



April 18, 2023

The Honorable Kevin Kiley
Chairman
Subcommittee on Workforce Protections
2436 Rayburn House Office Building
Washington, DC 20515

The Honorable Alma Adams
Ranking Member
Subcommittee on Workforce Protections
2436 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Kiley, Ranking Member Adams and Members of the Subcommittee;

I applaud your efforts to explore the impact the federal government has on our country's workforce. In support of your upcoming hearing entitled, "Examining Biden's War on Independent Contractors", I wanted to share with the committee the comments our organization, Truckers Integral to Our Economy, submitted in opposition to the Department of Labor's proposed rulemaking which seeks to reclassify our nation's truckers.

Truckers Integral to our Economy or TIE is a 501©4 dedicated to the preservation of the independent contractor model in the trucking industry. For more information on our efforts, please go to www.truckerchoice.org.

Thank you.

A handwritten signature in black ink, appearing to read 'Scott Brenner', written in a cursive style.

Scott Brenner
Executive Director

Comments Submitted on Behalf of Truckers Integral to Our Economy:

On October 13, 2022, the Department of Labor's (the Department) Wage and Hour Division published a proposed rule in the Federal Register, "Employee or Independent Contractor Classification Under the Fair Labor Standards Act." The proposal rescinds the Department's

2021 rule for determining independent contractor or employee status and sets forth analyses meant to provide guidance regarding the determination of employee/employer status for the gig economy.

The modern, rapidly adaptive, technology-driven “gig” economy provided critical services through COVID-19 and ensuing supply chain crises and enables supply chain stakeholders to meet rapidly shifting consumer demands. This essential workforce deserves the protections afforded by the Fair Labor Standards Act. Without doubt, workers and employers stand to benefit from affirmative regulatory guidance from the Department further developing the concept of economic dependence. Unfortunately, we believe the proposed rulemaking, as constructed, would significantly undermine the businesses of the Owner-Operator Trucking industry by forcing independent contractors to reclassify involuntarily as employees.

The trucking industry is a significant source of national employment, with 7.7 million people working in various trucking-related occupations, accounting for 1 in every 18 jobs in the U.S.¹ Additionally, “truck driver” has been among the top jobs in 29 states according to census bureau reporting². Though the nature of the trucking industry has changed significantly since the enactment of the FLSA, the importance of independent contractors has remained constant. Roughly 400,000 owner-operator drivers throughout the U.S.³ constitute the independent contractor portion of the domestic trucking industry. These drivers are an essential labor pool for businesses to pull from during rapid shifts in demand, such as holidays or unforeseeable market impacts (COVID, international conflict, etc.).

Doing business with independent contractors promotes efficiency and an increased ability to meet customer demands. Critically, independent contractors derive important economic benefits from their employment arrangement, including earning more than employee drivers,⁴ and the majority prefer the independence of deciding whom to work for and when to work as opposed to being an employee for a single employer. Further, owner-operators are entrepreneurs – many current large and medium motor carriers started out as independent contractors, and likely couldn’t have realized their success without the economic opportunity afforded by the independent contractor employment arrangement. These entrepreneurs can gradually acquire trucks and other drivers as they work their way up the business – a possibility foreclosed for employee drivers.

Truck drivers who choose to work independently should be able to do so without Department intervention. According to data from the Bureau of Labor Statistics⁵, 79% of independent contractors prefer their arrangement over traditional employment. By proceeding with the rule as written, the Department would force the involuntary reclassification, and likely loss of economic opportunity, of the very workforce it nominally intends to protect.

The proposed rule would make it difficult for businesses to consider owner-operators as independent contractors, with harmful, complex implications for longstanding business models. As businesses seek to mitigate increased costs and administrative burden, owner-operator drivers will be on the chopping block.

Although the nature of owner-operator drivers' employment shares aspects in common with the rideshare and food-delivery businesses, uniformly regulating the industries as a monolith "gig" economy is inappropriate and incorrect. In line with the 2021 Department rulemaking concerning independent contractors, we believe employment status may largely be determined by whether or not the worker has the opportunity for profit or loss based on either or both (1) exercise of managerial skill or business acumen and (2) investment in equipment, helpers, or material. The high investment in their trucks and equipment significantly differentiates the nature of independent contractor truckers' employment from, say, rideshare employees.

For these reasons, we call on the Department to withdraw its rule, "Employee or Independent Contractor Classification Under the Fair Labor Standards Act." As written, the rule would wreak havoc on independent contractor truck drivers by forcing them to reclassify their employment status against their will. Independent contractor truck drivers deserve certain protections from the Department of Labor – however, the proposed rulemaking would only serve to limit economic opportunities for this critical workforce.

¹ <https://www.trucking.org/news-insights/new-report-finds-trucking-industry-revenues-topped-700-billion> ² <https://www.npr.org/sections/money/2015/02/05/382664837/map-the-most-common-job-in-every-state> ³ Owner Operator Independent Drivers Associates, "Industry/Owner-Operator Facts," OOIDA.com, OOIDA, <https://www.oida.com/wp-content/uploads/2021/03/Trucking-Facts.pdf>

⁴ See "Contingent and Alternative Employment Arrangements Summary," U.S. Bureau of Labor Statistics, at 6 (May 2017) available at <https://www.bls.gov/news.release/conemp.nr0.htm> ("Independent contractors overwhelmingly prefer their work arrangement (79 percent) to traditional jobs. Fewer than 1 in 10 independent contractors would prefer a traditional work arrangement.").