

**INSURANCE INSTITUTE
FOR HIGHWAY SAFETY**

November 30, 2004

The Honorable Annette M. Sandberg
Administrator
Federal Motor Carrier Safety Administration
400 Seventh Street S.W.
Nassif Building, Room PL-401
Washington, D.C. 20590-0001

**Electronic On-Board Recorders for Hours-of-Service Compliance
Advance Notice of Proposed Rulemaking
Docket No. FMCSA-2004-18940, FMCSA-2004-17286**

Dear Ms. Sandberg:

The Insurance Institute for Highway Safety (IIHS) is concerned about the slow pace of rulemaking by the Federal Motor Carrier Safety Administration (FMCSA) regarding the important issue of hours-of-service compliance. The agency's issuance of an advance notice of proposed rulemaking (ANPRM) at this juncture is a significant step backward, needlessly delaying the single most critical hours-of-service reform -- requiring electronic onboard recorders (EOBRs) in large trucks.

FMCSA's stated purpose in the ANPRM is to gather information concerning a number of general and specific issues to be considered in the development of an EOBR requirement. Such a data-gathering exercise is appropriate when an agency initiates rulemaking on an issue for the first time. However, FMCSA already has an extensive history of rulemaking on EOBRs. This includes the incorporation of an EOBR requirement into the hours-of-service rules proposed in 2000, a current rule allowing carriers to use EOBR systems meeting established criteria in lieu of paper logbooks, and a current exemption allowing Werner Enterprise, Inc. to use GPS-based technology to monitor and record drivers' hours of service. FMCSA's concerns with an EOBR requirement, reiterated in the ANPRM, could be addressed by modifying the requirement proposed in 2000. But whatever regulatory route is chosen, the agency should move expeditiously to mandate EOBRs in large trucks. It is shameful that the potential of tracking and recording technologies has not been used to correct an enforcement system that is fundamentally broken and lacking in credibility.

IIHS has repeatedly petitioned the U.S. Department of Transportation to require onboard recorders to increase compliance with hours-of-service rules (e.g., IIHS, 1986, 1987, 1989, 1995). We have provided documentation of the detrimental safety effects of truck drivers' long

driving hours, the widespread noncompliance with hours-of-service rules, and the availability of affordable tamper-resistant onboard recorders (e.g., IIHS 1995, 2000a, 2000b). We concur with the assessment of the U.S. Court of Appeals for the District of Columbia that FMCSA has not fulfilled the congressional directive to evaluate seriously whether EOBRs should be required. We also agree that the agency's regulatory approach to this issue has been "one-sided and passive," as reflected in its failure to test existing EOBR devices and estimate EOBR safety benefits in spite of imperfect information. In this regard, we make the following points.

Although very little additional information is needed to craft a workable EOBR mandate, FMCSA must rely on its own expertise, or develop the necessary expertise, to conduct operational tests of the most commonly used devices. The agency has been remiss in not publishing field studies of current EOBR systems or a report on the pilot GPS project with Werner Enterprises, Inc. Studies involving complex research designs and statistical models are not needed. Instead simple, straightforward, real-world tests of whether current EOBRs can provide accurate, tamper-proof work records are indicated; if not, what modifications are indicated?

FMCSA also must use its own expertise to gather objective information on the costs, benefits, and issues related to enforcement of hours-of-service rules. The ANPRM continues the agency's misguided approach in relying on motor carriers, or technology industries dependent on carriers, to provide the needed expertise to develop an effective EOBR requirement and provide objective, detailed information on equipment costs, benefits, and capabilities as part of a public rulemaking process. Information provided in response to the ANPRM will be largely anecdotal, self-reported, or based on opinions rather than facts. It will not reflect a representative sample of the trucking and technology industries, drivers, or enforcement community. As such, it will not provide the basis for drawing accurate and objective conclusions about the costs, capabilities, and limitations of various technologies and their effects on carrier operations, compliance with hours-of-service rules, driver health and safety, and highway safety. Therefore, it is incumbent on FMCSA to gather whatever information still is needed.

Given that EOBRs currently are used by some carriers in lieu of paper logbooks and that Werner Enterprises, Inc. has for some time used a GPS-based system, FMCSA also should query agency staff and state enforcement personnel in a systematic way about the use of these systems to conduct roadside inspections and other enforcement activities. This will provide more reliable information than that gathered from an ANPRM.

The agency also should make some effort to collect information from the European Union, which has developed a regulation for digital tachographs (Commission Regulation EU 1360/2002) due to go into effect in 2005.

