

**BEFORE THE
CANADIAN COUNCIL OF MOTOR TRANSPORT ADMINISTRATORS**

**COMMENTS OF
THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC
IN RESPONSE TO A
REQUEST FOR COMMENTS**

Electronic On-Board Recorders

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I. INTRODUCTION

A. Procedural Statement

These comments are submitted by the Owner-Operator Independent Drivers Association, Inc. (“OOIDA” or “Association”) related to a “request for comments” from the Canadian Council of Motor Transport Administrators (“CCMTA”) exploring issues related to a possible recommendation to mandate electronic on-board recorders (“EOBRs”) on commercial motor vehicles operating in Canada. The CCMTA formed a project group to collect responses from stakeholders for evaluation into its report which is expected to be completed by the fall of 2010 and presented to the Council of Deputy Ministers of Transportation.

B. The Interest of the Owner-Operator Independent Drivers Association, Inc

The Owner-Operator Independent Drivers Association, Inc. is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators, small-business motor carriers and professional drivers. The more than 157,000 members of OOIDA are professional drivers and small-business men and women located in all 50 states and Canada. One-truck motor carriers represent nearly half the total number of active motor carriers operating in the United States while approximately 96 percent of active motor carriers operate 20 or fewer trucks. The address of the Association is:

Owner-Operator Independent Drivers Association, Inc.
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www.ooida.com

The Association actively promotes the views of small-business truckers and professional drivers through its interaction with state and federal government agencies, legislatures, the courts, other trade associations, and private businesses to advance an equitable and safe environment for commercial drivers. OOIDA is active in all aspects of highway safety and transportation policy, and represents the position of small-business truckers and professional drivers on numerous committees and in various forums on the local, state, national, and international levels. Any potential mandate for EOBRs would affect every Canadian member of OOIDA as well as members based in the U.S. engaged in cross-border trucking to/from Canada.

II. SUMMARY

The CCMTA is seeking input from industry stakeholders regarding a possible EOBR mandate for commercial motor vehicles operating in Canada. OOIDA's consistent position has been as follows: If EOBRs could prevent the manipulation of a driver's work schedule and respect drivers' privacy rights, we would consider supporting their adoption. Unfortunately, EOBRs are no more a reliable or accurate record of a driver's compliance with the hours-of-service ("HOS") rules than paper logs. HOS rules require an accounting of time spent by drivers doing other work activities that is not time spent driving, and EOBRs are not capable of accurately tracking this time. This incontrovertible fact underscores the lack of a rational basis for the economic burden and the unreasonable imposition on personal privacy rendered by any EOBR mandate.

The costs of EOBRs include those to personal privacy. The truck cab is the home away from home of most long-haul drivers. They sleep, eat, and conduct personal business in their truck while not driving. As in the U.S., Canada allows the use of a commercial motor vehicle as a means of personal conveyance when a driver is not "on-duty." Drivers have a legitimate

expectation of privacy that should be afforded protection – especially when they are not legally obligated to account for time spent conducting “personal business” such as driving their truck to restaurants, hotels, or any number of other locations. Because EOBRs offer no real improvement over paper logbooks, it cannot be argued that they are necessary to improve compliance with HOS rules when balanced against a driver’s expectation of privacy.

OOIDA has consistently objected to EOBR measures as costly and personally intrusive devices that would do nothing to address the problem they promise to fix. OOIDA has stated for years that it is the on-duty, not-driving demands of carriers, brokers, and shippers - backed by intense economic pressure - that force drivers to meet unreasonable delivery schedules. EOBRs would do nothing to help drivers resist this pressure and would only serve to increase the level of stress drivers experience in attempting to perform their job functions. Stress can lead to adverse health effects. In fact, the only evidence regarding potential health effects of EOBRs are the studies that show electronic monitoring of employees can increase the stress of workers.

