October 21, 2019

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-2018-0248, Hours of Service of Drivers

On behalf of the more than 8,000 members of the American Road & Transportation Builders Association (ARTBA), we respectfully offer comments on the Federal Motor Carrier Safety Administration’s (FMCSA) notice of proposed rulemaking concerning certain provisions of the federal Hours of Service (HOS) requirements.

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 $500 billion annually in U.S. economic activity and sustains the equivalent of 4 million American jobs.

ARTBA supports FMCSA considering various provisions of the HOS rule in response to President Trump’s January 30, 2017 executive order on “Reducing Regulation and Controlling Regulatory Costs.” In support of the administration’s regulatory reform agenda, ARTBA issued a report highlighting multiple regulations, including the HOS rules, we felt to be ideal candidates for examination and reform. We are pleased FMCSA has opened this discussion on the HOS regulations.

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 we support FMCSA’s efforts, 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 Supports FMCSA’s Proposed Rule**

ARTBA is particularly grateful to FMCSA for its focus on two areas which will offer our members increased flexibility without impacting safety. Specifically, the expansion of the “short haul” exemption from 100 to 150 air miles as well as allowing non-driving activities to satisfy the 30-minute rest requirement properly acknowledge that 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.

**Drivers Should Not be Required to Return to Their Original Work Reporting Location**

ARTBA would also like to propose that FMCSA revise the rule to eliminate the requirement that a driver must return to the normal work reporting location and be relieved from duty within the time limit to be eligible for exemption from the rule.

There is nothing magical about a normal work reporting location. Going back to the same origin point every date does not necessarily promote safer driving habits. Many drivers begin their duty period from home, or from different jobsites, or motels on the road. With modern telecommunications between drivers and management, it is not necessary for the driver to be physically present at a work reporting location to be relieved from duty in person. Drivers often now communicate with dispatchers and managers electronically on a daily basis, often exclusively, with no diminution in safety.

ARTBA suggests that the rule simply require the driver to establish the origin point for that duty period, using GPS or some equivalent means, and be relieved from duty within 14 hours. Drivers can notate their origin for the day in order to establish the 150 air-miles radius. If they are relieved from duty by the end of the 14-hour duty period, they would be exempt under the rule.

**A General Exemption for Transportation Construction Drivers Should be Considered**

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 FMCSA’s proposal 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.

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. In 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 continue working with FMCSA in this important effort.

Sincerely,

[Signature]

David Bauer
President & CEO