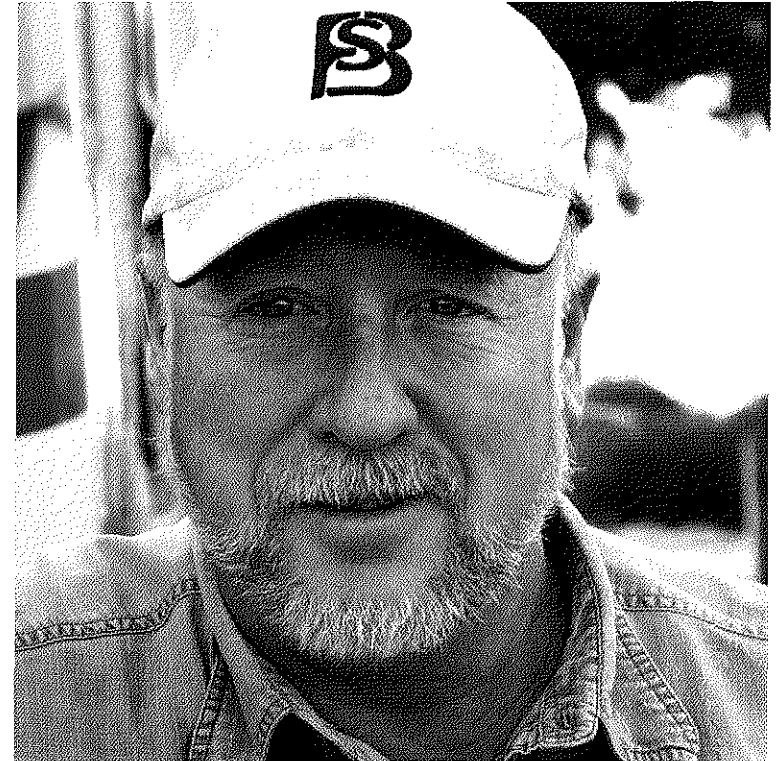
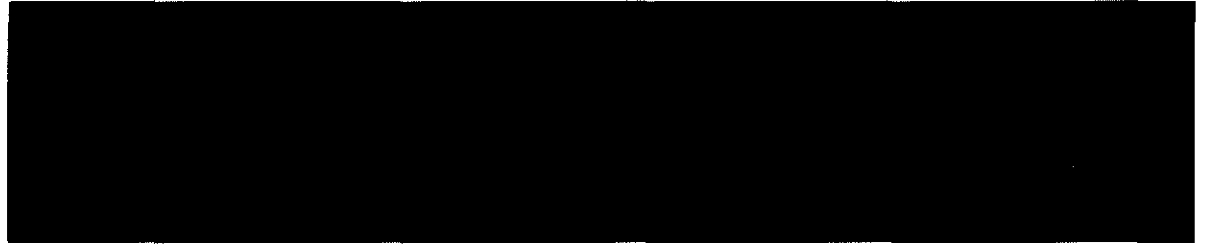




OOIDA

Owner-Operator Independent Drivers Association



Briefing to Office of Information & Regulatory Affairs

Electronic On-Board Recorders/Electronic Logging Devices

September 30, 2013

Key Meeting Topics

- > Background on OOIDA and Small Business Trucking
- > Important Components of an EOBR/ELD Cost-Benefit Analysis
- > The Requirement to Address Driver Harassment
- > Opportunities for the SNPRM to Meet MAP-21 Requirements while Addressing Cost, Privacy & Harassment Concerns
 - > MAP-21's Requirement that the Device Automatically Record Duty Status
 - > A Basic-Compliant Device under MAP-21
 - > Limits on Device Connectivity & GPS-location Tracking
 - > Reducing Harassment through Connected EOBRs/ELDs
 - > Additional Opportunities

Small business truckers = critical to the nation & committed to safety



- > Trucking is dominated by small businesses:
 - More than 90% of industry: 20 trucks or less
 - 50% of industry: one truck operations
- > OOIDA members and their peers are estimated to exclusively haul 40% of all US truck freight.
- > OOIDA's members are professional drivers, and have the safety record to back that up:
 - 25 years of driving experience, on average
 - Over 2 million miles of safe, accident-free driving
- > OOIDA is focused on advancing positive highway safety policies that will reduce crashes:
 - Finally requiring entry-level driver training
 - Reducing aggressive driving around trucks
 - Launched "Truckers for Safety" Campaign



Questions that need answered in calculating the benefits of EOBRs/ELDs

How does compliance with HOS rules affect safety?

Throughout it's HOS rulemakings, FMCSA has focused on the issue of fatigue and the role reducing fatigue plays in improving safety. With the current and past EOBR/ELD rulemakings, the issue is not about fatigue but about improving HOS compliance. As such, a keystone of any agency benefit analysis must be understanding how improve compliance improves safety, not simply transposing the benefits of reduced fatigue.

Do EOBRs/ELDs actually reduce crashes?

Throughout past regulatory efforts, FMCSA has focused on the assumed ability of EOBRs/ELDs to improve HOS-compliance, inferring that there will be an automatic reduction in crashes. Instead, the CBA should be required to show a reduction in crashes due to EOBRs/ELDs, independent of HOS regulations.

Do carriers using EOBRs/ELDs see a reduction in crashes?

