

method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### B. Filing Requirements

83. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

84. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference

Center, Federal Communications Commission, 445 12th Street SW., CY-A257, Washington, DC, 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

85. To request information in accessible formats (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

86. For additional information on this proceeding, contact Brenda Boykin of the Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418-2062.

#### C. Initial Regulatory Flexibility Act Analysis

87. As required by the Regulatory Flexibility Act of 1980 ("RFA"), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this NPRM. The IRFA is attached to this NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this Notice of Proposed Rulemaking as set forth on the first page of this document and have a separate and distinct heading designating them as responses to the IRFA.

#### D. Paperwork Reduction Act

88. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

#### VII. Ordering Clauses

89. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 4(j), 301, 302(a), 303(b), 303(e), 303(f), 303(g), 303(r), 304, 307(a), 309(j)(3), and 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302(a), 303(b), 303(e), 303(f), 303(g), 303(r), 304, 307(a), 309(j)(3), and 316(a)(1), and § 1.401 *et seq.* of the Commission's rules, 47 CFR 1.401 *et seq.*, that this Notice in WT Docket No. 12-69 IS *adopted*.

90. *It is further ordered* that the Petition for Rulemaking of the 700 MHz

Block A Good Faith Purchaser Alliance *is granted* to the extent described herein.

91. *It is further ordered* that the proceeding in RM-11592 is hereby terminated.

92. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Bulah P. Wheeler,**

*Deputy Manager.*

[FR Doc. 2012-7760 Filed 3-30-12; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 385, 390, and 395

[Docket No. FMCSA-2010-0167]

RIN 2126-AB20

#### Electronic On-Board Recorders and Hours of Service Supporting Documents

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of public listening session.

**SUMMARY:** FMCSA announces that it will hold a public listening session to solicit information, concepts, ideas, and comments on Electronic On-Board Recorders (EOBRs) and the issue of driver harassment. Specifically, the Agency wants to know what factors, issues, and data it should consider as it addresses the distinction between productivity and harassment: What will prevent harassment from occurring; what types of harassment already exist; how frequently and to what extent harassment happens; and how an electronic device such as an EOBR, capable of contemporaneous transmission of information to a motor carrier, will guard against (or fail to guard against) harassment. Additionally, the Agency will solicit concepts, ideas, and comments from enforcement personnel on the hours-of-service (HOS) information they would need to see on the EOBR display screen to effectively enforce the HOS rules at the roadside and the type of evidence they would need to retain in order to support issuing drivers citations for HOS

violations observed during roadside inspections. This session will be held in Bellevue, Washington (WA), and will allow interested persons to present comments, views, and relevant new research that FMCSA should consider in development of Supplemental Notice of Proposed Rulemaking (SNPRM). This listening session will be recorded and a transcript of the session will be placed in the docket for FMCSA's consideration. The listening session will also be webcast via the Internet and will allow for email interactivity during the webcast.

**DATES:** The listening session will be held on Thursday, April 26, 2012, at the Commercial Vehicle Safety Alliance (CVSA) meeting in Bellevue, WA. The listening session will run from 1:30 p.m.–5:30 p.m., with a break between 3:30 p.m. and 4 p.m., and continue from 4 p.m.–5:30 p.m. local time, or earlier, if all participants wishing to express their views have done so.

**ADDRESSES:** The listening session will be held at the Hyatt Regency Bellevue, 900 Bellevue Way NE., Bellevue, WA 98004, telephone: (425) 462-1234 and fax: (425) 646-7567. The session will be held in the Grand Ballroom IJK on the 2nd floor.

*Internet Address for Live Webcast.* FMCSA will post specific information on how to participate via the Internet on the FMCSA Web site at: <http://www.fmcsa.dot.gov> in advance of the listening session.

You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2010-0167 using any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.
- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at

any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the listening session or the live Webcast, please contact Ms. Shannon L. Watson, Senior Advisor for Policy, FMCSA, (202) 385-2395, [Shannon.Watson@dot.gov](mailto:Shannon.Watson@dot.gov).

