

ON-BOARD DATA RECORDERS INCENTIVES AND METRICS REPORT

Pursuant to House Conference Report 111-366 accompanying the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010 (P.L. 111-117, Division A)
August 2010

1.0 PURPOSE

House Conference Report 111-366, accompanying the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010 (P.L. 111-117, division A), requests the Federal Motor Carrier Safety Administration (FMCSA) to report to the House and Senate Committees on Appropriation on the specific actions the Agency will take to incentivize industry-wide use of electronic on-board recorders (EOBRs) and the metrics that will be used to measure the adoption of EOBRs installation.

2.0 BACKGROUND

On January 18, 2007, FMCSA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (72 FR 2340). The NPRM proposed to amend the Federal Motor Carrier Safety Regulations to (1) incorporate new performance standards for EOBRs installed in commercial motor vehicles (CMV) manufactured on or after the date 2 years following the effective date of a final rule, (2) require the use of EOBRs by motor carriers demonstrating patterns of noncompliance with the Federal hours-of-service (HOS) rules, and (3) provide regulatory incentives for the voluntary use of EOBRs by the motor carrier industry. The proposal represented the first revision of the standards for devices to monitor drivers' hours of service in more than 20 years.

While the standards that were adopted in 1988 had certain limitations, the Agency proposed that automatic on-board recording devices (AOBRDs) meeting FMCSA's standards and voluntarily installed in CMVs manufactured before the implementation date of a final rule could continue to be used for the remainder of the service life of those CMVs. The Agency proposed this approach to avoid penalizing motor carriers that took voluntary action to use technology to monitor their drivers' compliance with the Federal HOS rules. The requirements for AOBRDs are found in Section 395.15 of Title 49 Code of Federal Regulations (CFR).

2.1 MANDATORY USE OF EOBRs

The FMCSA's 2007 NPRM proposed that motor carriers that have demonstrated a history of serious noncompliance with the HOS rules would be subject to mandatory installation of EOBRs that meet the new performance standards. The proposal provided that if FMCSA determined, based on HOS records reviewed during each of two compliance reviews (CR) conducted within a 2-year period, that a motor carrier had a 10 percent or greater violation rate ("pattern violation")

for HOS regulations, FMCSA would issue the carrier a remedial directive to install EOBRs. The motor carrier would be required to install EOBRs in all of its CMVs, regardless of their date of manufacture, and to use the devices for HOS recordkeeping for a period of 2 years, unless the carrier already had (i) equipped its vehicles with conforming AOBRDs, and (ii) could demonstrate to FMCSA that its drivers understand how to use the devices.

Based on a review of CR data, FMCSA estimated that approximately 465 motor carriers would be issued a remedial directive each year. After the first full year of implementation, therefore, FMCSA estimated that, at any given time, about 930 carriers would be required to use EOBRs. The Agency estimated these carriers to have approximately 16,000 power units and 17,500 drivers.

2.2 INCENTIVES FOR VOLUNTARY USE OF EOBRs

The FMCSA acknowledged that some carriers are reluctant to use EOBRs on a voluntary basis. Therefore, FMCSA's 2007 proposal included a provision to encourage industry-wide use of EOBRs by providing incentives for motor carriers to voluntarily use EOBRs in their CMVs. The incentives included (i) revising the Agency's CR procedures to permit examination of a random sample of drivers' records of duty status, and (ii) providing partial relief from HOS supporting documents requirements if certain conditions are satisfied. The Agency also sought input on other potential incentives made possible by the inherent safety and driver health benefits of EOBR technology.

First, the carriers' chief concern was that the greater accuracy of EOBRs and the accessibility of the electronic records they would generate would make it easier for, safety investigators to identify minor violations. To avoid placing carriers using EOBRs at a disadvantage during CRs, and to provide an incentive for EOBR use, the FMCSA's proposed rule included a provision to evaluate HOS compliance differently during CRs of carriers that voluntarily use EOBRs.