The agency has failed to conduct an examination of this important point, despite the fact that EOBRs/ELDs in some form have been utilized by motor carriers for more than a decade. Indeed, analysis of FMCSA data by OOIDA's Foundation shows that carriers using EOBRs frequently crash.

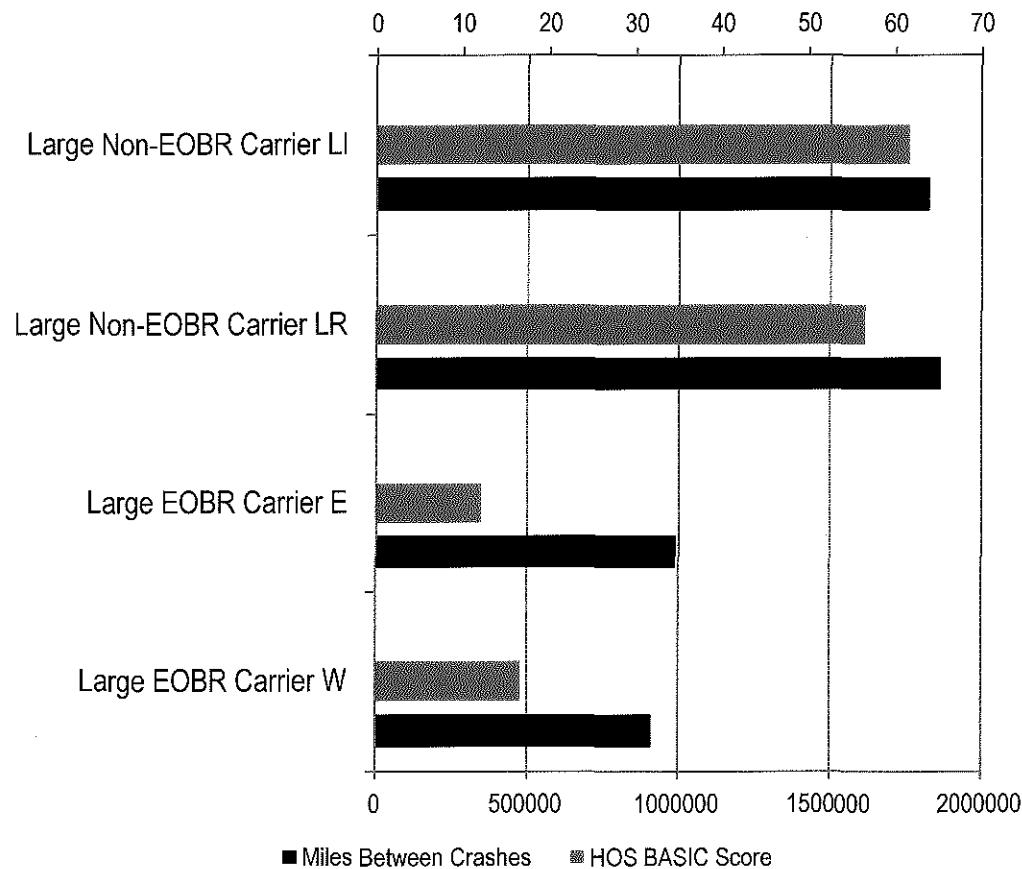
What violations would be prevented by EOBRs/ELDs that paper logs cannot prevent?

HOS regulations, and a truck driver's daily activities, cover more than just a driver's time operating the vehicle, which an EOBR/ELD is capable of measuring. Not only does the trucker have to take their mandatory breaks and other off-duty time, but they also must spend a (sometimes considerable) portion of their day on-duty/not driving. The mislabeling of this time not driving, whether on or off duty, is an opportunity for HOS violations to occur, especially due to harassment and coercion by a carrier, shipper, or receiver. How will an EOBR/ELD prevent these violations?



Productivity language.

Is there a connection between EOBRs/ELDs and reduced crashes? What about HOS compliance?



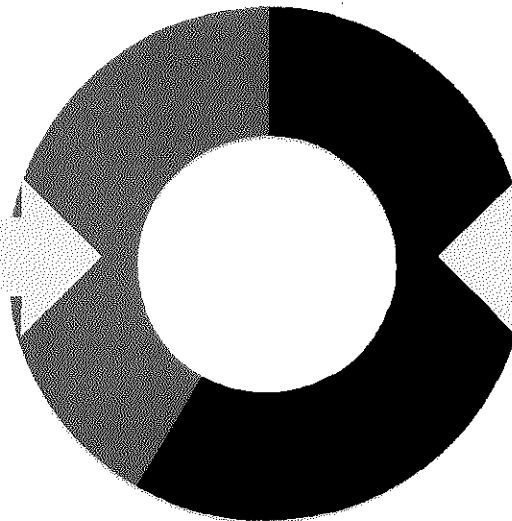
OOIDA examined 2011 crash data from a number of large (more than 3,500 power units) carriers, comparing those that utilize company drivers and require EOBR/ELD use and those that utilize owner-operators and do not require EOBRs/ELDs.

- > It is important that the CBA take real-world experiences of carriers that use EOBRs/ELDs and those that do not and examine crash data, not simply compliance records.
- > An initial look shows that there is not a direct relationship between
 - > EOBR/ELD use and fewer crashes
 - > Better CSA compliance scores and fewer crashes
- > This is an important, foundational issue for the CBA to examine and to quantify.