Contrary to anecdotal statements in the discussion paper attributed to unknown motor carriers, OOIDA questions any self-reported economic analysis used to support the use of EOBRs. If EOBRs cannot accurately account for all the time a driver actually spends on-duty, it’s erroneous to attempt to articulate a connection between EOBRs and improved compliance with HOS rules; therefore, the supposed economic benefits of better HOS compliance cannot be attributed to EOBRs. Any mandate for EOBRs would also undoubtedly fall hardest on small-business motor carriers which lack market size to negotiate not only fair up-front acquisition costs but also the potential monthly service fees likely associated with this technology.

In the U.S., the Federal Motor Carrier Safety Administration (“FMCSA”) sponsored a technical report completed by the John A. Volpe National Transportation Systems Center

(“Volpe”). The report underscores the inadvisability of mandating EOBRs – especially for small businesses¹. The abstract to the Volpe Recommendations cautions against the mandate of EOBRs because of the “continuing uncertainties and insufficient amounts of reliable documented empirical data regarding a variety of issues, such as cost, benefits, and operational impacts on motor carriers that are characterized as small businesses.” OOIDA agrees with Volpe’s bottom line assessment of EOBRs and encourages the CCMTA to review this document.

Finally, the sole legitimate reason for any EOBR mandate should be a connection to improved highway safety. Within the Discussion Paper is an attribution to an old (1998) National Transportation Safety Board (“NTSB”) statement alleging that “fatigue is the most commonly cited cause (31%) of fatal accidents involving a heavy vehicle.” That is at odds with the statistics contained in the FMCSA’s “Large Truck Crash Causation Study”²(“LTCCS”) and a review of current fatal crash data from the U.S. National Highway Traffic Safety Administration (“NHTSA”) Fatality Analysis Reporting System (“FARS”).

Information from both sources clearly show that factors³ involving driver fatigue barely made the “Top 10” of associated factors and violations assigned in large truck crashes. Fatigue cannot always be assumed to indicate a HOS violation. Fatigue, drowsy driving, or falling asleep behind the wheel can and does occur during any hour of operating a commercial motor vehicle without a violation of HOS rules. Hence, the actual goal of reducing large truck crashes from any EOBR mandate because the EOBRs somehow will magically reduce driver fatigue is often overinflated and at best a hypothesis.

¹ “Recommendations Regarding the Use of Electronic On-Board Recorders (EOBRs) For Reporting Hours of Service (HOS).” Final Report, September 28, 2005. Available at <http://www.regulations.gov> Docket number FMCSA-2004-18940. No.351 at 2.

² See: <http://www.fmcsa.dot.gov/facts-research/research-technology/analysis/fmcsa-rra-07-017.htm>

³ “Factors” are not the actual causes of a large truck crash but instead circumstances that influenced crash risk.

III. COMMENTS OF THE ASSOCIATION

A. EOBRs Are No More A Reliable Record of a Driver's Duty Status Than Paper Logs

OOIDA has previously provided extensive comments to the FMCSA describing how EOBRs cannot provide a more reliable record of drivers' compliance with HOS rules than paper logs. This is because driver input to the EOBR is required for the device to properly record whether an individual who is not driving is on-duty or off-duty. Some believe that EOBRs can automatically record changes to a driver's duty status without the input of a drivers – they cannot. Whatever ambitions proponents may have for the use of EOBRs to record compliance with HOS rules, the reality is that the need for driver input to EOBRs results in no advantage being gained over paper logs. There being no net gain in regulatory enforcement, any proposed mandate is overwhelmed by cost and privacy concerns and by unproven or hypothetical decreases in truck involved crashes.

The public policy interest in HOS compliance is clear. However, a costly mandate for EOBRs would do little to make the operation of commercial motor vehicles safer, or to improve drivers' opportunity for rest, thus supposedly reducing fatigue. Often discussion of EOBRs include very tepid conclusory statements, which hypothesize that EOBRs “*could* increase compliance with HOS rules” yet offer no substantiation for the conclusion. Even in the U.S., the FMCSA admitted in its last Notice of Proposed Rulemaking/Electronic On-Board Recorders for Hours-of-Service Compliance, published in the Federal Register on Jan. 18, 2007, that “comprehensive research data regarding the safety benefits of EOBR deployment are sparse,” and that “there is little research data linking EOBR deployment directly to safety benefits.” The FMCSA - funded the Literature and Technology Review performed by Cambridge Systematics,

Inc., which stated that there had been no documented improvements in compliance or safety in carriers that use EOBRs.