Should you need sign language interpretation or other assistance to participate in this listening session, please contact Ms. Watson by Thursday, April 12, 2012, to allow us to arrange for such services. There is no guarantee that services requested on short notice can be provided.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 13, 2012, FMCSA published a notice of intent in the **Federal Register** announcing the Agency's plan for the Electronic On-Board Recorders and Hours of Service Supporting Documents rulemaking (EOBR 2) by working towards preparing a Supplemental Notice of Proposed Rulemaking (SNPRM) (77 FR 7562). In this notice, FMCSA stated it would do the following: (1) Hold listening sessions on the issue of driver harassment; (2) task the Motor Carrier Safety Advisory Committee (MCSAC) to assist in developing material to support this rulemaking, including technical specifications for EOBRs and their potential to be used to harass drivers; and (3) conduct research by surveying drivers, carriers, and vendors regarding harassment issues.

The following discussion summarizes the recent regulatory history of the agency's EOBR program:

##### EOBR 1

On April 5, 2010, the Agency issued a final rule (EOBR 1) (75 FR 17208) that provided new technical requirements for EOBRs. The EOBR 1 final rule also required the limited, remedial use of EOBRs for motor carriers with significant HOS violations. The EOBR 1 final rule required a motor carrier found to have a 10 percent violation rate for any HOS regulation listed in Appendix C of 49 CFR part 385 during a single compliance review to install and use EOBRs on all of its CMVs for a period of 2 years. The compliance date for the rule was June 4, 2012.

The Owner-Operator Independent Drivers Association (OOIDA) challenged the final rule in the United States Court of Appeals for the Seventh Circuit. OOIDA raised several concerns relating to EOBRs and their potential use for driver harassment. On August 26, 2011, the Court vacated the entire final rule. *Owner-Operator Indep. Drivers Ass'n et al. v. Fed. Motor Carrier Safety Admin.*, 656 F.3d. 580 (7th Cir. 2011). The Court held that, contrary to statutory requirements, the Agency failed to address the issue of driver harassment, including how EOBRs could potentially be used to harass drivers and ways to ensure that EOBRs were not used to harass drivers. The basis for the decision was FMCSA's failure to directly address a requirement in 49 U.S.C. 31137(a), which reads as follows:

**USE OF MONITORING DEVICES.** If the Secretary of Transportation prescribes a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations of the Secretary, the regulation shall ensure that the devices are not used to harass vehicle operators. However, the devices may be used to monitor productivity of the operators.

The court's expectation about how the Agency should address harassment and productivity under the statutory directive included the following:

In addition, an adequate explanation that addresses the distinction between productivity and harassment must also describe what precisely it is that will prevent harassment from occurring. The Agency needs to consider what types of harassment already exist, how frequently and to what extent harassment happens, and how an electronic device capable of contemporaneous transmission of information to a motor carrier will guard against (or fail to guard against) harassment. A study of these problems with EOBRs already in use, and a comparison with carriers that do not use these devices, might

be one obvious way to measure any effect that requiring EOBRs might have on driver harassment (*Id.* at 588–89).

As a result of the vacatur, carriers relying on electronic devices to monitor HOS compliance are currently governed by the Agency's previous rules regarding the use of automatic on-board recording devices (49 CFR 395.15). The requirements set forth in 49 CFR 395.15 were not affected by the Seventh Circuit's decision regarding the technical specifications set out in 49 CFR 395.16 in the EOBR 1 Final Rule.

## II. Meeting Participation and Information FMCSA Seeks From the Public

The listening session is open to the public. Speakers' remarks will be limited to five minutes each. The public may submit material to the FMCSA staff at the session for inclusion in the public docket, FMCSA–2010–0167. FMCSA will docket the transcription of the listening session that will be prepared by an official court reporter.