Handwritten note: Hazardous in non-driving hours.

Accounting for the HOS violations an EOBR/ELD truly has the possibility of preventing

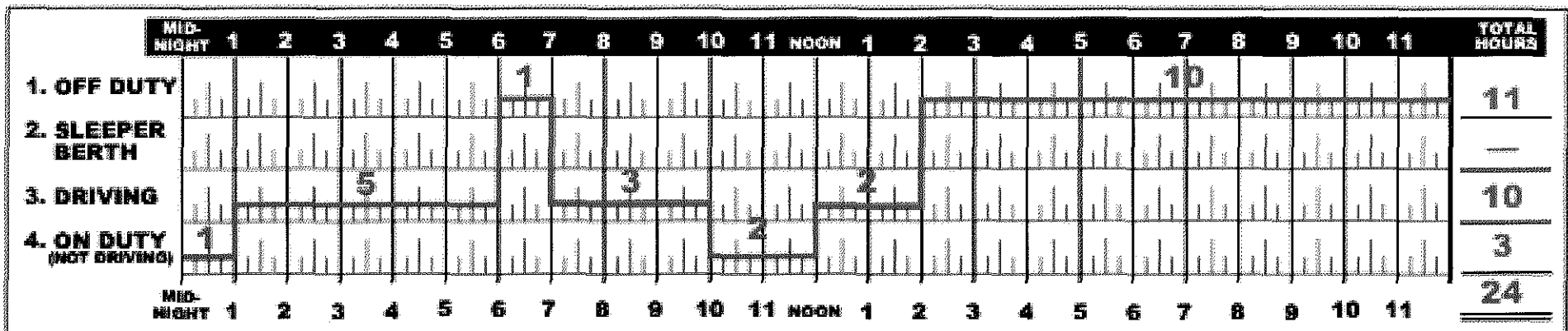
An EOBR/ELD only has an opportunity determine and prevent violations that are related to driving time, which at a maximum can only make up less than half of a trucker's day.



The remainder of the day is either in the sleeper berth, off-duty, or on-duty/not driving. The EOBR/ELD cannot prevent on-duty/not-driving time from being recorded as off-duty.

Improperly recording time during these non-driving periods can add hours to a driver's "work" day – time when they become fatigued.

■ Requires Manual Input ■ Automatically Tracked by an EOBR/ELD



How should the benefits of EOBRs/ELDs be calculated?

Looking at Actual Safety Performance

Instead of automatic assumptions that HOS compliance and EOBR/ELD use leads to improved safety and reduced crashes, FMCSA should be held to a standard that requires the agency to show these results actually occur. The agency has had available for several years violation data and accident information under the CSA program. While OOIDA feels the processes for generation CSA scores have flaws, the raw data should allow FMCSA to examine individual carriers and individual violations and conduction comparisons.

Examining which Violations an EOBR/ELD could Reduce

Past FMCSA analysis of EOBR/ELD effectiveness have made the assumption that the devices are capable of automatically preventing all HOS violations. Interestingly, CSA data from major carriers who use EOBRs shows that this is not the case, with violations for exceeding the 11-hour driving window or the 14-hour driving day just as common as for carriers who do not utilize EOBRs. As part of the CBA for this rulemaking, FMCSA should examine which individual violations of HOS regulations an EOBR is able to reduce and assign a benefit to that individual violation instead of assigning benefits to a blanket ability to reduce violations.

The CBA must correctly reflect how truckers are paid for their work and nature of small carriers

- > The CBA for EBOR-2 included significant cost benefits for the trucking industry from the following:
 - > Time drivers spend filling out paper logs
 - > Clerical time savings
- > Truckers are generally paid by-the-mile, so there is no appreciable savings from not requiring the trucker to fill out the paper log.
- > With 50 percent of the industry being one-truck operations, the vast majority of carriers do not have clerical staff. Further, the CBA needs to control for the carriers that are already using EOBRs/ELDs.

Questions that need answered in calculating the costs of EOBRs/ELDs?

What violations of HOS regulations are hidden by EOBRs/ELDs?

As noted above, EOBRs/ELDs focus on the recording of driving time. OOIDA has demonstrated that an EOBR/ELD may display that a driver is 100% in compliance with HOS regulations, but on reality, more than half the driver's driving time is in violation of the rules. The ability of an EOBR/ELD to hide HOS violations should be considered as part of the CBA, and noted as a cost of the devices.

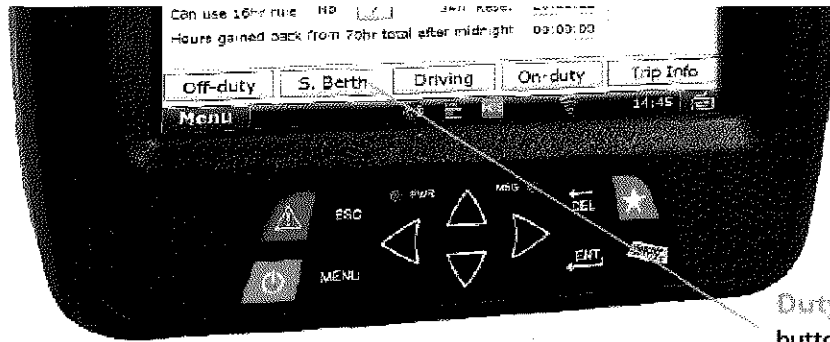
What role do connected EOBRs/ELDs have in violations of other FMCSA regulations and safety laws?

