

Other small truckload carriers and owner-operators reported the devices would be too expensive; they could not afford them; and they would likely have to go out of business.

The OOIDA believed that dividing the day into a 10-hour rest period and a 14-hour duty period would make compliance and enforcement so simple that EOBRs would be redundant.

The less-than-truckload (LTL) sector was generally opposed to the mandatory use of EOBRs.

The MFCA claimed its carriers now achieve virtually 100 percent compliance with the HOS regulations. The only possible noncompliance is failing to keep up the record of duty status. Therefore, at least as concerns the MFCA, there is no benefit, only cost.

Yellow recommended that the EOBR provision simply be removed from rule until more information is available.

Watkins was concerned about unproductive costs. Watkins believes that EOBRs have no direct safety benefit; that there is no equipment currently available; and that the cost to convert to the requirement would be \$2,650 per EOBR. After making a case for exempting LTL operations from the EOBR requirement, Watkins projected its total cost of converting to the proposed monitoring and record-keeping system at \$15,053,465.

The OOIDA complained that "[FMCSA leaps] from regulations that may or may not prevent driver fatigue to requiring black boxes to assure compliance with those regulations." OOIDA believes the regulations should be reasonable and should rely on voluntary compliance. OOIDA believes EOBRs would expose carriers to greater liability, as plaintiffs' attorneys would have more ammunition with which to impress juries, regardless of actual fault. OOIDA also objected to EOBRs based on Fourth Amendment privacy protections.

OOIDA participated in a DOT European safety scan in 1999. OOIDA stated the mandatory use of EOBR type devices in Europe had been delayed four times due to industry objections. OOIDA also found that drivers did not embrace the product at the time, they hated it. The system was too restrictive and limited their earning capacity. OOIDA claimed that drivers and employers worked out unofficial arrangements so drivers would not plug in their drivers' cards until they were a couple of hundred miles down the road to enable them to get the overtime the drivers needed to make a living. OOIDA believed VDO North America, a vendor that commented at the hearings and roundtables, "took literary license in the interest of sales." OOIDA acknowledged

that the United States system is not foolproof, and drivers would find ways of beating it. OOIDA believes a truly foolproof system would be too expensive.

The IBT commented that it has not opposed EOBRs in the past, provided limitations are placed on the use of the data, because record of duty status falsification has been a big problem. The IBT asserted, though, that the requirement for EOBRs would contribute nothing to safety without strong enforcement. The IBT also doubted whether the information collected by EOBRs would have much value for enforcement since they only directly track driving time.

The ABA cited a General Accounting Office report to Congress finding in relation to the agency's estimate of a 20 percent safety benefit from the use of EOBRs that the FMCSA "did not have an analytic basis to support this estimate." The ABA concludes that mandating EOBRs for long-haul buses would result in a large expense with no safety benefit.

Commercial Vehicle Training Associations (CVTA) is a trade association representing the nation's private training programs for CMV operators. Regarding EOBR training, CVTA commented that if a uniform set of specifications were developed and required, the schools could, and probably would, include a module on EOBR use.

The U.S. Small Business Administration (SBA) noted the cost of the required EOBRs and believed that even four years lead time may not be sufficient to reduce costs significantly. It further believed the cost estimates were understated. The SBA provided no substantiation for its estimate, except its concept of "average," which was to add the lowest estimate it had heard to the highest estimate and divide by two, resulting in a per-unit cost estimate of \$17,000 to \$19,000. It recommended examination of feasible alternatives to general EOBR use, including one that is performance-based. If the FMCSA imposed the requirement on those with the worst safety records, it would provide an added incentive to operate safely. The SBA strongly urged the FMCSA to consider all information from small businesses and include full discussion of costs and assumptions, as well as feasible alternatives and why they were not chosen.

Law Enforcement Comments

The CVSA opposed the requirement for EOBRs as premature and recommended more study to ensure standardization. It suggested using the

DOT's Intelligent Vehicle Initiative (IVI) to conduct operational evaluation and possible pilot tests. In addition to suspecting the quality of the equipment presently available, CVSA has concerns about access, availability and use of the data. CVSA noted that most tachometer-type equipment is used by industry as asset management tools and not necessarily for driver management, and noted, "The EOBR requirements as currently written in the proposal offer no benefit to industry or enforcement in having the ability to proactively manage fatigue." In this context, the CVSA was distinguishing the EOBR from other developing technologies that measure and project driver alertness (e.g., Perclos™ and Actigraph™ devices).

The California Highway Patrol (CHP) was not opposed to the use of automated time record systems for Types 1 and 2. CHP noted such equipment has been in use in California since the mid-1980s. CHP has problems with Types 3, 4 and 5 drivers because they may be caught in positions where they suddenly need an EOBR on a limited basis, such as a required overnight stay. CHP suggested the development of an alternate means of compliance in those situations. CHP also believed that with no records required for Types 3, 4 and 5, roadside enforcement would be impossible. It recommended building into the rules a rebuttable presumption of regularity with toll receipts and other time-dated records regularly issued in the course of business.

Safety Advocacy Groups

Safe Drive America (SDA) described itself as an organization improving highway safety by observing and reporting unsafe practices and promoting improvements in training and working conditions for drivers. SDA supported the NPRM overall as a positive step in the right direction, in particular, the requirement for EOBRs. It recommended a six month phase-in period for all motor carriers. SDA claimed it is not unusual under the current rules for a driver, with three pickups in a given town, to spend all night making those pickups and then record 0.75 hours loading, and 11.25 hours in a sleeper berth. SDA claims the driver then shows on the record of duty status as emerging from the sleeper at 6 a.m. with an eligible 10 hours of driving and 15 hours on duty. SDA claims the driver could still do this under the proposal unless there is a device like the EOBR to keep the driver honest, and even then, enforcement would be required.