In the NPRM, FMCSA proposed that if a carrier voluntarily using EOBRs was found to have HOS violations in 10 percent or more of the records reviewed in the initial analysis (which focuses on drivers expected to have compliance problems), FMCSA would conduct a second analysis, this time using a random sample made up of records of duty status from a broader selection of the carrier's drivers. The FMCSA would use the results of the second analysis in determining the carrier's safety rating.¹ The Agency explained in the preamble of the NPRM that this approach would remove a disincentive to EOBR use, while maintaining the Agency's focus on safety. This incentive would not be available to motor carriers operating under a remedial directive to install, use, and maintain EOBRs.

¹ The FMCSA's routine CR procedures call for FMCSA or State safety investigators to focus their sample of HOS records on the records of duty status of drivers involved in interstate recordable accidents, drivers placed out of service for HOS violations during roadside inspections, drivers discovered to have poor driving records through Commercial Driver's License Information System checks, recently hired drivers, and drivers having a high probability of excessive driving.

Second, FMCSA proposed providing partial relief from HOS supporting documents requirements for motor carriers that voluntarily use EOBRs, provided certain conditions are satisfied. The motor carrier would have to use EOBRs that, at minimum, met the proposed requirements to produce time and CMV location position histories at intervals sufficient to verify adequately a driver's on-duty driving activities. Motor carriers voluntarily maintaining the time and location data produced by these EOBRs would no longer need to maintain documents to verify on-duty driving activities, but would only need to maintain those additional supporting documents necessary to verify on-duty not-driving activities and off-duty status.

2.3 FMCSA'S 2010 FINAL RULE CONCERNING EOBRs

On April 5, 2010, FMCSA published its EOBR final rule (75 FR 17208). The final rule incorporates new performance standards for EOBRs installed in CMVs manufactured on or after June 4, 2012. On-board HOS recording devices meeting FMCSA's AOBRD requirements and installed in CMVs manufactured before June 4, 2012, may continue to be used for the remainder of the service life of those CMVs.

Motor carriers that have demonstrated serious noncompliance with the HOS rules are subject to mandatory installation of EOBRs that meet the new performance standards. If FMCSA determines, based on HOS records reviewed during a single CR, that a motor carrier has a 10 percent or greater violation rate for HOS regulations (the 2007 NPRM proposed using the results of two CRs within a 2-year period), FMCSA will issue the carrier an EOBR remedial directive. The motor carrier will then be required to install EOBRs in all of its CMVs, regardless of their date of manufacture, and use the devices for HOS recordkeeping for a period of 2 years, unless the carrier (i) already equipped its vehicles with AOBRDs that meet the Agency's requirements under 49 CFR 395.15 prior to the finding, and (ii) demonstrates to FMCSA that its drivers understand how to use the devices. As proposed in the NPRM, FMCSA also changed the safety fitness standard to take into account a remedial directive.

The FMCSA estimated that the remedial provisions of this final rule, requiring the installation, use, and maintenance of EOBRs by motor carriers with a 10 percent threshold rate of serious HOS violations, would affect approximately 5,700 motor carriers that employ 129,000 drivers annually, after the first full year of implementation.

Additionally, to encourage industry-wide use of EOBRs, FMCSA revised its CR procedures, as proposed in the NPRM, to permit examination of a random sample of drivers' records of duty status after the initial sampling, and provides partial relief from HOS supporting documents requirements for motor carriers that voluntarily use compliant EOBRs, if certain conditions are satisfied.

The final rule is effective on June 4, 2010. Motor carriers must comply by June 4, 2012.

