

March 4, 2011

Docket Management Clerk
U.S. Department of Transportation
Room W12-140
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590-0001

Re: Docket No. FMCSA-2004-19608-4095

To Whom It May Concern:

The American Road & Transportation Builders Association (ARTBA), now in its 109th year of service, provides federal representation for more than 5,000 members drawn from all business sectors of the U.S. transportation construction industry. ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

Throughout various Federal Motor Carrier Safety Administration (FMCSA) comment periods (starting in 2000) addressing the hours of service rule for commercial motor vehicle operators, ARTBA has argued the revised rule should not apply to drivers in our industry. In the present rulemaking, FMCSA proposes to revise these regulations again, but does not contemplate an exemption for the transportation construction industry. ARTBA believes the rationale for this exemption remains strong and worthy of the agency's consideration. The effect would be increased efficiency in the construction of transportation improvement projects, while still 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, which allows for short breaks. 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. Generally, transportation construction industry commercial drivers do not operate in a manner that leads to concerns over fatigue that are 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 these 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. While windows of 10-11 hours of drive time and 13-16 hours of on-duty time may seem adequate, in fact they often disrupt the efficient deployment of professionals and resources on the construction job site, without a demonstrable increase in safety.

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 in order to allow the contractor to undertake an intense effort to replace or renovate it within a very short time frame – sometimes over a single weekend. Similarly, natural or man-made disasters may require contractors to be extremely resourceful under even more challenging time frames, in order for them to repair or replace critical infrastructure assets that have been damaged.

The industry is proud to be at the cutting edge of these emerging techniques. However, in these circumstances, the hours of service rule makes the job more difficult by limiting the availability of certain key personnel 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 a requisite enhancement of safety for all concerned.

Therefore, ARTBA reiterates its desire that FMCSA develop 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, including agriculture. A transportation construction industry exemption could be fashioned in a similar manner. 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 would address drive time and on-duty limits for our sector while preserving safety.

ARTBA is committed to a continuing dialogue with FMCSA and other entities – both in the public and private sectors – on these important issues, again with safety as everyone's priority. Thank you for consideration of these comments.

Sincerely,

A handwritten signature in black ink, reading "T. Peter Ruane". The signature is fluid and cursive, with the first name "T." and last name "Ruane" clearly legible.

T. Peter Ruane
President & C.E.O