This question drives at the heart of the 7th Circuit's decision on EOBR-1 regarding driver harassment. With connected EOBRs/ELDs and the ability for a dispatcher to monitor a driver in real-time, fleets are capable of harassing drivers and coercing them into violating a number of FMCSA regulations and safety laws, including HOS violations, driving when fatigued, and speeding.

What impact does changing recording duty changes from 15 min. increments to by the minute have in highway safety and trucking productivity?

Concern over the impacts of this change have not simply been raised by the trucking community, but have been voiced by shippers and, at a hearing earlier this year, by the chairman of the House Highways Subcommittee. OOIDA is especially concerned about how this will impact truckers and their ability to find safe and secure parking or other instances when the clock of the EOBR/ELD puts them in a Catch-22 situation.

How EOBRs/ELDs can hide other HOS violations



Duty status buttons to input on duty, off duty or heading to sleep

- > Recording driving time is the only "automatic" element of an EOBR/ELD.
- > All other duty-status selections must be inputted manually, including those that are "on-duty/not driving."
- > An accurate CBA needs to consider this reality and include it as part of the analysis.

Example of hidden HOS violations:

- > While supervising the unloading of his truck, the driver only logs 15 minutes of the time as "on-duty/not driving," despite the fact that unloading took two hours. The 1.75 hours remain was logged as "off-duty."
- > As these miss-stated duty status changes add up, the driver then begins to violate other HOS regulations, from the 14-hour on-duty window to the mandatory 10 hour break. It also impacts the full 60/70 hour work week limits set in 395.3(d).

Driver harassment must be addressed, according to courts and Congress

7th Circuit's Decision on EOBR-1

FMCSA was directed by Congress back in the late 1980s to "ensure that the devices are not used to harass vehicle operators."

"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."

Congress in MAP-21 Statutory Language

"the Secretary of Transportation shall prescribe regulations...ensuring that an electronic logging device is not used to harass a vehicle operator."



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Preventing harassment is “core” to rule itself, but SNPRM to be issued before driver survey is complete

FMCSA on Survey Regarding Potential Harassment Deriving from EOBR Use

Dec 13, 2012
Federal Register Number:
2012-30143

“The objectives of the proposed driver and carrier surveys through this ICR are to broadly examine the issue of driver harassment and coercion and determine the extent to which EOBRs could be used to either harass and/or monitor driver productivity. These surveys will explore the relevant issues from the point of view of both drivers and carriers towards the use of EOBRs. **The survey results will inform FMCSA in its ongoing rulemaking on EOBRs, including potential countermeasures or best practices that will ensure that EOBRs are not used to harass or coerce CMV drivers.** The purpose of these surveys is, in part, to respond to the court’s suggestion that the Agency research the issue of driver harassment based on use of the device.”

Administrator Ferro
House Transportation &
Infrastructure Committee
March 14, 2013

“Four core factors in the rule itself: first are just the technical specifications for the equipment, which shares its own complexity and requires flexibility with the new technologies today; **ensuring that drivers are not harassed with the use of those devices**; ensuring that any sort of supporting documents requirements that are required to document and prove an operator’s hours are reduced and streamlined through the use of those devices; and then the requirement itself.”

FMCSA

May 28, 2013
Federal Register Number:
2013-12564

“FMCSA will publish a SNPRM on EOBRs and will consider survey results concerning the EOBR use by motor carriers to ensure that EOBRs are not used by carriers to harass or coerce drivers **prior to the issuance of a final rule.**”



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Driver harassment can and does have a safety cost

Forcing the driver to drive when fatigued

Harassing the driver and coercing them into driving while they are fatigued in order to make a shipment. Dispatcher: "You still have hours showing to drive." Driver: "I am tired and don't feel comfortable driving."

Messaging the driver through a EOBR/ELD fleet management system during their off-duty or sleeper berth time

Some EOBR/ELD systems allow for the carrier to send messages to the driver, including during their off-duty or sleeper berth time. These messages range from messages about the next load or are simply just advertisements from vendors. If the system requires the driver to interact with the device to turn off the message tone, then that not only wakes them from rest, but it also is a violation of HOS regulations.

Messaging the driver while the vehicle is moving and requiring the driver to interact with the device to stop the message tone

Carriers also send messages to the driver during their driving time. Often, these require the driver to respond in order to turn off the message, which is distracted driving. Further, if the carrier is receiving real-time information about the driver, they know the vehicle is in motion.