The Cambridge study further said: “Even the most effective on-board technology will not enable regulators to determine how drivers have conducted themselves while they are off-duty and/or on-duty, not driving. Most on-board devices were not developed to provide this functionality; however, this is critical because research suggests that the amount and/or quality of sleep that drivers get while they are off-duty are the key safety factor.” These studies simply confirm OOIDA’s conclusion that EOBRs are no better at recording a driver’s compliance with the HOS rules than paper logs, and have not been shown to improve HOS compliance or improve drivers’ opportunity to obtain rest.

Other than anecdotal evidence by the motor carriers and vendors supporting EOBRs, there has been no scientific basis for establishing that EOBRs are necessary to further the regulatory scheme of HOS compliance.

1. EOBRs Require Driver Input to Distinguish Between Being On-Duty, Not-Driving and Off-Duty

Drivers will need to exercise discretion and enter data and duty status for an EOBR to properly record and distinguish between on-duty, not driving activities and off-duty status. The Volpe Literature and Technology Review 2005 Update acknowledges that “[e]lectronic recorders could not discriminate among any of the myriad activities that constitute ‘on-duty, not driving’ and science tells us that the physical and mental exertion associated with the task differs among individuals,” and that “[m]ost of the fleet management technologies available ... only have the ability to automatically record the number of hours the driver has been driving and/or the location of the vehicle.”⁴ Both the Volpe Literature and Technology Review and Update and the

⁴ Volpe Technology Review and Update 2005, FMCSA Docket No. 2004-18940-349 at “1-8”

Volpe Recommendations made part of FMCSA's docket state, "[a]ccurate recording of driver duty status will require that drivers continue to be required to explicitly record data regarding change of duty status." "Automation of this function ... would likely result in inaccurate recording of driver duty status..."⁵

Even if an EOBR could accurately and automatically record a driver's on-duty driving time without driver input (which we question below), this limited functionality does not provide any more reliable record of a driver's HOS compliance than paper logs. A law enforcement official inspecting the data from an EOBR has no reason to be more confident in their finding than if they were reading a paper logbook. Several examples illustrate this point.

Example 1: A driver begins his/her day with on-duty, not-driving work. If the driver begins the workday waiting to load or unload his truck, he must tell the EOBR when he went on-duty. Otherwise, the EOBR will believe the workday began when the driver begins to operate his vehicle, rather than when he actually went on-duty.

Example 2: A driver ends the workday with several hours of on-duty, not driving work. If the driver logged off-duty when he stopped driving and began his mandatory rest period while actually engaged in loading/unloading activity, he would obviously be able to return sooner to on-duty driving status without actually taking the required off-duty time.

Example 3: A driver arrives at a receiver and is forced to wait and then unload the trailer for a total of eight hours. Although the time is accurately on-duty, not-driving, the driver could be pressured to log that time as "sleeper berth," or "off-duty – not driving" while actually engaged in physical labor in order to be able to begin driving duties as soon as the unloading process ends.

⁵ Volpe Technology Review Update, FMCSA Docket No. 2004-18940-349 at "3-7;" Volpe Recommendations Regarding the use of Electronic On-Board recorders (EOBRs) for Reporting Hours of Service (HOS) Final Report, FMCSA Docket No. 2004-18940-351 at 86 and 109.

