



## **Statement of the American Road & Transportation Builders Association**

### **“The Impacts of DOT’s Commercial Drivers Hours of Service Regulations”**

**House Highways and Transit Subcommittee  
June 18, 2013**

Chairman Petri and Representative DeFazio, thank you for convening this important hearing today. The federal hours of service rule is important to the safety of the nation’s roadways, and constitutes an equally important area of compliance for commercial motor vehicle operators in the transportation construction industry. The American Road & Transportation Builders Association (ARTBA) appreciates this opportunity to present our views on this issue.

The more than 5,000 members of ARTBA represent the consensus voice of the U.S. transportation construction industry at the federal level. ARTBA’s membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Many of these are small and/or family-owned businesses. About two-thirds of ARTBA members are transportation construction companies of varying size and areas of expertise. These include prime contractors, sub-contractors and suppliers. Overall, our industry generates nearly \$354 billion annually in U.S. economic activity and sustains the equivalent of 3.5 million American jobs. ARTBA’s membership structure also includes nearly three dozen affiliated chapters.

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 – as administered by the Federal Motor Carrier Safety Administration (FMCSA) – appears clear. Agency 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. Various other provisions of the rule require drivers to keep log books reflecting these time records.

Throughout various FMCSA comment periods (starting in 2000) addressing the hours of service rule, ARTBA has argued the revised rule should not apply to drivers in the transportation construction industry. FMCSA is about to implement these rule revisions, but to our knowledge the agency has never seriously contemplated an exemption for this industry's short-haul drivers. As we have expressed over the years in comments submitted to FMCSA and to the U.S. Department of Transportation, 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 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.

Generally, transportation construction industry commercial drivers do not operate in a manner that leads to concerns over fatigue that is the focus of the hours of service rule. Further, we are unaware of any conclusive data to demonstrate that driver fatigue and ancillary health issues are a significant problem in our industry.

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.

Now the revised hours of service rule will also mandate 30-minute off-duty periods at least every eight hours in order for an operator to drive. Clearly this provision is targeted at long-haul drivers who should come off the road periodically to prevent fatigue. However, it is expected to disrupt the work day for many transportation construction industry professionals. Under some interpretations, industry drivers who do not normally need to keep log books will now have to do so in order to track their required 30-minute breaks.

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.

FHWA has used its Every Day Counts program to promote these types of activities. A prominent example was the Massachusetts Department of Transportation’s “Fast 14” effort during the summer of 2011, through which contractors replaced fourteen bridges in just ten weekends. The public and media reaction to this innovative effort was extremely positive.

The industry is proud to be at the cutting edge of these emerging techniques. The intensity of the work schedule for these contractors, whether leading up to or during the weekends in question, cannot be overstated – nor can the industry’s satisfaction in these accomplishments. However, in these circumstances, the hours of service rule continues to make the job more difficult by limiting the availability of certain key personnel (none of whom are long-haul truck drivers) to discharge job duties relating to commercial motor vehicles. The rule may also disrupt the timely delivery of materials to the construction site. For these reasons, the rule may increase the project’s cost (in terms of additional personnel required) without accompanying safety benefits for all concerned.

Therefore, ARTBA reiterates its desire for an exemption relating to the drive-time and on-duty limits for transportation construction industry drivers. Any standard tailored for the transportation construction industry should be based on clear facts that establish the degree to which – if at all – fatigue for these drivers is a factor that could lead to an increase in deaths and injuries on the nation’s roadways.

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 this time of 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. Moreover, the existing rule includes a 24-hour restart provision (as opposed to 34 hours under the general rule) for commercial motor vehicle drivers of construction materials and equipment. So the rule already contemplates a unique place for our industry and it would be possible to carefully craft a wider, viable exemption in a similar vein. Such an exemption could address drive time and on-duty limits for the unique aspects of our sector while preserving safety. Like the rule for oilfield operations, transportation construction supplier drivers waiting in a “queue” should not be considered on duty, nor should the time for workers who drive a commercial vehicle or construction equipment only incidentally to their main duties on a construction project.

ARTBA and its members continue to be concerned about the wholesale application of the hours of service rule to the transportation construction industry. Contractors 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 Congress, FMCSA and other transportation agencies in this important effort.

Thank you for this opportunity to offer the views of ARTBA’s members and the transportation construction industry.