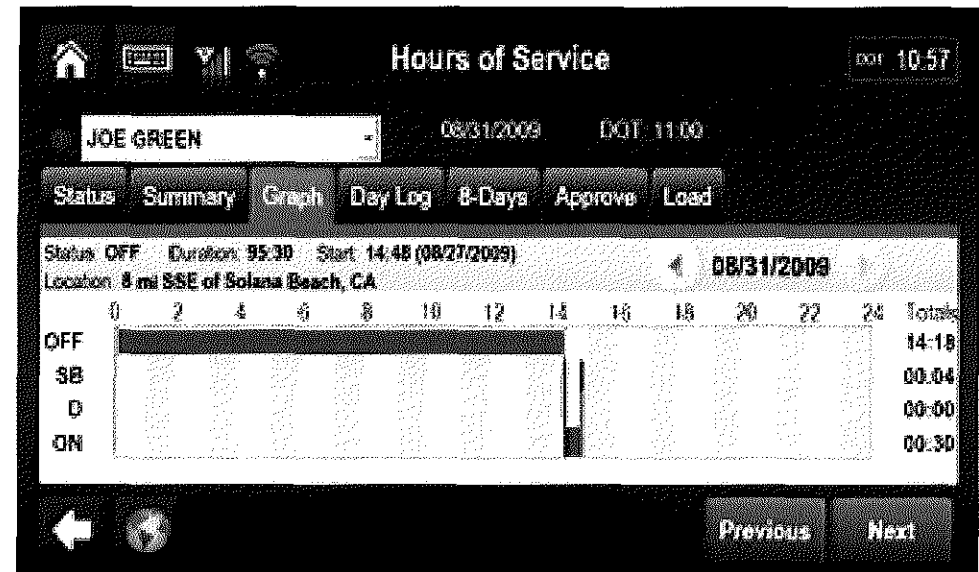
EOBR technical specifications directly tie into the ability of the device to protect the driver against harassment. As such, the harassment survey and other steps should be taken **BEFORE** the SNPRM is issued.

How will an EOBR/ELD “automatically” record non-driving time?

MAP-21:

ELECTRONIC LOGGING DEVICE- The term 'electronic logging device' means an electronic device that is capable of recording a driver's hours of service and duty status accurately and automatically

- > Language requires automatic recording of all categories of a driver's duty status, not simply when they are driving.
- > Important issue from a safety perspective, but also important as a significant amount of a driver's time is not compensated.



MAP-21 only requires a basic-complaint device, the SNPRM should follow this lead

What is in
MAP-21's
EOBR/ELD
Language

- > Device is capable of tracking compliance with HOS regulations set by the Secretary;
- > Device capable of recording: the driver's HOS and the location of the vehicle; and
- > Allows law enforcement access and a standard process for a carrier to store EOBR/ELD data.

What is not in
MAP-21's
EOBR/ELD
Language

- > Express permission for carriers to use the devices for productivity-related purposes – change from past statute;
- > A requirement that the device be connected through data networks for real-time tracking;

Approaching a basic-compliant device

Specifications for a basic-compliant device under the SNPRM should not expand upon the information required under Sec. 395.8 for HOS compliance.

ROD Informational Requirement (Sec. 395.8)	Compliance through Paper Log	Compliance through EOBR/ELD
Duty Status: Off-Duty, Sleeper Birth, Driving, On-Duty/not driving	Manual input, paper recordation on Graph Grid	Manual input, electronic recording on Graph Grid
Location of Change of Duty Status (state & municipality or highway number and milepost)	Manual input, paper recordation in remarks section	Electronic GPS recordation
Date	Manual input, paper recordation	Electronic recordation
24-hour period starting time	Manual input, paper recordation	Manual input, electronic recordation
Total Daily Mileage	Manual input, paper recordation	Electronic recordation
Carrier, Truck, and Shipment Information	Manual input, paper recordation	Manual input, electronic recordation
Driver's Certification	Manual input, paper recordation	Manual input, electronic recordation

Why the SNPRM should not require device connectivity

Not required under MAP-21 requirements or for HOS compliance purposes

Data connectivity will not assist the device recording HOS status "accurately and automatically."

A non-connective device keeps costs low

Data connectivity is one of the major cost factors for many EOBR/ELD systems. However, for a small business carrier, the data transfer processes can be accomplished without the use of a network, and an on-device printer can provide logs to law enforcement.

Not requiring connectivity eliminates an opportunity for harassment

By not requiring connectivity, the regulation would require real-time monitoring of driver time by carriers, significantly reducing harassment potential.

Increases data protections

Major requirement of MAP-21; no automatic data flow to carrier ensures they will not adjust RODs to increase driving time.



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SNPRM is an opportunity to fix past error in location tracking requirement

- > While MAP-21 does require that the EOBR/ELD record the location of the vehicle, the regulation should clearly state that recording the vehicle's location is only required during changes in duty status, as is the current requirement in 395.8.
- > SNPRM is an opportunity to eliminate current requirement that EOBRs/ELDs record location data every 60 minutes.

Additional location recording is not required for HOS compliance

There is no discernible need for the EOBR/ELD to hold in it's memory the location of the vehicle following a change in duty status. The ability of the device to accept GPS signals can be turned on and off

Addresses driver harassment and privacy concerns

Many truckers, from owner-operators to truckers for major fleets, use their trucks for personal conveyance. A requirement that the EOBR/ELD track and record their location beyond what is required for HOS compliance opens the door for further driver harassment while also opening up significant privacy concerns.

Reducing harassment by carriers using connected devices (fleet management systems)

Many carriers, especially major fleets, operate EOBRs/ELDs that are connected through cellular networks to the carrier's home base and dispatching systems.

These devices, "fleet management systems" or FMS, can provide a variety of features. Real-time monitoring of a driver's hours-of-service and the truck's current position on the road are common, but also are tools that enable a carrier to communicate to the driver.

