April 28, 2026

The Honorable Daniel Navarrete
Director
Wage and Hour Division
U.S. Department of Labor
Washington, DC 20210

RE: Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act [WHD-2026-0001]

Dear Director Navarrete:

NACS, the Association for Convenience and Fuel Retailing; NATSO, representing America's truck stops and travel centers; SIGMA: America's Leading Fuel Marketers; and Energy Marketers of America ("EMA") (collectively, the "Associations") respectfully submit these comments in response to the Department of Labor's ("Department" or "DOL") Notice of Proposed Rulemaking published in the Federal Register on February 27, 2026 (the "Proposed Rule" or "NPRM")[1], which proposes to rescind the 2024 independent contractor rule ("2024 Rule")[2] and restore a modified version of the 2021 independent contractor rule ("2021 Rule")[3] under the Fair Labor Standards Act ("FLSA"), the Family and Medical Leave Act ("FMLA"), and the Migrant and Seasonal Agricultural Worker Protection Act ("MSPA").

Independent contractor relationships are central to the everyday operations of the Associations' members.[4] Across the convenience, travel center, fuel marketing, and energy

[1] U.S. Department of Labor, *Employee or Independent Contractor Status under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act*, Notice of Proposed Rulemaking, 91 Fed. Reg. 9932 (February 27, 2026), available at https://www.federalregister.gov/documents/2026/02/27/2026-03962/employee-or-independent-contractor-status-under-the-fair-labor-standards-act-family-and-medical.

[2] U.S. Department of Labor, *Employee or Independent Contractor Classification Under the Fair Labor Standards Act*, Final Rule, 89 Fed. Reg. 1638 (January 10, 2024), effective March 11, 2024, available at https://www.federalregister.gov/documents/2024/01/10/2024-00067/employee-or-independent-contractor-classification-under-the-fair-labor-standards-act.

[3] U.S. Department of Labor, *Independent Contractor Status under the Fair Labor Standards Act*, Final Rule, 86 Fed. Reg. 1168 (January 7, 2021), effective March 8, 2021, available at https://www.federalregister.gov/documents/2021/01/07/2020-29274/independent-contractor-status-under-the-fair-labor-standards-act.

[4] NACS is an international trade association representing more than 1,300 retail and 1,600 supplier member companies, the majority of which are based in the United States. The U.S. convenience store industry encompasses more than 150,000 stores nationwide, sells approximately 80 percent of all motor fuel purchased in the United States, and serves 165 million customers every day. The industry employs 1.73 million workers nationwide, and the majority of NACS members are small, independent operators — more than 70 percent operate ten or fewer stores.

NATSO is the trade association representing America's travel plazas and truck stops. NATSO's approximately 5,000 member locations, comprising both national chains and small, independent operators, are essential hubs along the nation's freight corridors, providing fuel, food, parking, showers, and maintenance services to professional drivers and the motoring public. These businesses are often the largest private employers and taxpayers in rural and small-town communities, and in many cases they are among the few locations open 24 hours a day.

SIGMA: America's Leading Fuel Marketers represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel. Sixty-seven percent of SIGMA members are involved in gasoline retailing; 83 percent in wholesaling;

marketing supply chain, members regularly engage independent contractors for deliveries, equipment inspection and maintenance, construction and renovation, information technology, and a broad range of specialty services. Clear, workable direction on worker classification is essential to preserving these longstanding business models while ensuring compliance with federal labor standards.

The Proposed Rule correctly identifies "economic dependence" as the ultimate touchstone of the independent contractor inquiry. Any test establishing independent contractor status should determine if a worker is economically dependent on the business for work or is genuinely in business for themselves. Restoring the 2021 Rule, with its emphasis on the core factors of control and opportunity for profit or loss, will allow businesses to reach that correct conclusion for worker classification.

The restored economic reality framework also reflects the best reading of the FLSA's statutory terms. The 2021 Rule's core-factor approach is consistent with decades of judicial interpretation of the terms "employee" and "employ" under the FLSA, and it grounds the classification inquiry in the statutory text and structure rather than in shifting administrative preferences. Finalizing the Proposed Rule on this basis will promote long-term stability regardless of future changes in administration.

The determination of whether a worker is an employee or independent contractor under the FLSA has oscillated significantly over the past five years, imposing substantial compliance burdens and legal uncertainty, especially on small businesses. The Associations urge the Department to finalize the Proposed Rule as quickly as possible.

I. The Associations Support the Proposed Rule.

In 2021, the Trump Administration's DOL issued a final rule establishing a five-factor economic reality test with two "core" factors — the nature and degree of control over the work and the worker's opportunity for profit or loss — that, when both pointing to the same classification, should be determinative. The 2021 Rule also preserved the full economic reality inquiry, including factors bearing on skill, permanence, investment, and integrality.

The convenience, travel center, and fuel and energy marketing industries strongly and consistently supported the 2021 Rule, which was carefully developed to provide certainty for business owners and to encourage innovation and entrepreneurship across the modern economy.