In each of these examples or combinations of them, a law enforcement official on the roadside could not be certain that the EOBR was correctly reporting the driver's compliance with the HOS rules. A driver under pressure to deliver a load on an unreasonable schedule could use the EOBR to extend his workday by as many hours as he was on-duty before driving: 2 hours, 12 hours, 16 hours, and longer. A driver could be driving during the 24th hour after beginning the workday or a driver could begin his workday after fewer than 8 hours off-duty, and the EOBR would show them in full compliance with Canadian HOS rules - all because the driver has discretion to record his duty status on the EOBR just as if it were a paper logbook.

Whether in Canada or the U.S., the HOS rules do not mandate sleep. No EOBR system has been conceived of to measure rest. The HOS rules are designed to give drivers the opportunity to get the rest and sleep necessary to be able to operate a commercial motor vehicle safely. To fulfill this goal, the distinction between on-duty, not-driving and off-duty is a critical component of the HOS rule. OOIDA strongly disapproves of the apparent inclination of EOBR supporters to de-emphasize the technical failings of EOBRs by diminishing the importance of non-driving, on-duty time in a driver's workday.

OOIDA has been previously accused by the U.S. government in HOS litigation of wanting activities such as loading and unloading to be considered off-duty, but OOIDA has never taken such a position. OOIDA has been trying to gain more attention to the abuse of drivers during non-driving on-duty time. Drivers are forced to wait, on-duty and uncompensated, for as many as 18 to 44 hours per week to load or unload their vehicles. This substantial unproductive time puts pressure on drivers to make the most of their remaining on-duty time to drive. OOIDA knows this to be one of the central causes for the HOS compliance

issues. Yet this problem remains unaddressed, and any EOBR mandate will not alter this problem.

OOIDA believes that drivers must be compensated for their not-driving, on-duty time in a manner that corresponds to the amount of time devoted to such work. If they were, then OOIDA could guarantee that most deficiencies in drivers' recording their on-duty, not-driving time would disappear. OOIDA strongly urges the CCMTA not to ignore the importance of on-duty, not-driving time in a driver's workday when finalizing its report to the Council of Deputy Ministers of Transportation.

2. EOBRs Require Driver Input to Accurately Record On-Duty Driving Status

EOBRs will also require driver input in order to accurately record that driver's on-duty driving time.

- * Any EOBR mandate must take into account the driver operating the vehicle for permissible off-duty use for personal conveyance.
- * Team drivers will need to enter some type of identification to distinguish themselves to the EOBR. In any EOBR mandate provisions would need to be considered to ensure that one driver could not "borrow" the other's hours by punching in the other driver's identity or utilizing their "smart card."
- * How will a mechanic or other service person be able to move or test drive the truck without disrupting the driver's duty status in an EOBR?

These examples further demonstrate that EOBRs are no more accurate than paper logs in recording driver duty status. Without any apparent appreciable public policy benefit to EOBRs, OOIDA believes there is no rational basis for the imposition of their cost or invasion of privacy.

3. Other technical issues

OOIDA would like to point out other technical issues presented by any EOBR proposal.

- * How would a driver's prior 14 days of on-duty data follow him if he switches vehicles?
- * When would enforcement personnel be prepared with equipment and training to inspect data from EOBRs? Would the provinces be given the financial support necessary to take on this responsibility without compromising the funding of other safety efforts? Until the provinces are prepared, there would be uneven enforcement of the HOS rules. Carriers who have adopted EOBRs already face less enforcement and scrutiny from enforcement officials who are unprepared to read EOBR data, and this problem would be exacerbated if EOBRs are rolled out prematurely.
- * Any mandate should contemplate a specific data security standard to prevent the unauthorized dissemination of data collected by EOBRs. The Association is concerned that without any specified data security requirement authorities could simply rely upon "generally accepted" manufacturer standards that may be weak, unenforceable or meaningless. Data and identify theft have been identified as a significant problem, and drivers are too often victimized by this crime. OOIDA suggests that as the CCMTA evaluates issues surrounding EOBRs it should identify a minimally acceptable security standard that is at least equivalent to or greater than that of the banking or credit card industry. This issue becomes even more germane if an EOBR mandate were to allow wireless technology to be used by law enforcement to remotely view EOBR data. That same wireless technology used inappropriately would shatter driver privacy.

