

INSURANCE INSTITUTE FOR HIGHWAY SAFETY

April 18, 2007

The Honorable John H. Hill
Administrator
Federal Motor Carrier Safety Administration
400 Seventh Street SW
Nassif Building, Room PL-401
Washington, DC 20590-0001

Electronic On-Board Recorders for Hours-of-Service Compliance Notice of Proposed Rulemaking; Docket No. FMCSA-2004-18940

Dear Mr. Hill:

On March 12, 2007 the Insurance Institute for Highway Safety (IIHS) submitted the attached comments at the Federal Motor Carrier Safety Administration (FMCSA) listening session. In our comments we reviewed the long, unproductive history of federal efforts to improve enforcement of hours-of-service rules. By failing to mandate electronic on-board recorders (EOBRs) in all large trucks, the agency has signaled once again that it does not intend to take meaningful steps to reduce the serious problem of truck driver fatigue. The proposed rule, if promulgated, will be a travesty.

In stark contrast FMCSA put safety ahead of political expediency in 2000, proposing to require EOBRs in all large trucks. This requirement, however, was removed from the final rule implemented on January 4, 2004. When vacating the rule in July 2004, the US Court of Appeals for the District of Columbia Circuit questioned the rationality of FMCSA's decision. The court chastised the agency for its "one-sided and passive" regulatory approach to the issue of EOBRs and noted it had not taken the "seemingly obvious step of testing existing EOBRs on the road" (*Public Citizen v. FMCSA*, 374 F.3d 1209, 1222 (D.C. Cir. 2004)). FMCSA still has not tested existing EOBRs and, with little justification, has drafted a rule that would affect only a tiny percentage of motor carriers. The proposal represents the most minimal actions the agency could have taken in response to the court.

Specific provisions of proposed rule

The following comments on specific provisions of the proposed rule supplement our statements at the listening session.

In requiring EOBRs for only a miniscule proportion of carriers, FMCSA assumes there are only a few problem carriers and drivers. This is contradicted by surveys of truck drivers indicating that 20-25 percent of drivers violate the work rules, that 1 in 5 drivers fell asleep at the wheel during the previous month, and that work rule violations are associated with dozing at the wheel (McCartt et al., in process). Absent an EOBR requirement, there is no sound way to identify actual violators. Compliance officers must rely on paper logbooks and related documentation that can be falsified easily. So even identifying this tiny proportion of egregious violators will be problematic.

The proposed rule fails to account for the large increase in trucks with EOBRs. Surveys of truck drivers indicate that about 45 percent of the long-distance drivers in 2005 said there were EOBRs in their trucks. This was up from about 18 percent in 2003 and about 38 percent in 2004. This indicates that for many carriers EOBRs are affordable and provide many operational benefits. It is understood by vendors and carriers that EOBRs will become considerably less expensive when they are required in all trucks.

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The proposed incentives for encouraging voluntary use of EOBRs are weak and unlikely to persuade carriers. Of the truckers who reported having EOBRs, only 10 percent or fewer said they were using them in lieu of paper logbooks for showing compliance with work rules. This demonstrates that compliance with work rules will be overcome only with an industry-wide EOBR requirement.

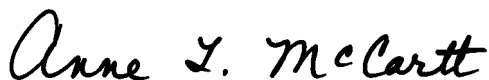
IIHS strongly opposes any action by FMCSA that would allow truck drivers using EOBRs to extend their 14-hour driving window or permit such drivers other relief from the work rules. This suggestion shows that FMCSA is not at all serious about addressing truck driver fatigue.

IIHS recognizes that systems based on cell phones are inexpensive, but FMCSA has failed to provide evidence that such systems can provide secure and accurate records, be made tamper-resistant, or ensure that work records will be related to a unique driver, truck, and carrier. Absent such evidence, we do not believe such portable systems should be permitted. We also question whether self-certification by vendors is the optimal approach. Providing carriers with a list of acceptable devices that have been tested by FMCSA would facilitate their adoption across the industry.

Mandate EOBRs on all large trucks now

In continuing its passive and one-sided approach, FMCSA has abdicated its primary responsibility to protect the safety of the American people. The agency has indicated that the final rule will be published within 18 months to 2 years, with the rule taking effect 2 years after that (McNally, 2007). FMCSA should set aside this ill-conceived proposal that is completely at odds with the data on truck driver fatigue and implement the 2000 proposed recorder requirement without delay.

Sincerely,



Anne T. McCartt, Ph.D
Senior Vice President, Research

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

Attachment

Insurance Institute for Highway Safety. 2007. Statement before the Federal Motor Carrier Safety Administration on electronic on-board recorders for documenting hours of service, Anne T. McCartt, March 12, 2007. Arlington, VA.

References

McCartt, A.T.; Hellinga, L.A.; and Solomon, M.G. In process. Work schedules before and after 2004 hours-of-service rule change and predictors of reported rule violations in 2004: survey of long-distance truck drivers. Arlington, VA: Insurance Institute for Highway Safety.

McNally, S. 2007. DOT unveils EOBR rule: plan targets 'worst' hours-of-service violators. *Transport Topics*, January 15. Alexandria, VA: American Trucking Associations.