A. The 2021 Rule Struck the Right Balance.

The 2021 Rule struck the right balance by providing a workable classification test that protected workers while allowing legitimate independent contractor relationships to continue to

56 percent transport product; 39 percent operate bulk plant facilities; and 20 percent operate petroleum terminals. Member outlets range from travel centers and traditional service stations to cardlocks and unattended public fueling locations.

EMA is a federation of 48 state and regional trade associations representing small business fuel distributors and retailers across the country. EMA marketers supply 80 percent of all finished motor and heating fuels nationwide, operating approximately 60,000 retail stations, distributing motor fuels to an additional 40,000 gas stations, and delivering heating oil to more than five million homes and businesses.

thrive. By grounding the analysis in a practical, predictable economic realities test, the rule offered employers and workers a clear framework that was easy to apply to real-world business relationships. The 2021 Rule appropriately focused the analysis on core factors (control and opportunity for profit or loss) while preserving the full economic reality inquiry, including factors that are especially significant for the Associations' members: the amount of skill required for the work, the degree of permanence of the working relationship, the worker's investment in equipment or materials, and the extent to which the services rendered are integral to the employer's business.

Many of the Associations' members are small, independently owned convenience stores, travel centers, and fuel marketing businesses that lack in-house legal counsel and sophisticated Human Resource (HR) departments. To them, the 2021 Rule's structured, predictable framework was critically important. Workers and businesses alike benefit from a classification standard that is practical and easy to apply, not one that requires expensive legal analysis every time a contractor relationship is structured or renewed.

B. The 2024 Rule's Open-Ended Test Created Harmful Uncertainty.

By replacing the 2021 Rule's structured analysis with a six-factor totality-of-the-circumstances test in which no single factor carries greater weight, the 2024 Rule generated significant legal uncertainty for businesses of all sizes. For small operators, this uncertainty was particularly harmful, as it required costly legal review of contractor arrangements that had operated without issue for years. The Department's proposal to rescind the 2024 Rule is well-grounded, and the Associations support it.

II. The Associations' Comments on the Proposed Rule.

A. The Full Set of Economic Reality Factors Should Be Preserved, with the Two Core Factors Given Greatest Weight.

The Associations strongly support preserving both the core-factor structure of the 2021 Rule and its full set of economic reality factors. Independent fuel haulers, equipment inspectors, and specialty service contractors who own their own vehicles and tools, bear financial risk, serve multiple clients, and bring skills not otherwise possessed by the engaging business are in business for themselves. They are not economically dependent on any one fuel marketer, travel center, or convenience store operator. The factors based on skill, permanence, investment, and integrality are not merely secondary, however. They are often the factors that most directly illuminate the true nature of a contractor relationship. These relationships often involve:

- A high degree of specialized skill: fuel delivery drivers, equipment inspectors, heating oil and propane delivery technicians, service and installation contractors, and maintenance contractors typically possess technical training and certifications not required of the businesses that engage them, including U.S. Department of Transportation hazardous materials endorsements, Commercial Driver's License credentials, state fire marshal certifications, propane dispenser qualifications, and manufacturer-specific equipment certifications;

- Significant worker investment: independent fuel haulers (including tank-truck operators transporting motor fuel, heating oil, and propane) and equipment service contractors

commonly own their own vehicles, specialized tools, and diagnostic equipment, reflecting meaningful entrepreneurial investment that frequently exceeds several hundred thousand dollars per operator;

- Long-term engagements that reflect geography and workforce realities, not economic dependence: many travel centers and convenience stores are located in remote areas with limited pools of qualified specialists, making long-term contractor relationships a practical necessity rather than an indicator of employment; and

- Services that, while important to operations, are distinct from the core convenience and fuel marketing business of the contracting firm: supporting a finding that the services are not "integral" in the sense the FLSA contemplates.

The Department should finalize a rule that confirms these characteristics, taken together under a proper economic reality analysis, support independent contractor classification even where the engagement is long-term or recurring.

B. The Rule Must Clarify That Safety and Operational Instructions Do Not Constitute Employer Control.

The Associations urge the Department to include an explicit clarification regarding the treatment of safety and operational instructions in safety-sensitive industries.

To operate responsibly and to comply with federal and state regulatory requirements, the Associations' members routinely provide detailed instructions regarding how equipment inspections must be conducted to prevent hazards, how deliveries should be scheduled to minimize supply disruption and potential threats, and how fueling operations must be conducted to protect workers and public safety. These instructions are a product of regulatory compliance and responsible business practice. They are not an exercise of control over an employee.

This is particularly true for members engaged in the delivery and handling of hazardous materials, including motor fuels, heating oil, and propane.[5] A contractor transporting gasoline across state lines, filling a residential heating oil tank, or inspecting an underground storage tank cannot lawfully perform the work without receiving and following instructions grounded in these regulatory regimes. Treating such instructions as evidence of an employment relationship would put the Associations' members in the untenable position of choosing between regulatory compliance and classification certainty.Under an ambiguous or overbroad definition of "employment," this necessary safety and operational oversight risks being mischaracterized as evidence of an employer-employee relationship. Such an outcome would unfairly penalize the Associations' members for acting responsibly and prioritizing safety. It would also create a

[5] Federal regulations administered by the Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation hazardous materials regulations at 49 C.F.R. Parts 171–180, Occupational Safety and Health Administration standards, U.S. Environmental Protection Agency underground storage tank regulations, state fire marshal regulations, National Fire Protection Association codes, and homeowner- and customer-premises safety protocols all require that businesses communicate detailed, specific, and enforceable instructions to the personnel who deliver fuel or service fuel-related equipment.

perverse incentive for businesses to pull back from providing safety guidance to contractors — an outcome contrary to the public interest.