B. EOBRs Collect Personal and Proprietary Information

The truck cab is the home away from home of most long-haul drivers. Drivers sleep, eat, and conduct personal business in their truck while not driving. They have a legitimate expectation of privacy that should be protected. Unfortunately, it seems this concern is often brushed aside. Because EOBRs record data any time a truck is moving, even when the driver is off-duty and using the vehicle for his personal conveyance, there is insufficient constraint on how the data captured by EOBRs could be used. Drivers cannot be expected to subject their personal life to the same governmental intrusions that they may be required to endure in their work life. A driver should enjoy the same sphere of privacy in a truck, during off hours, that are enjoyed at home.

If Global Positioning System (“GPS”) incorporation was required in an EOBR mandate, all of the minute-by-minute location and time data must be stored and made available for later inspection during motor carrier compliance reviews. The EOBR subjects the driver to a continual search and recording of information regardless of whether it implicates their work life or personal life.

EOBRs will by their nature capture, store and make available a variety of personal and proprietary information not captured in paper logs or not accessible through paper logs. For example, the Volpe Recommendations encouraged the FMCSA in its related rulemaking to highlight the benefits to motor carriers of “the increased amount of data more readily available to motor carriers” to improve their operations and scheduling.⁶ Within this context, the potential for data mining from EOBRs for uses other than HOS compliance is clear and those uses are, so far, unregulated and viewed as intrusive by drivers.

1. Personal Information

⁶ Volpe Recommendations, FMCSA Docket No. 2004-18940-351 at 75

The setting of EOBR surveillance is the driver's home away from home. Drivers spend a large amount of time in their trucks not working, but conducting the activities of day to day life. The long-haul driver typically drives more than 160,000 kilometers per year. In OOIDA members' experiences, long-haul drivers spend more than 300 days per year on the road. They can spend weeks on the road and are not always on-duty. Off-duty hours are often spent in their trucks to keep down the cost of lodging and food. While on the road, long-haul drivers often eat, sleep and engage in various leisurely activities in the cabs and sleeper berths of their trucks. In addition to one or two bunks, today's sleeper berths are often equipped with many of the comforts of home, including running water, refrigerator, microwave oven, coffee maker, television, VCR, audio equipment, a personal computer and cell phone. Long-haul drivers are sometimes accompanied by their spouses, and the cab and sleeper berth is as much a home to the driver as the stationary dwelling others call "home," a place where long-haul drivers spend less than 18 percent of their nights in a given year.

An EOBR proposal that includes a GPS mandate would necessarily require the recording of the exact location of the driver in the truck every minute the truck is moving, regardless of whether the driver is on-duty or off-duty. If the information captured were to be electronically transferrable and stored so that it could be accessible at a later time, an EOBR would capture a driver's precise location, speed, time of travel, departure and destination points for all on-duty and off-duty moves by a driver while traveling in their truck. This data could then be used to locate the exact address where a driver parks, eats, or goes to sleep. Perhaps that information is not viewed as a very egregious privacy invasion by a truck owner or company management but it certainly is by drivers and especially owner-operators. Because a driver can operate a truck for personal conveyance, the EOBR will record where drivers spend their private time - the exact

location of friends' houses, relatives' houses, bookstores, restaurants, motels, libraries, casinos, truck stops, lawyers' offices, doctors' offices, health clinics, therapist offices, and possible future employers. This type of information is clearly personal in nature. Without proper consideration, information regarding the personal habits of drivers could be gleaned from the exacting information contained in an EOBR and used against them in any number of ways. For instance, this information could potentially be used in legal proceedings unrelated to the safe operation of a commercial motor vehicle – a marital divorce for instance.

