

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 set their own rates. The current model offers much-needed guidance to the intermodal industry. Adopting the revised economic reality test would strip away the worker's control over their work and the worker's opportunity to own their own business, harming both businesses and workers. Straightforward, clear and transparent rules are needed to resolve conflicting interpretations of worker status and reduces costly

In summary, IANA