The final rule should make explicit that instructions provided to contractors for purposes of regulatory compliance, public safety, or the protection of third parties do not constitute the kind of control that weighs toward employment classification. This clarification is consistent with the economic reality framework's focus on whether the worker is economically dependent on the business, not on whether the business has communicated reasonable operational expectations.

C. Only Exercised Control Should Count Under the Control Factor.

The Associations urge the Department to clarify in the final rule that only exercised control, rather than a theoretical or merely reserved contractual right to control, is relevant to the employment classification analysis. The economic reality test focuses on what actually happens in the working relationship, not on boilerplate contract provisions that are commonplace in business-to-business commerce. Many fuel marketers and convenience store operators enter into service agreements that include quality standards, delivery windows, and performance metrics. These provisions reflect ordinary commercial expectations. A final rule that expressly limits the control inquiry to control that is actually exercised will prevent these standard commercial terms from being mistaken for indicators of an employment relationship.

D. The Associations Support the NPRM's Modifications and Conforming Amendments.

In addition to restoring the 2021 Rule's core analytical framework, the Proposed Rule makes modifications and conforming amendments that the Associations affirmatively support. The extension of the economic reality test to determinations of employment status under the FMLA and MSPA (both of which expressly adopt the FLSA's definitions of "employ" and "employee") promotes consistency and reduces compliance confusion for businesses that must simultaneously navigate all three statutes. The Associations, however, urge the Department to provide practical guidance addressing how the analysis interacts with the FMLA's eligibility thresholds and the MSPA's employment definitions, to avoid inadvertent consequences for businesses with complex multi-state or multi-contractor operations.

III. The Associations Urge Prompt Finalization and Regulatory Stability.

The Associations urge the Department to finalize this rule as quickly as possible. The repeated reversals of independent contractor policy over the past five years have imposed significant and unnecessary compliance costs on businesses, most acutely on the small operators that make up the majority of the Associations' membership. Each regulatory shift requires businesses to re-examine contractor relationships, engage legal counsel, and potentially restructure longstanding arrangements that have operated without issue. The Associations' members have historically relied on the economic reality framework, and on the 2021 Rule's core-factor articulation of that framework, in structuring contracting relationships, entering into multi-year service agreements with specialty contractors, investing in dispatch and compliance systems built around the independent-contractor model, and pricing services to their own customers. These concrete reliance interests are material to any future consideration of the rule. Any subsequent reversal of the restored framework would need to account for the significant investments,

contracts, and operational systems that the Associations' members have built around the economic reality test as it has historically been understood.

Regulatory stability is itself a form of worker and business protection. When businesses cannot predict how their contractor relationships will be evaluated by the government, they may forgo engaging independent contractors altogether. This eliminates the flexible arrangements that many contractors prefer and that enable small businesses to access specialized services.

Clear guidance is critical to supporting entrepreneurship, operational flexibility, and continued investment across the nation's convenience, truck stop, and fuel marketing industries. The disproportionate burden on small businesses is particularly important in this rulemaking. Rules that impose uncertainty on contracting relationships fall most heavily on small operators without in-house legal or human-resources resources, a concern that is squarely within the purposes the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, was enacted to address. The record in this rulemaking reflects that the 2024 Rule imposed substantial and disproportionate costs on small entities and that the restored framework mitigates those costs; any subsequent reversal would need to confront that record directly.

IV. Conclusion.

The Associations strongly support the Department's proposal to rescind the 2024 Rule and restore the previous framework. The 2021 Rule struck the right balance. The Associations support a practical, predictable, and easy-to-apply classification standard that protects workers while allowing legitimate independent contractor relationships to continue to thrive. To make the restored framework as effective as possible, the Associations respectfully request that the final rule: (1) preserve the 2021 Rule's core-factor structure, under which control and opportunity for profit or loss are generally determinative when they point in the same direction; (2) explicitly clarify that safety and operational instructions issued for purposes of regulatory compliance or public safety do not constitute employer control; (3) confirm that only actually-exercised control (rather than merely a reserved contractual right to control) is relevant under the control factor; and (4) provide practical guidance on the rule's application to FMLA and MSPA determinations.

We appreciate the Department's work on this important issue and welcome the opportunity to return to a workable classification framework that reflects the realities of the modern economy and recognizes the unique reliance of the convenience, travel center, fuel marketing, and energy marketing industries on independent contractors. Please do not hesitate to contact us with any questions.

Sincerely,

National Association of Convenience Stores (NACS)
NATSO, Representing America's Truck Stops and Travel Centers
SIGMA: America's Leading Fuel Marketers
Energy Marketers of America (EMA)