Even if the EOBR permits a driver to record this driving time as off-duty, then the drivers are placed in an untenable position of trying to demonstrate to roadside law enforcement during an inspection that they operated the vehicle for their personal conveyance in compliance with the rules. This opens a Pandora's Box of having roadside law enforcement apply a subjective interpretation to the drivers' explanation of discrepancies recorded by an EOBR. More likely than not, this will result in a driver being unjustifiably cited for a non-existent HOS violation with an admonishment to "let the Justice of the Peace sort out the truth." It is well known that because of most drivers' irregular routes and schedules, challenges to unjustified citations are difficult for many drivers to pursue not to mention the financial cost they face defending themselves.

2. Proprietary Information

Not only is the data collection personal, but it can contain proprietary information that describes the driver's or motor carrier's methods of doing business: the routes used by the carrier; the times of day those routes are used; who the driver's or carrier's customers are; where, when and how often the driver fuels up; where the driver has the truck maintained; and where the driver finds scarce truck parking in some areas of Canada and the U.S. This can all be

proprietary information that reveals the business practices that competitors might find of great interest without appropriate safeguards incorporated into any proposed mandate.

C. Incentives for Voluntary Adoption of EOBRs Have No Rational Basis

While the CCMTA does not specifically broach the issue of financial inducements for voluntarily adoption of EOBRs in the Discussion Paper, relief from regulatory oversight and even lessening of “audit burdens” appears to be contemplated. OOIDA does not believe incentives for voluntary adoption of EOBRs can be adequately justified from either a financial standpoint or a public policy standpoint.

Without clearly articulated public safety benefits from the adoption of EOBRs by motor carriers, financial inducements only act to subsidize a given motor carrier’s fleet management expenses for little or no appreciable benefit to highway safety. The Discussion Paper mentions fleet management benefits from EOBRs and while it may be true that a large fleet finds an EOBR to be a useful tool, it’s a mistake to extrapolate the same benefits across the whole population of motor carriers. It would seem that most public pronouncements regarding EOBRs from large motor carriers focus almost entirely on fleet management benefits. That point is again underscored by the Volpe Technology Review, which described the benefits of EOBRs to include “better and more economical fleet management...”⁷ The motor carrier management surveyed by Volpe identified EOBRs as addressing “timeliness of delivery, improved service, maximization of driver working hours and equipment, and real-time audits of driver hours to determine which driver should deliver which load.”⁸ Incentives to voluntary adoption of EOBRs actually work against the much hyped desire to “level the playing field” mentioned by many

⁷ Volpe Technology Review. FMCSA Docket No. 2004-18940-349 at “3-11”

⁸ Volpe Technology Review. FMCSA Docket No. 2004-18940-349 at “5-3”

large motor carriers as justification for a mandate. Incentives act to subsidize some at the expense of others.

The abstract to the Volpe Recommendations cautions against the mandate of EOBRs because of the “continuing uncertainties and insufficient amounts of reliable documented empirical data regarding a variety of issues, such as costs, benefits, and operational impacts on motor carriers that are characterized as small-businesses.”⁹ Additionally, the University of Michigan Transportation Research Institute’s (“UMTRI”) 1998 Electronic Recorder Study noted that “There is no evidence that ERs are cost effective in small fleets.” Most carriers surveyed by UMTRI saw “no operational benefits of mandatory use of electronic recorders to record hours-of-service, and believe such a requirement would result in high initial capital and system maintenance costs, while having little or no effect on commercial vehicle safety.” Hence, to incentivize voluntary EOBR adoption would benefit a select group – usually larger motor carriers – who do not necessarily have exemplary safety records – with or without an EOBR.

Reducing record-keeping requirements on motor carriers that adopt EOBRs would appear to be counter-intuitive to highway safety. This often-hyped incentive seems to assume that a motor carrier who equips its trucks with EOBR technology is somehow less likely to tolerate HOS violations. OOIDA has been contacted numerous times by drivers who operate trucks for fleets equipped with EOBRs about “back office” manipulation of data when they were actually in violation of the rules. Many of these same companies actually instruct their drivers to either “not log on-duty, not driving time for unloading,” or instruct drivers to “only log 15 minutes for loading and unloading regardless of the total time involved.”