FMCSA tasked the MCSAC with addressing harassment through Task 12–01, titled, “Measures to Ensure Electronic On-Board Recorders (EOBRs) Are Not Used to Harass Commercial Motor Vehicle (CMV) Operators”. MCSAC held public meetings on this task on February 7–8, 2012, and based on its deliberations, submitted a report to the FMCSA Administrator on February 8, 2012. This report is available for review at <http://mcsac.fmcsa.dot.gov/meeting.htm> and in the public docket, FMCSA–2010–0167. The questions posed to MCSAC will be used as a template for public comment and discussion at the listening session.

The comments sought from the questions below may be submitted in written form at the session and summarized verbally, if desired:

1. In terms of motor carriers' and enforcement officials' monitoring or review of drivers' records of duty status (RODS), what would constitute driver harassment? Would that definition change based on whether the system for recording HOS is paper or electronically based? If so, how? As a starting point, the Agency is interested in potential forms of harassment, including but not limited to those that are: (1) Not prohibited already by current statutes and regulations; (2) distinct from monitoring for legitimate business purposes (e.g., efforts to maintain or improve productivity); and (3) facilitated or made possible solely by EOBR devices and not as a result of functions or features that motor carriers may choose to purchase, such as fleet

management system capabilities. Is this interpretation appropriate? Should it be broader? Or narrower?

2. Are there types of driver harassment to which drivers are uniquely vulnerable if they are using EOBRs rather than paper logs? If so, what and how would use of an EOBR rather than a paper log make a driver more susceptible to harassment? Are there ways in which the use of an EOBR rather than a paper log makes a driver less susceptible to harassment?

3. What types of harassment are motor carrier drivers subjected to currently, how frequently, and to what extent does this harassment happen? How would an electronic device capable of contemporaneous transmission of information to a motor carrier guard against (or fail to guard against) this kind of harassment? What experience have motor carriers and drivers had with carriers using EOBRs as compared to those who do not use these devices in terms of their effect on driver harassment or complaints of driver harassment?

4. What measures should the Agency consider taking to eliminate the potential for EOBRs to be used to harass drivers? Are there specific functions and capabilities of EOBRs that should be restricted to reduce the likelihood of the devices being used to harass vehicle operators?

5. Motor carriers are often responsible for managing their drivers and equipment to optimize efficiency and productivity and to ensure transportation services are provided in accordance with a planned schedule. Carriers commonly use electronic devices, which may include but are not limited to EOBRs, to enhance productivity and optimize fleet operation. Provided such devices are not used to coerce drivers into violating Federal safety regulations, where is the line between legitimate productivity measures and inappropriate oversight or actions that may be construed as harassment?

FMCSA also seeks concepts, ideas, and comments from enforcement personnel on the HOS information they would need to see on the EOBR display screen at the roadside to effectively enforce the HOS rules and the type of evidence they would need to retain in order to support issuing drivers a citation for HOS violations observed during roadside inspections.

## III. Alternative Media Broadcasts During and Immediately After the Listening Session on April 26, 2012

FMCSA will webcast the listening session on the Internet. Specific

information on how to participate via the Internet and the telephone access number will be on the FMCSA Web site at <http://www.fmcsa.dot.gov>. FMCSA will docket the transcripts of the webcast and a separate transcription of the listening session that will be prepared by an official court reporter.

Issued on: March 26, 2012.

Larry W. Minor,

Associate Administrator for Policy.

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Parts 1002, 1011, 1108, 1109, 1111, and 1115

[Docket No. EP 699]

#### Assessment of Mediation and Arbitration Procedures

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Surface Transportation Board (Board or STB) proposes regulations that would require parties to participate in mediation in certain types of cases and would modify its existing regulations that permit parties to engage voluntarily in mediation. The Board also proposes an arbitration program under which carriers and shippers would agree voluntarily to arbitrate certain types of disputes that come before the Board, and proposes modifications to clarify and simplify its existing rules governing the use of arbitration in other disputes. The Board seeks comments regarding these proposed rules.

**DATES:** Comments are due by May 17, 2012. Replies are due June 18, 2012.

**ADDRESSES:** Comments, information, or questions regarding this proposed rule should reference Docket No. EP 699 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Amy C. Ziehm at 202–245–0391. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board