**Statement before the Federal Motor
Carrier Safety Administration**

**Electronic On-Board Recorders
for Documenting Hours of Service**

Anne T. McCartt

March 12, 2007

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**Electronic On-Board Recorders (EOBRs) for Documenting Hours of Service:
Listening Session, March 12, 2007
Federal Motor Carrier Safety Administration
Notice of Proposed Rulemaking DOT Docket No. FMCSA-2004-18940**

**Comments from Anne McCartt, Senior Vice President for Research, Insurance
Institute for Highway Safety**

Thank you for allowing the Institute the opportunity to comment on this rulemaking. Normally the Institute focuses its comments on the merits or demerits of a proposed rule and provides relevant research or other evidence. My comments today will be a little different. I will not be providing new evidence because the Institute has provided all the evidence in numerous communications to the Federal Motor Carrier Safety Administration over the past two decades. I refer you to that history. Instead, today I will focus on the refusal of the agency to address the problem of truck driver fatigue in a meaningful way. Because it does not require electronic onboard recorders on all large trucks, the proposed rule, if promulgated, will become another failed effort to reduce the serious problem of truck driver fatigue.

Efforts to improve enforcement of the truck driver hours-of-service rules span more than three decades. In 1971 federal legislation was introduced to require all commercial trucks and buses manufactured after January 1974 to be equipped with tachographs to record driving time. The legislation was not enacted, and to this day the system for enforcing the hours-of-service rules is inadequate.

The rule currently proposed by the Federal Motor Carrier Safety Administration shows a complete lack of leadership in reducing truck driver fatigue. The proposed rule is a travesty, affecting only a tiny proportion of motor carriers and certain to have a negligible effect on safety. It is an open question whether the proposed rule will be better

than no rule at all. After three decades of research and rulemaking, is this the best that our government can do?

On October 1, 1986, the Insurance Institute for Highway Safety petitioned the Bureau of Motor Carrier Safety to require that automatic on-board recording devices be installed and used by all heavy trucks. That petition was denied, and during the intervening 20 years an estimated 16,030 people died in crashes involving fatigued truckers; this includes 11,750 passenger vehicle occupants; 2,257 occupants of large trucks; and 2,023 motorcyclists, bicyclists, pedestrians, and other road users. By failing to take meaningful and readily available steps to address truck driver fatigue, the Federal Motor Carrier Safety Administration and its predecessor agencies share responsibility for these deaths.

By all accounts, the current system of manually recorded logbooks is a joke. Yet the government still fails to require devices in trucks to improve the enforcement of what are lax restrictions on the amount of time truck drivers can spend behind the wheel. It is doubtful that anyone can really argue with a straight face that a driver of a tractor-trailer spending 11 hours behind the wheel is good for safety.

My question today is what will it take for the Federal Motor Carrier Safety Administration to live up to its safety mission?

Since 1986, our Institute has submitted 4 additional petitions and 19 comments calling for an onboard recorder requirement for all large trucks. We have provided more than 200 pages documenting the failed paper-based system of enforcement of the hours-of-service rules and the affordability of onboard recorder devices. Instead of considering

the objective research findings of the Institute and others, the agency has given weight to evidence that is biased and lacking in scientific merit.

The agency has refused to require recorders despite the following:

- Unanimous support of safety groups for a recorder requirement
- Conditional support for a recorder requirement from the American Trucking Associations
- A federal appeals court finding that the decision not to require onboard recorders is “of questionable rationality”, reflecting a “one-sided and passive approach”
- Evidence that truckers routinely violate the hours-of-service rules and fudge the paper logs that they keep
- Evidence that 1 of every 5 long-distance truckers fell asleep at the wheel in the past month, an increase from 13 percent in 2003 before the hours-of-service rule change

And you have ignored the fact that a substantial and increasing number of trucks already have onboard recording devices. About 45 percent of long-distance truckers interviewed in two states in 2005 said there was an electronic recorder on their truck. However, only about 10 percent said they were using the recorder in lieu of the paper logbook for showing compliance with the work rules. It is no longer a credible argument that devices are too expensive or burdensome for widespread use. It is past the time for research; it is past the time for pilot studies and government/industry cooperative ventures. You have run out of excuses.

The excuse that the technology isn't there yet doesn't stand up to scrutiny. We can download 20,000 songs to our i-Pods. Worldwide we sent 161 billion gigabytes –

161 exabytes – of digital information last year. Our government sends astronauts to space for months at a time. In-vehicle technologies can parallel park vehicles without the driver’s input. Many large truck rigs have expensive, multi-function entertainment systems. Is it really possible that the government cannot figure out how to get devices in trucks to record when they are being driven?

The refusal to require recorders is not based on evidence. Rather, the agency has ignored the evidence in choosing political expediency over safety. And fatigue-related deaths continue in the absence of any effective government action. In Lake Butler, Florida, on January 26, 2006, a trucker awake for 34 hours, except for a short nap, rammed his tractor-trailer into the back of a van stopped behind a school bus. In the ensuing inferno, all the occupants of the van were killed -- 7 children ages 20 months to 15 years. The grandfather of these children suffered a fatal heart attack upon learning of the tragedy. The bus driver and 3 children were seriously injured. Highway Patrol officers said there was no evidence that the trucker braked, and there didn’t appear to be any reason why the truck driver could not have seen the van and bus stopping. Many such tragedies occur each year because truck drivers, like this one, exceed the hours-of-service regulations. What will it take for this agency – with the word “safety” in its name – to require the use of electronic on-board recorders in all trucks and put real teeth in the hours-of-service regulations?

In closing, we call upon the agency to act upon the evidence by putting aside this inadequate rule. Should the agency choose to take meaningful steps to institute real enforcement of truckers’ work rules, we will gladly work closely with the agency.