

experience reported by enforcement personnel is that EOBR records are more difficult to review. The ATA argued that the FMCSA overlooked the biggest shortcoming of EOBRs—they do not track what a driver is doing when the vehicle is stopped and the engine is shut off. The ATA was critical of present methods that do not discover intentional lawbreakers, who know how to avoid detection. The ATA noted that the agency even failed to address the issue of off-duty driving of the truck, so that a trip to the diner or to a movie theater could very well be recorded as driving time and possibly result in a violation.

The ATA noted that the phase-in schedule belied the agency's contention that safety benefits will flow from improved compliance. The proposed schedule gave small carriers, the least compliant segment of the industry, according to an ATA study of FMCSA's Motor Carrier Management Information System (MCMIS) data, more time than the large carriers, the most compliant.

The ATA criticized the FMCSA for failing to evaluate potential risks of requiring drivers to manually enter location codes when crossing state lines in spite of NHTSA's concerns about driver distractions.

The ATA expressed its disappointment with the lack of discussion of privacy concerns or limitations on the use of data for purposes unrelated to regulatory compliance. It also suggested that the proposal could be subject to legal challenge based on U.S. Supreme Court decisions defining the parameters of lawful, warrantless searches in closely regulated industries.

The ATA accused the FMCSA of violating advice from ITS America, an advisory committee to the DOT, and particularly Principles 1, 5, 6, and 7 of the *Fair Information Principles for ITS/CVO*.

Other Industry Comments

The State trucking associations were not unanimous in their opposition to the EOBR provision in the proposal. Many did not comment on this issue, perhaps relying on the ATA, their national representative, to express their views.

The Arkansas Trucking Association unanimously supported the required use of EOBRs. It was particularly persuaded by the opportunity to replace a very expensive and inefficient paperwork system. It recommended to its members that EOBRs be installed and maintained in all CMVs over 26,000 pounds. The members reportedly were tired of competing with cheaters, and

believed that EOBRs would provide a level playing field.

CTA supported the use of time recording devices (not necessarily an EOBR) for all drivers and trucking operations only under the following six conditions:

(1) The implementation of EOBR devices must be the same for all carriers;

(2) The time recording device must be readable at roadside inspections by law enforcement officials;

(3) The data obtained from a recording device must be used by law enforcement officials for HOS enforcement purposes only and not for reconstruction of other events or operations;

(4) The recording device must identify individual drivers and include the option of personal technology devices, as well as EOBR's installed in the vehicle;

(5) There must be an investment tax credit for purchase and installation costs associated with the recording devices, retroactive to existing devices; and

(6) The mandatory record retention period for recorded data must not exceed six months.

CTA opposed the use of additional information that may be recorded to enforce other statutes not relative to a driver's HOS. CTA believes that due process and driver privacy require this consideration.

The PMTA, on the other hand, reported that many of its carriers believed EOBRs would be redundant for their type of operation, under which drivers' HOS are already closely controlled or monitored. The PMTA recommended assembling a multi-disciplinary committee to hammer out HOS reform regulations.

The large truckload carriers were somewhat divided over the provision, but several supported it.

J.B. Hunt believed that EOBRs would ensure compliance with HOS regulations, but attached certain conditions to its support:

(1) They must be required of all carriers at the same time;

(2) Their use must be limited to immediate enforcement of compliance; and

(3) They must have legally enforceable prohibitions on the use of EOBR data for other purposes.

J.B. Hunt also suggested that EOBRs should be phased in based on a motor carrier's safety performance, using Safestat as a reference, so that the worst performing carriers would be required to comply earlier, e.g., "A" list first, then "B" list, etc. It also urged the FMCSA to set performance standards that allow for innovative technology.

M.S. Carriers (M.S.) found the EOBR proposal to be basically sound, but believed the FMCSA should require standard equipment in all CMVs so it could be used interchangeably. M.S. also recommended a condition that information from these devices could not be used in court.

Schneider National, while not in outright support of the provision, felt that if EOBRs were to be required, implementation should be the same for all commercial fleets, regardless of size.

U.S. Xpress Enterprises believed it would be prudent to separate out the EOBRs from the rest of the proposed rules because "black boxes" perform a variety of functions. They suggested it would be better to combine all functions in a single device and test them so everyone could get the ultimate benefits. They noted, for example, that the NTSB is very interested in getting black boxes installed for crash investigation purposes.

Landstar believed the implementation schedule for EOBRs would be unfair to owner-operators leased to larger carriers because they would have to meet a more expedited schedule by reason of the size of the carrier to which they lease. Landstar also supported requiring EOBRs on a performance basis, e.g., carriers with above average accident rates should be first to implement.

Great Coastal Express pointed out that EOBRs are good for monitoring driving time, but not very good for tracking non-driving on-duty time.

Smaller truckload carriers and owner-operators were more uniform in their opposition to the mandatory EOBR provision. Perfetti Trucking, for instance, was totally opposed to EOBRs, believing they would cause older drivers to leave in large numbers. They believe younger drivers in the 30 to 45 age bracket, who may possess some degree of computer literacy, might be more comfortable. The older drivers, however, view EOBRs as an intrusion on their liberties, an insult to their intelligence, and a way of making them look inferior. Perfetti also believed the proposal would put many owner-operators and small trucking companies out of business.

The NASTC found the proposed use of EOBRs to be intrusive and would "treat drivers on a par with convicted felons under house arrest." NASTC noted, however, that if EOBRs are to be required, the agency, in conjunction with CVSA and the industry, should design specifications that are uniform, cost-effective, tamper-proof, and can be incorporated as a mass-manufactured component.