear and transparent federal guidance streamlines otherwise conflicting interpretations of worker status and reduces costly litigation.

IANA strongly opposes California's approach to codify the ABC test and agrees with the Department's assessment that "adopting the ABC test as the FLSA's generally applicable standard for distinguishing employees from independent contractors would be unduly restrictive and disruptive to the economy." As evidenced by the numerous legal challenges against the implementation of Assembly Bill 5 and various exemptions enacted to its provisions, the ABC test has significant limitations and fails to provide a clear, applicable standard for many industries that depend on independent contracting arrangements. It also fails to provide choices to workers and flexibility to the companies who need independent contractors to manage their business effectively. The ABC test essentially eliminates the independent contractor model for motor carriers involved in intermodal drayage. Disruption caused by this wholesale destruction of the independent contractor model would have a dramatic adverse effect upon the entire intermodal supply chain, injuring not only motor carriers, but also rail and steamship operators as well as third-party logistics providers and the customers they all serve.

In summary, IANA applauds the Department's efforts in developing the proposed rule under RIN 1235-AA34. The independent contractor model supports vital operations of the intermodal industry and has served both the industry and drivers well for decades. The proposal establishes clear and consistent standards to determine employee or independent contractor status under the FLSA. Additionally, it 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 benefits of adopting the proposed changes to the interpretation of independent contractors under the FLSA. Please let me know if you or your staff would like to discuss our position in further detail.

Sincerely,



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

Cc: Marc Blubaugh