⁹ Recommendations Regarding the Use of Electronic On-Board Recorders (EOBRs) for Reporting Hours of Service (HOS), FMCSA Docket No. 2004-18940-349 at 2.

To illustrate the folly of reduced record-keeping requirements or less regulatory oversight and assuming any motor carrier adopting EOBR technology is worthy of less scrutiny – one need only read the NTSB report regarding a collision between a tractor/trailer, automobile, and school bus in Florida on Jan. 25, 2006, that caused the deaths of 7 people.¹⁰

The findings in the report speak for themselves.

“In total, the accident driver made three and a half round trips between Jacksonville and High Springs, Florida, from January 24–25. Had he not been involved in the accident, he would have completed four round trips. Even with only three round trips between the two locations, it would have been very difficult to remain in compliance with the hours-of-service regulations. Qualcomm communication data show that the driver was asked to make three round trips on this route or at least two and a half runs, **thus pressuring the driver to the outer limits of the State regulation. Furthermore, the Qualcomm data show the location of the truck and should have alerted Crete that the driver was making more trips than would have been allowable.**”¹¹

NTSB’s Probable Cause finding is equally as blunt:

“The National Transportation Safety Board determines that the probable cause of this accident was the failure of the truck driver to maintain alertness due to fatigue from obtaining inadequate rest. **Contributing to the accident was the failure of Crete Carrier Corporation to exercise proper oversight of the driver’s hours of service.**”

OOIDA does not believe that the supposed better record keeping of bigger and more sophisticated motor carriers necessarily correlates with better HOS compliance nor justifies any lessening of regulatory oversight.

D. Impact on Small Businesses

Small businesses do not have the purchasing power of larger carriers or the large number of revenue producing drivers across whom to spread EOBR costs. These costs include the fixed hardware, software, and the training costs of EOBR installation, set-up, programming, monitoring, communication, and data storage. Fifty percent of small-business carriers who are

¹⁰ <http://www.nts.gov/publictn/2008/HAB0805.pdf>

¹¹ NTSB, Highway Accident Brief, Accident Number HWY-06-MH-013 at 11.

members of OOIDA are sole proprietors whose only office is entirely within the truck. For such motor carriers, any requirement that certain information and data be transmitted to and stored at a fixed location will be enormously burdensome and very likely costly. For example, the cost of the initial installation of an EOBR into an existing truck has been estimated to be between \$1,000 and \$3,000 (US). That cost does not contemplate software upgrades necessary for drivers engaged in cross-border trucking who need their HOS to conform to different standards. Either the motor carriers will face that cost for each truck, or the owner-operator will bear that cost in addition to likely monthly fees. That cost may be prohibitive for a small-business and owner-operators and they could easily be forced out -of- business for no net gain in highway safety. It would be ironic if a mandate actually worked to force some of the most seasoned, veteran, and safe small-business motor carriers and owner-operators from the industry simply because they don't have the financial resources to comply with an EOBR mandate. Besides the downside to highway safety from replacing these drivers with those that have little or no driving experience, OOIDA believes the push from larger motor carriers for an EOBR mandate is precisely intended to accomplish the removal of smaller competitors from the marketplace, not "level the playing field" as they pompously claim.

Harmonization of standards between Canada and the U.S. presents even more vexing problems that we could only speculated about at this stage. However, it can be stated that either country moving forward independently and establishing an EOBR mandate would likely have a chilling effect on the supposedly desirable economic benefit of marketplace competition – especially from small-business motor carriers and owner-operators. Simply stated, many small-business motor carriers are unlikely to offer transportation services into jurisdictions that establish higher regulatory hurdles than they would otherwise face. This affect is already

playing itself out related to speed-limiter regulations which, like EOBRs, are unproven to have any net benefit to increased highway safety. OOIDA believes these initiatives are promoted by large motor carrier interests precisely to diminish their small-business competitors under the false guise of safety.