3.0 FMCSA'S COMMITMENT TO INITIATE A NEW EOBR RULEMAKING

The FMCSA acknowledged, in its preamble to the 2010 final rule, the safety concerns of Congress, the National Transportation Safety Board, and the many organizations and individuals

that submitted comments to the 2007 NPRM in support of a broader EOBR mandate. The Agency has stated that it is evaluating regulatory options for potentially expanding the population of carriers covered by an EOBR mandate. The Agency explained that it could not extend the EOBR mandate beyond those covered by the final rule because the scope of that rulemaking proceeding was limited to compliance-based regulatory approaches, implemented through a remedial directive. The Agency will also update the analyses used for the 2010 final rule and conduct a full regulatory evaluation of broader mandates.

As part of this new rulemaking activity, FMCSA will attempt to gather more information on the voluntary use of EOBRs and to assess how increases in the number of units installed may influence the purchase and operational costs. The regulatory identification number (RIN) for this new rulemaking action is RIN 2126-AB20. The RIN may be used to follow the progress of the rulemaking through the Federal government's rulemaking portal at www.regulations.gov.

The follow-on rulemaking (RIN 2126-AB20) will consider revisions to the April 2010 EOBR final rule (RIN 2126-AA89). The FMCSA is consolidating this follow-up to the EOBR rule with the HOS supporting documents rulemaking in a single NPRM. In addressing supporting documents requirements in this new rulemaking, FMCSA will consider reducing or eliminating certain paperwork burdens associated with supporting documents in favor of expanded EOBR use. The Agency anticipates publishing the NPRM by the end of calendar year 2010.

3.1 ACTIONS TO INCENTIVIZE EOBR USAGE

In consideration of the FMCSA's new rulemaking initiative, the Agency does not plan to take any additional actions at this time to incentivize the use of EOBRs beyond those regulatory incentives provided in the April 2010 final rule.

Incentive 1: If a carrier voluntarily using EOBRs is found to have HOS violations in 10 percent or more of the records reviewed in the initial analysis, which focuses on drivers expected to have compliance problems, FMCSA will conduct a second review of a random sample made up of records of duty status for a larger sample of the carrier's drivers, and use the results of the second sample in determining the carrier's safety rating.

Incentive 2: The FMCSA will provide partial relief from HOS supporting documents requirements for motor carriers that voluntarily use EOBRs, provided certain conditions are satisfied. The EOBRs meeting the proposed requirements produce regular time and CMV location position histories sufficient to verify adequately a driver's on-duty driving activities. Motor carriers voluntarily maintaining the time and location data produced by such devices will no longer need to maintain documents to verify on-duty driving activities, but would only need to maintain those additional supporting documents necessary to verify on-duty not-driving activities and off-duty status.

3.2 EVALUATION OF ACTIONS TO INCENTIVIZE EOBR USE

The Agency is now focusing its efforts on updating its regulatory analyses to support the new rulemaking initiative. To the extent that there remains a substantial population of motor carriers

that are not covered by the forthcoming rulemaking, the Agency will then assess the effectiveness of the regulatory incentives provided in the 2010 final rule.

The FMCSA believes the current incentives could potentially prompt some motor carriers to install EOBRs on a voluntary basis. However, given the Agency's announcement to move forward with a new rulemaking, other carriers may, for a variety of reasons, choose to defer voluntary installation until the completion of the rulemaking. Therefore, an evaluation of the impact of the incentives may be difficult to determine because of the industry's reaction to the announcement of the follow-up rulemaking.

4.0 CONCLUSION

The FMCSA is committed to improving highway safety. In April 2010, FMCSA published a final rule that instituted a remedial directive, broader than that proposed in the 2007 NPRM, to install EOBRs for motor carriers that have demonstrated serious noncompliance with the HOS rules. After the first full year of implementation, this would affect approximately 5,700 motor carriers that employ 129,000 drivers annually. The Agency will consider, through a notice-and-comment rulemaking, the extent to which the scope of the April 2010 EOBR final rule should be extended to a larger population of motor carriers. Because the Agency has initiated a rulemaking action to consider expanding its EOBR mandate, efforts to evaluate the effectiveness of incentives for voluntary use of EOBRs are being deferred until the completion of that action.