



December 13, 2022

Ms. Jessica Looman
Division of Regulations,
Legislation, and Interpretation Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W
Room S-3502
Washington, D.C. 20210

RE RIN 1235-AA43: Via: www.regulations.gov

Dear Ms. Looman:

The National Industrial Transportation League, [NITL](http://www.nitl.org), submits this letter to the Wage and Hour Division (WHD) in response to its October 13, 2022, notice of proposed rulemaking (NPRM) entitled “Independent Contractor Status Under the Fair Labor Standards Act (FLSA)”, put forth by the U.S. Department of Labor (DOL) under RIN 1235-AA43.

NITL strongly opposes this proposal and, instead, supports the comments submitted by the American Trucking Associations (ATA).

NITL is a trade association whose mission includes advancing the views of shippers on industrial freight transportation policy matters. Its members include U.S. companies across a wide variety of industries who rely on efficient, competitive, and safe maritime, rail, and highway transport within the United States and beyond to meet their supply chain requirements. In the end, to meet the needs of their respective customers efficiently and effectively.

First, independent owners-operators are essential workers that represent a crucial link in our nation’s supply chain. Their ability to continue transporting foods, chemicals, supplies, medicines, and multitudes of other commodities, must be protected. As such, this proposed rule would contradict the 2021 FLSA rule change, which was necessary to clarify and protect the owner-operator trucking model which must remain in effect without any modification or override.

The confusion that previously existed over the classification of owner-operator drivers presented a burdensome obstacle, threatening the supply chain workforce, which is why the 2021 rule was implemented. The currently proposed rule change would not just reinstate but increase the level of confusion and adversely affect Independent Contractors nationwide – the opposite of the U.S. DOL's stated intent.

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Second, it is Important to note that 54% of every driver, of the 3.5 million for-hire driver fleet, works for fleet sizes of 1-100 trucks, with an average fleet size of 5.3 trucks. Since trucking handles about 70% of all surface freight, that means this proposed rule will directly affect 38% of all freight that moves today. Technology has made it easier for owners- operators to run their own businesses and succeed where today market enjoys for the first time in modern history, independent truck owners-operators, are the majority. These drivers expressly do not want to be employees of larger fleets.

NITL is concerned that, if finalized, the proposal would harm the supply chain by jeopardizing the independent enterprising spirit and commitment of men and women whose NITL's members depend on. NITL members move billions of dollars of freight, by rail, ocean, and highway annually. In fact, the proposal will only benefit trial lawyers litigating this issue in court by blurring the lines so badly that virtually every case will go to trial.

Third, NITL hopes that your agency will see how this proposal would only exacerbate the truck driver shortage we face today. The current test, under the 2021 rule, is clear and concise for all concerned with two core definition factors focused on an independent contractor's ability in 1) controlling the means and methods of their work and 2) having an investment in and opportunity for profit as part of their work.

Supporting efforts to protect the independent contractor model, including harmonizing across statutes the standard for Independent Contractors at the federal level is paramount. And where appropriate, pursue reforms to ensure clear Independent Contractors standard for the benefit of all working Americans and business so that independent contracting is not abused. NITL believes that the 2021 rule is working for the independent trucking contractor and should not be mitigated, weakened, or overturned which this proposal would do. As such, NITL agrees and aligns itself with the submitted ATA comments.

Thank you for your consideration.

Respectfully submitted,



E. Nancy O'Liddy
Executive Director