E. An EOBR Mandate Gives Motor Carriers a More Effective Tool to Harass Drivers

EOBRs are touted for many non-HOS uses such as monitoring drivers' behavior and communicating timely information to drivers, automating fuel tax data collection, reviewing odometer readings and engine usage, and performing billing and payroll functions to improve operational efficiency.

Such versatile tools, however, could be used to harass drivers and exacerbate, not resolve problems with non-compliance with the hours-of-service rules. OOIDA has been communicating for years that most HOS compliance problems we observe are due to the on-duty, not-driving demands of carriers, brokers, and shippers and intense economic pressure that forces drivers to meet unreasonable delivery schedules. OOIDA has long warned of the potential for, and current use of, EOBR-like devices, to harass drivers and exacerbate this pressure.

Carrier harassment includes the use of technology to interrupt a driver during an off-duty rest period. Carriers who can monitor a driver's duty status and truck movement can contact the driver and coerce him to get back on the road to maximize his on-duty time. Such power usurps the drivers discretion to get rest, take a break, or sleep when he believes it is necessary.

Conversely, carriers who know a driver is not driving, but who left the EOBR "on-duty," can call the driver to coerce him to hit the off-duty button, no matter what activity the driver is engaged in. These examples are not predictions for possible EOBR use. They are current carrier policies that will be easier to enforce with EOBRs. As stated in our comments earlier many

motor carriers actually have explicit policies instructing drivers how to log loading and unloading time that is in direct contradiction to HOS rules.

Whether there would need to be technical restrictions on certain motor carrier uses of EOBRs - rules that protect drivers from specific types of harassment, specific rights to protect drivers who report such harassment, a focused and dedicated enforcement effort to combat such problems, or all of the above - the CCMTA should give broad consideration to this genuine issue in its report to the Council of Deputy Ministers of Transportation.

F. The Net Negative Impact of the EOBR on Driver Health

Studies show an increase in employee stress when monitored electronically. Such stress in drivers could certainly be attributed to the type of pressure and harassment OOIDA detailed in the previous section. Such coercion can occur when the driver is sick, does not feel well enough to be driving, and would choose to be off-duty under his own discretion until he feels better. The driver gets squeezed between the pressure from carriers to be more productive and the pressure to comply with the HOS rules as monitored by the EOBR.

Numerous studies have shown that electronically monitored workers experience increased depression, tension, anxiety, and reduced productivity, compared with workers free of constant surveillance. For example, “twice as many electronically monitored workers reported wrist pains and 20% more reported neck pains, as compared with those who were not monitored, and . . . monitored employees noted higher incidents of depression, tension, anger and extreme anxiety.” Such monitoring unquestionably increases the stress suffered by drivers. As the rules grow more complex while data gathering and analysis becomes instantaneous and automatic, drivers will worry far more about civil and criminal penalties for even the slightest technical noncompliance. The health of drivers will be compromised and safety will suffer.

Often, EOBRs are portrayed as offering benefits for driver health related from supposedly better compliance with HOS rules. But that again makes an assumption that HOS violations are pervasive and the only fix is the electronic monitoring of drivers.

IV. CONCLUSION

There are many reasons a mandate for EOBRs should not go forward. There have been no statistically demonstrated appreciable benefits of EOBRs over paper logs in relationship to improved highway safety or reduced crash risk. Their cost and impact on privacy, therefore, cannot be justified.

OOIDA is continually frustrated that the primary focus of regulatory agencies responsible for HOS enforcement as well as other entities seems to remain on punishing drivers. No effort is being made to address the coercive and economic pressure used by motor carriers, brokers, shippers and receivers to control the actions of drivers. EOBRs that give motor carriers better monitoring of and greater control over drivers will only exacerbate rather than ameliorate such pressures. Until these pressures are resolved, especially at the loading docks, there can be few appreciable improvements in compliance with the HOS rules. Drivers will still face heavy fines or disqualification and continue to be victimized by a system where “shared responsibility for safety” is mere words.

Respectfully submitted,



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