The fleets that have made the decision to utilize an FMS do so for a variety of reasons. All are directly tied to the carrier's business needs – they have nothing to do with HOS compliance.

As such, since these devices go above and beyond the HOS compliance rationale for an EOBR/ELD, the FMCSA should take this opportunity to set some basic driver and safety protections that carriers utilizing an FMS and must abide by.



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Preventing harassing messages

Ability to turn off real-time tracking and/or messaging capability during off-duty time

Any messages that would be sent to the driver during this time are unnecessary and technically are violations of HOS requirements, especially if the driver's attention is required. Further, if the driver is off-duty, there is no need for the carrier to track their status since they are off-duty, and relieved of all responsibility for performing work.

Prohibiting an FMS from requiring driver response to a message sent while driving

This would not only prevent message tones from continuing without end until the driver responds, but it also would eliminate the distracted driving danger that comes from typing out a message while driving a commercial vehicle.

Include driver harassment as a focus during compliance reviews

FMCSA should take this opportunity to include issues of driver harassment and coercion as an important element during carrier compliance reviews, especially given the focus given to the issue by courts and Congress.

Messaging features are not required for HOS compliance – they are a driver productivity feature. FMCSA should govern their use by fleets using FMS-type EOBRs/ELDs to protect drivers from unnecessary and unsafe harassment.

Additional Opportunities

DEVICE CHOICE, INTEROPERABILITY & REPAIR

The SNPRM should allow any EOBR/ELD use for HOS compliance to be installed in any CMV manufactured. This will ensure that owner-operators who use older trucks that may not be wired for easy installation are not forced to pay for a higher-cost device simply that is the only device that works with their older truck.

Devices should have reasonably priced and safe interchangeable parts so as to not require the purchase of an entirely new unit when a component becomes damaged. The repair of these devices is a major potential cost factor for an individual trucker, and repairs for the physical parts of the device – cords, plugs, etc. – need to be considered by FMCSA as part of the cost-benefit analysis.

DEVICE SAFETY

Any complaint device must not interfere with any other equipment on the truck or trailer. Further, the device must not interfere with the driver's visibility of equipment or gauges.

The device must be able to sustain a crashworthiness test and the mounting bracket must be designed to ensure that the device will not become a projectile in the event of a crash.

OOIDA provides these comments in order to help OMB evaluate FMCSA's assessment of the costs and benefits of the equipment and performance of EOBRs/ELDs, and that FMCSA attend to the statutory requirements to ensure that EOBRs/ELDs are not used to harass drivers. OOIDA continues to maintain its opposition to EOBRs/ELDs in the belief that their costs far outweigh their limited, if any, safety benefits and because of Constitutional privacy concerns.

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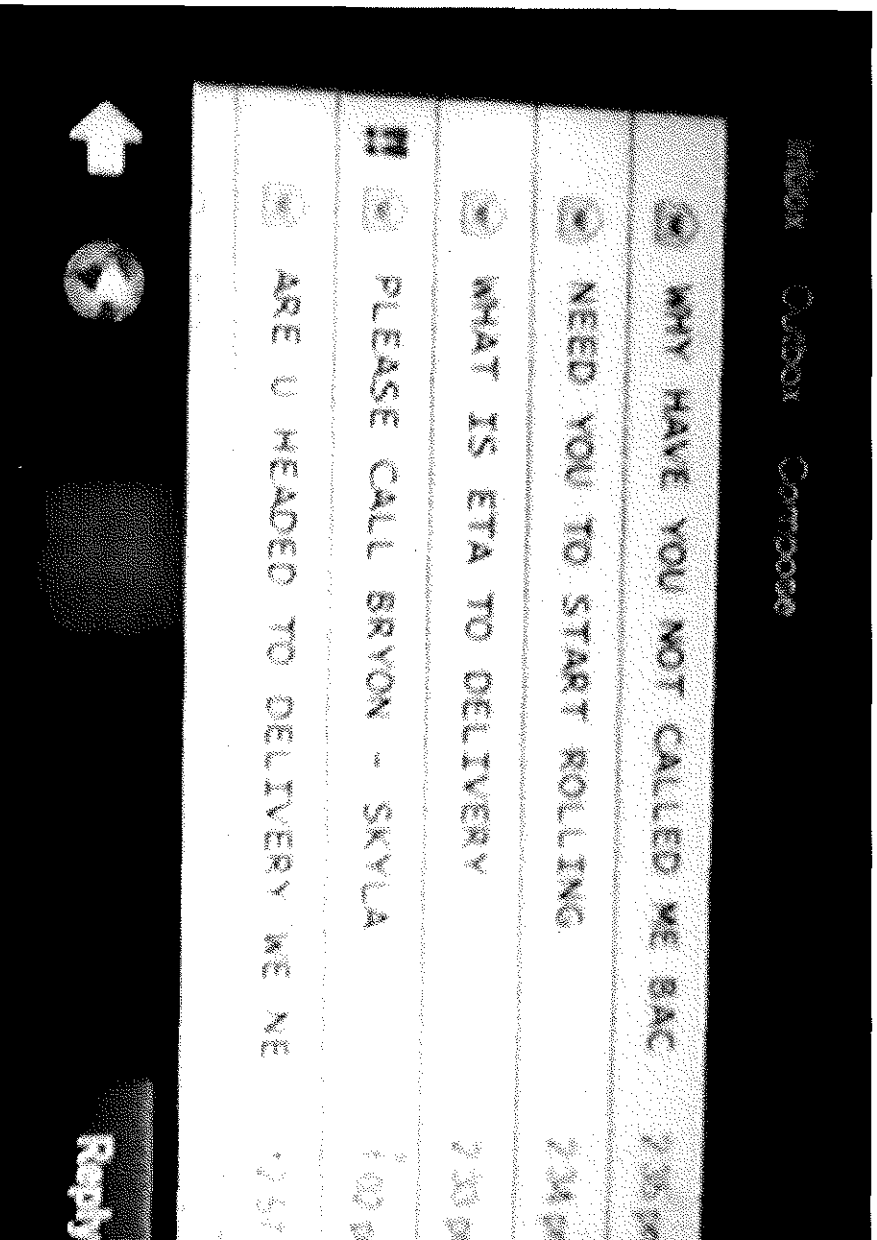
Ryan S. Bowley