Estimating Costs and Benefits

A variety of EOBRs, GPS systems, and other similar technologies are being used by many carriers to manage operations and track shipments. Numerous press articles report carriers' increasing use of onboard technologies and the added value of these technologies in carrier operations (e.g., Balint, 2004; Davis, 2002; Gale Group, 2003; Schulz, 2004; Wlazlowski, 2004). For example, GPS has been described by a representative of the American Trucking Associations as about "as important as diesel fuel... a major logistics tool" (Davis, 2002). In a fall 2003 survey conducted by IIHS with long-distance truck drivers in 2 states, 36 percent of drivers reported they had GPS systems in their trucks. Eighteen percent of drivers reported they had EOBRs or other onboard computers that recorded driving times automatically (IIHS, unpublished data).

Cost is not a significant barrier. Affordable EOBR systems are available (IIHS, 1995, 2000b). Once EOBRs are required, the fundamental laws of economics will cause prices to fall substantially due to the effects of economies of scale and increased demand.

The ANPRM discussion of potential benefits makes no mention of driver health, despite the recent U.S. Court of Appeals finding that this statutorily mandated factor must be addressed in hours-of-service rulemaking. Improved compliance with the rules will have a direct and measurable effect on driver health.

Enforcement Using EOBRs

FMCSA should develop guidelines and training for federal and state enforcement personnel to access EOBRs and interpret system outputs to conduct roadside inspections and other enforcement. The ANPRM states that FMCSA has "received numerous reports of State enforcement officials who purposely avoid reviewing EOBR and electronic records because they are unfamiliar with their appearance and unsure they can review them accurately and efficiently." FMCSA has been remiss in not providing training. A lack of knowledge about the use of EOBR data in compliance reviews of carriers also was noted. However, because FMCSA was the primary agency conducting these reviews, it is unclear to whom this deficiency can be attributed other than the agency.

System Capabilities

The accurate recording of driving time, based on or verified through engine operation, is by far the most important capability needed in an

EOBR system. Fortunately, many onboard systems already have this capability or can provide it with minor modifications. An accurate record of nondriving work time also is important. However, developing a system that can verify nondriving work time with the same degree of accuracy as driving time is much more difficult to achieve. IIHS notes that both driving and nondriving times can be easily falsified using the current paper-based system. We also note that the change in the method used for calculating total on-duty time (e.g., time elapsed since start of duty period) in the new hours-of-service rules should facilitate enforcement of daily work limits in an automated system. A desire to identify systems that can ensure perfectly accurate and verifiable accounts of nondriving work time should not delay a mandate for EOBRs that produce an accurate account of driving time.

With regard to the ANPRM query on the development of "basic" EOBRs to promote increased carrier acceptance, IIHS agrees that carriers should be able to use a relatively simple system that identifies the driver and accurately records driving time, other on-duty time, and off-duty time but that does not have other features such as those to monitor vehicle performance. However, the ANPRM does not clearly define how a "minimally compliant" EOBR would differ from an EOBR allowed under 49 CFR 395 or the GPS-based system used by Werner Enterprises, Inc.

With regard to the merits of a design versus performance standard, IIHS does not believe it is FMCSA's responsibility to design an EOBR system. However, FMCSA has not sufficiently explained why a performance-based system would be problematic for enforcement personnel. A design component specifying a uniform method of assessing the data and a uniform output record can be incorporated into the overall system requirements.

Voluntary versus Mandated EOBR Use

A system that relies on carriers' voluntary use of EOBRs will fall short; a mandate is needed. Although onboard systems are common, they rarely are used to document compliance with hours-of-service rules. In the 2003 IIHS interviews with long-distance truck drivers, 91 percent of drivers with EOBRs or other onboard computers also kept paper logbooks for reporting their work times.

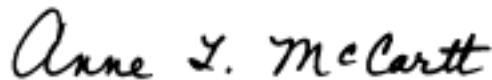
The ANPRM states that there is "a lack of support from the transportation community at large" for an EOBR requirement. Certainly safety groups have been united in support of a requirement. IIHS believes many drivers and carriers also support such a requirement. According to Douglas Duncan, CEO of FedEx Freight, an EOBR requirement is "a way to improve highway safety. It is a way to make sure everyone is abiding by the same rules" (Schulz, 2004). However, it is hardly surprising that some carriers and drivers do not support a

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system requiring them to comply with the rules. It is FMCSA's responsibility to make unpopular decisions, if necessary, to further safety.

In sum, IIHS believes little useful information will be gathered with this ANPRM. We are concerned that it will push the regulatory process back to the starting point, even though it is patently clear that safety would be served by adopting an EOBR requirement for large trucks. We urge FMCSA to demonstrate leadership by instituting such a requirement without further delay.

Sincerely,



Anne T. McCartt, Ph.D.
Senior Research Associate

cc: Docket Clerk, Docket No. FMCSA-2004-18940, FMCSA-2004-17286

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