October 9, 2018

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue SE
West Building, Ground Floor
Room W12-140
Washington, D.C. 20590-0001

RE: Docket No. FMCSA-2018-0237, Hours of Service of Drivers: American Concrete Pavement Association, Inc.; Application for Exemption;

On behalf of the more than 8,000 members of the American Road & Transportation Builders Association (ARTBA), we respectfully offer comments on the application for exemption from certain provisions of the federal Hours of Service (HOS) requirements requested by the American Concrete Pavement Association (ACPA).

ARTBA’s membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. These include prime contractors, sub-contractors and suppliers. Overall, our industry generates nearly $380 billion annually in U.S. economic activity and sustains the equivalent of 3.3 million American jobs.

ARTBA supports ACPA’s request for an exemption for commercial motor vehicles (CMVs) in the concrete pavement field. Specifically, ACPA has asked for an exemption from the rule’s 30-minute rest break provision and the requirement for short-haul drivers utilizing the record of duty status (RODS) exception to return to their work-reporting location within 12 hours of coming on duty.

Drivers in transportation construction often spend most of their days driving short distances and one piece of equipment may have multiple drivers during a shift. While supporting ACPA’s application, ARTBA continues to believe that the transportation construction industry as a whole merits an exemption from the rule. We offer the following comments in that context.

ARTBA contractor-members who operate in interstate commerce must comply with the hours of service rule for commercial motor vehicle operators (49 CFR Parts 385, 386, 390, and 395). Moreover, many states automatically incorporate the federal hours of service into the state’s controlling law for intrastate commercial motor vehicle operators. Above all else, these contractors are committed to safety – for the traveling public and their own employees. They also seek to build transportation improvement projects with the maximum degree of efficiency, innovation and value to the public.
The purpose of the hours of service rule appears clear. Federal Motor Carrier Safety Administration (FMCSA) publications note that the main reason for the regulations is to “keep fatigued drivers off the public roadways.” The rule limits when, and for how long, operators may drive commercial motor vehicles. The limits include length of drive time and length of on-duty time (even though the driver may be behind the wheel for a small portion of that time), as well as mandated off-duty or rest time.

Throughout various FMCSA comment periods (starting in about 2000) addressing the hours of service rule, ARTBA has argued the revised rule should not apply to drivers in the transportation construction industry. While ACPA’s exemption application is meritorious, ARTBA still believes an industry-wide exemption from the entire rule is needed. As we have expressed over the years in comments submitted to FMCSA and to the U.S. Department of Transportation (USDOT), ARTBA believes the rationale for this exemption is strong and worthy of the agency’s consideration. It would relate to two major federal transportation policy goals: increasing efficiency in the construction of transportation improvement projects, and preserving the safety of all involved.

Transportation construction industry drivers are not long-haul operators who consistently spend many consecutive hours on the road in a given day. They are short-haul drivers who typically travel less than 20 miles one way. Many of our drivers spend substantial amounts of time off the road during the work day, loading and unloading materials or equipment. Others may be responsible for positioning a piece of mobile equipment at the beginning of the work day, but may not be back behind the wheel until day’s end, so that their daily drive time is actually minimal. Those drivers who transport construction materials may spend substantial time in a queue to pick up or drop off those products. However, in the indiscriminate eyes of the hours of service rule, these examples of non-driving activities are still considered “on-duty time” and can end up prohibiting industry employees from carrying out their driving duties past 14 hours on a lengthy work day.

Moreover, transportation project owners, the driving public and commercial shippers are expecting more timeliness and efficiency in the construction of transportation improvement projects, as well as less disruption to traffic. Transportation construction firms will often work very long hours to complete these projects expeditiously, especially in regions of the country where seasonal weather is a factor. In other industries, a 14-hour window of on-duty time may seem more than adequate. However, as described above, in the transportation construction industry it can often limit the efficient deployment of professionals and resources on the construction job site, without a demonstrable increase in safety.

Ultimately, this is an example of two areas of federal policy – hours of service as administered by FMCSA and accelerated transportation project delivery as promoted by other agencies at USDOT – that are simply in direct conflict. In recent years, the transportation construction industry and many public-sector transportation agencies have been eager partners in utilizing accelerated construction techniques to increase efficiency, maximize the safety of motorists and workers, and minimize the inconvenience to the traveling public. This often involves total closure of a bridge or stretch of highway so the contractor can undertake an intense effort to replace or renovate it within a very short time frame – sometimes over a single weekend.
recent years, we have seen numerous safe, swift, ingenious and high-profile examples of these techniques, acclaimed by public agencies, elected officials, the media and the general public alike. Similarly, natural or man-made disasters may require contractors to be extremely resourceful within even more challenging time frames, to repair or replace critical infrastructure assets that have been damaged.

It should be noted that other classes of industries are exempt from the general rule, or enjoy certain exceptions. As one example of which we are always reminded in mid-summer each year, FMCSA exempts members of the American Pyrotechnics Association from the rule so they can transport explosives for Fourth of July fireworks shows. One would think that, as a national public policy goal, the improved efficiency in the delivery of transportation improvement projects would rank at least as high as the successful staging of holiday fireworks displays. Other partial or full exemptions apply to:

- Agricultural drivers during planting or harvesting season
- Vehicles operated by the federal, state or local government
- Drivers for movie and television productions
- Oilfield operations drivers (through which waiting time at a natural gas or oil well site does not count as on-duty time)
- Drivers transporting propane heating fuel during the winter
- Railroad signal employees
- Retail store deliveries
- Utility service vehicles

A transportation construction industry exemption could be fashioned in a similar manner to those affecting other specific industries, as described.

ARTBA and its members continue to be concerned about the wholesale application of the hours of service rule to the transportation construction industry. Contractors and suppliers make every effort to comply, but often to the detriment of efficiency in the project’s time and cost. Treating short-haul transportation construction industry drivers the same as long-haul commercial truckers defies common sense. Correcting this misapplication of federal requirements is the type of regulatory reform that all sides claim to support. ARTBA stands ready to work with FMCSA in this important effort.

Sincerely,

T. Peter Ruane
President & CEO