OOIDA Government Affairs

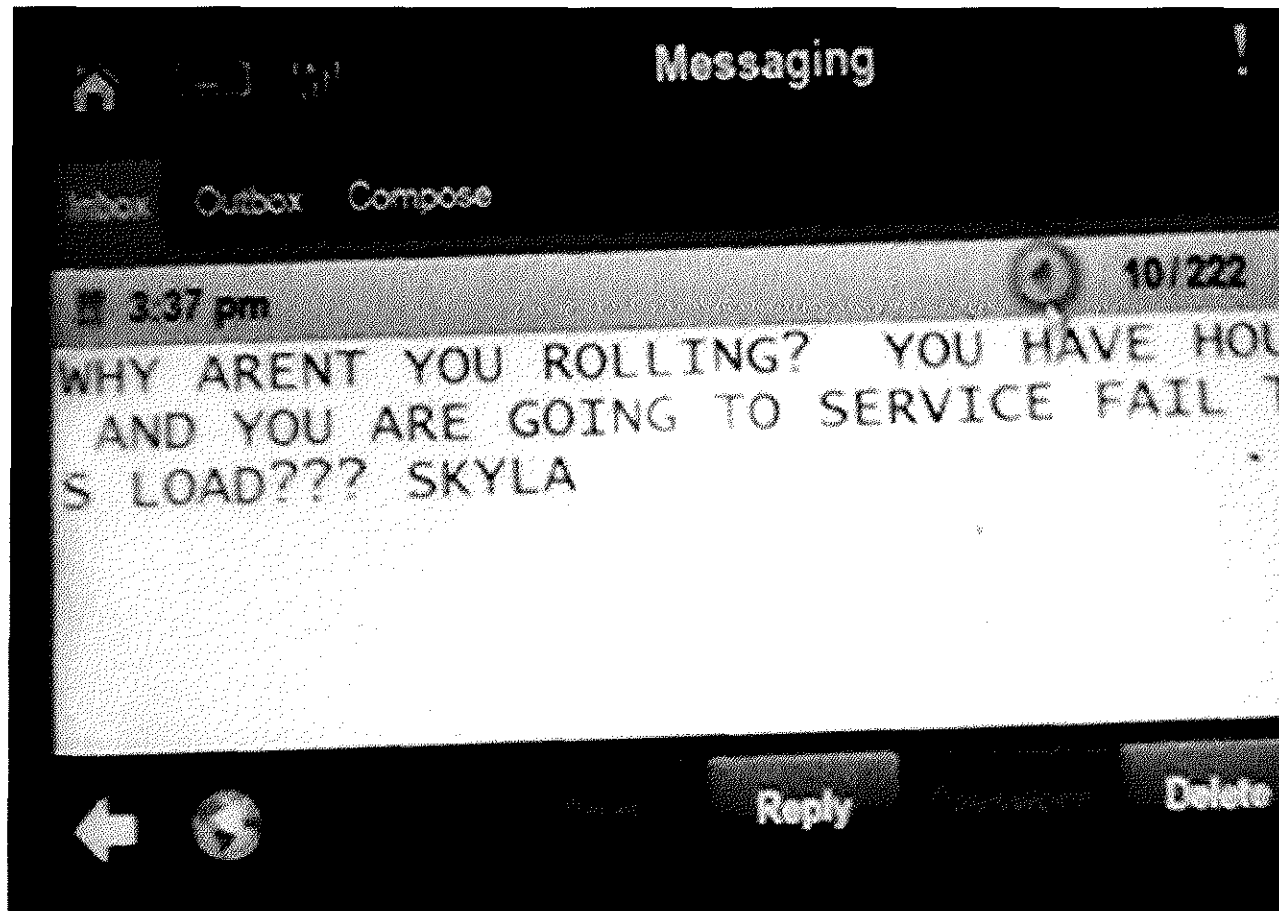
ryan_bowley@ooida.com



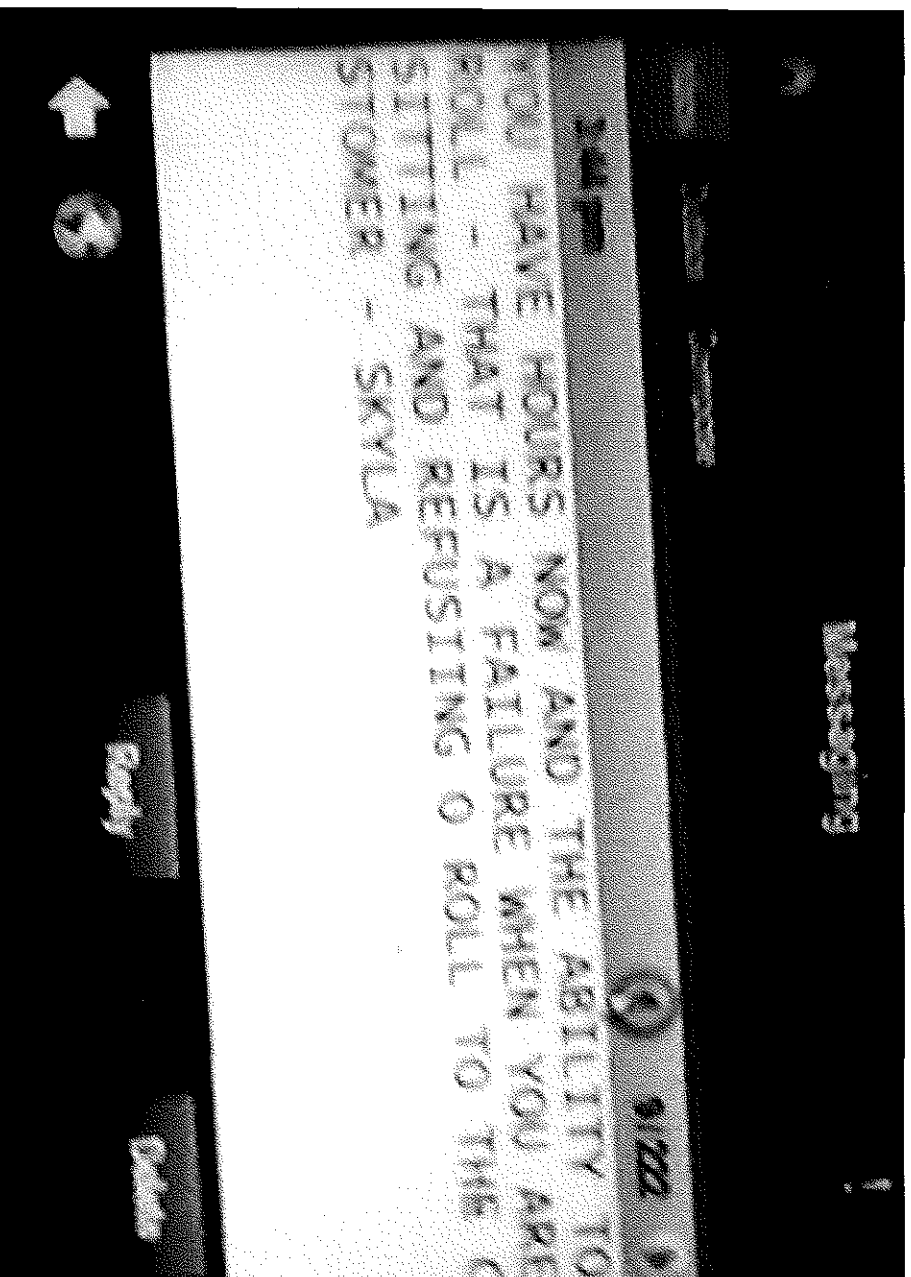
Examples of Harassment thru EOBRs/ELDs



Why aren't you rolling? You have hours and your are going to service fail the customer's load?



