

Carriers that discussed the phase-in period generally insisted that, if a mandate were adopted, all carriers should be required to begin using EOBRs at the same time. The Small Business Administration (SBA), though critical of the financial burden of on-board recorders for small entities, suggested that the agency consider requiring them only for carriers with the worst safety records. In short, there was no consensus on the phase-in issue.

Fourth, although the agency proposed EOBRs only to capture HOS information, most commenters viewed these devices in a wider context. Many drivers regard electronic monitoring as a direct assault on their dignity and privacy. Motor carriers, on the other hand, are deeply concerned that HOS functions handled by the on-board electronic systems of modern tractors would expose all other information recorded by those systems (e.g., speed, frequency of brake application, etc.) to demands for production in lawsuits resulting from accidents. Many carriers and trucking organizations expressed adamant hostility to any EOBR requirement that did not protect data generated by recording devices from any use except HOS enforcement. Although the commenters may have exaggerated the impact of EOBRs, they did raise issues the agency did not consider in the NPRM and is not prepared to address in this final rule.

For all of these reasons, FMCSA has concluded that it has neither the economic and safety data needed to justify an EOBR requirement at this time, nor the support of the transportation community at large. The agency, however, does plan to continue research on EOBRs and other technologies, including evaluating alternatives for encouraging or providing incentives for their use. Key research factors will include:

- (1) Ability to identify the individual driver;
- (2) Tamper resistance;
- (3) Ability to produce records for audit;
- (4) Ability of roadside enforcement to quickly and easily access the HOS information;
- (5) Level of protection afforded other personal, operational or proprietary information;
- (6) Cost; and
- (7) Driver acceptability.

Proposed Compliance and Enforcement

The ATA and a substantial number of other industry commenters expressed concern that enforcement would suffer if the proposed rules were adopted. Motor carriers, associations, unions, and

shippers all found the proposed rules too complex, particularly the provision for five types of operations. They stated that roadside inspections would take much longer as enforcement officers sorted out what category each driver fit into so they would know what rules to apply. Longer times per inspection would translate into fewer inspections and a less effective enforcement effort.

Industry Comments

The ATA found that the proposed shifting among 5 types of operations would cloud compliance and enforcement. Although the proposal allowed "good faith" compliance with the perceived type of operation, too many variables made the proposal unworkable. Customer demands, weather, loading and unloading delays, and other unforeseen circumstances would impact schedules. Inflexible categories and the subjective interpretation by law enforcement personnel would make confusion unavoidable.

The ATA stated that regulations have to be clear and concise. The ATA stated that it has been a consistent supporter of effective enforcement, but that reliance on EOBRs is not the answer. The ATA comments also recommended removing the link to the DOL requirements and reverting to the current record keeping requirements in 49 CFR part 395.

The DLTCA made no mention of record keeping in its petition or in its comments, noting agreement with ATA's view on this matter.

Werner Enterprises recommended an alternative regulatory scheme. It stated that a better objective would be to achieve uniform enforcement of existing rules before attempting any industry-wide change. Consideration should be given to retaining the present HOS rules, but to implement the proposed on-board recorder requirement. The agency could then determine whether that initiative with adequate training would achieve desired level of regulatory compliance and safety improvement.

J.B. Hunt counseled that rules should not be difficult for drivers and enforcement personnel to understand. It believes effective enforcement and meaningful sanctions change behavior. It supported requiring immediate enforcement against violators at the time and place of occurrence to reinforce compliance. Placing the driver out-of-service until he is in compliance is not enough. Uniform fines should also be imposed. J.B. Hunt believes that reliance on carriers to discipline drivers is impractical because of the gap between

the time of the violation and the time the carrier learns of it, as well as the mobility of drivers. Finally, J.B. Hunt urged the government to mandate speed control devices on all CMVs limiting truck speeds to a standard national rate (60 to 65 mph) for everyone.

Landstar believes that the proposed provision for different types of operations would make enforcement difficult. It also stated that reliance on DOL records is misplaced: historically, carriers have considered themselves subject to DOT rules and interpretations of them. Without any meaningful explanation, the FMCSA "would throw out decades of industry practice." The complexity of the proposed rules would have an adverse impact on enforcement. Landstar believes that both compliance reviews and roadside inspections would take longer because the investigator would have to determine what type of operation carriers and drivers are engaged in before they know what rules to apply.

Overnite was convinced that stricter enforcement is the key to improved compliance with HOS regulations and to safety. Overnite strongly endorses the use of EOBRs to bolster enforcement. On the whole, Overnite found the proposal too complex. It offered comments from a driver, Thomas Hawks, a 10-year driver based in Memphis, TN with an exemplary safety record. Mr. Hawks stated the NPRM provisions would confuse drivers and enforcement people, but more importantly, it would prevent drivers from doing their jobs in a professional way. Although he does not load or unload, he believes enforcement action should be taken about time wasted at the docks of shippers and receivers.

The Minnesota Trucking Association found that the five categories of drivers would be very confusing for both companies and law enforcement to follow.

The California Trucking Association agreed that "typing" drivers serves no useful purpose and only confuses industry and enforcement. The CTA would support use of time-recording devices for enforcement, provided certain other conditions apply. Although a vigorous supporter of efforts to make highways safer, CTA would stress better drug/alcohol testing and reporting procedures and more funds for roadside enforcement.

The NTTCC deferred to CVSA comments regarding enforcement, but agreed that five types of operations are unnecessarily confusing and would hamper uniformity.

The NITL and the NAM also found the proposed rules overly complex,