That is a failure when you are sitting and refusing [t]o roll to the customer.





1/11

Messaging

Message

Outbox

Compose



91222

3:51 pm

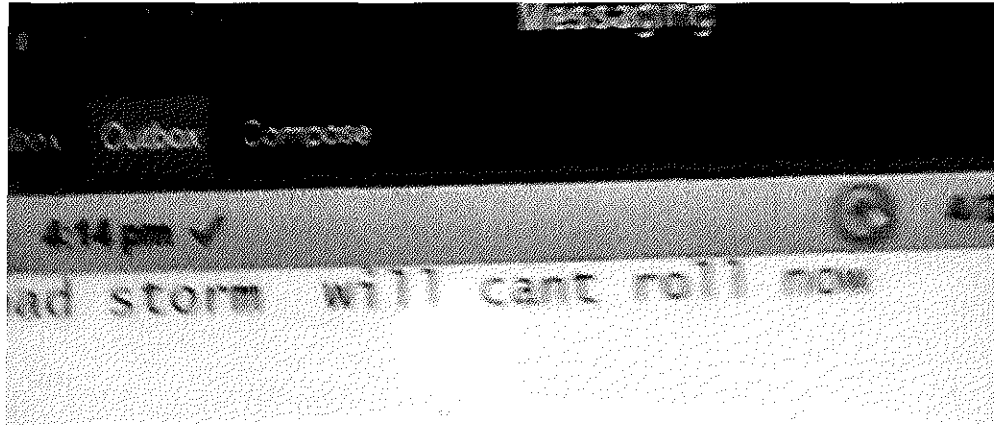
PLEASE GO IN AND DELIVER. WE NEED TO
SERVICE OUR CUSTOMERS. PLEASE START
ROLLING. THEY WILL RECEIVE YOU UP TO
130 PLEASE DO NOT BE LATE. - BRITTANY



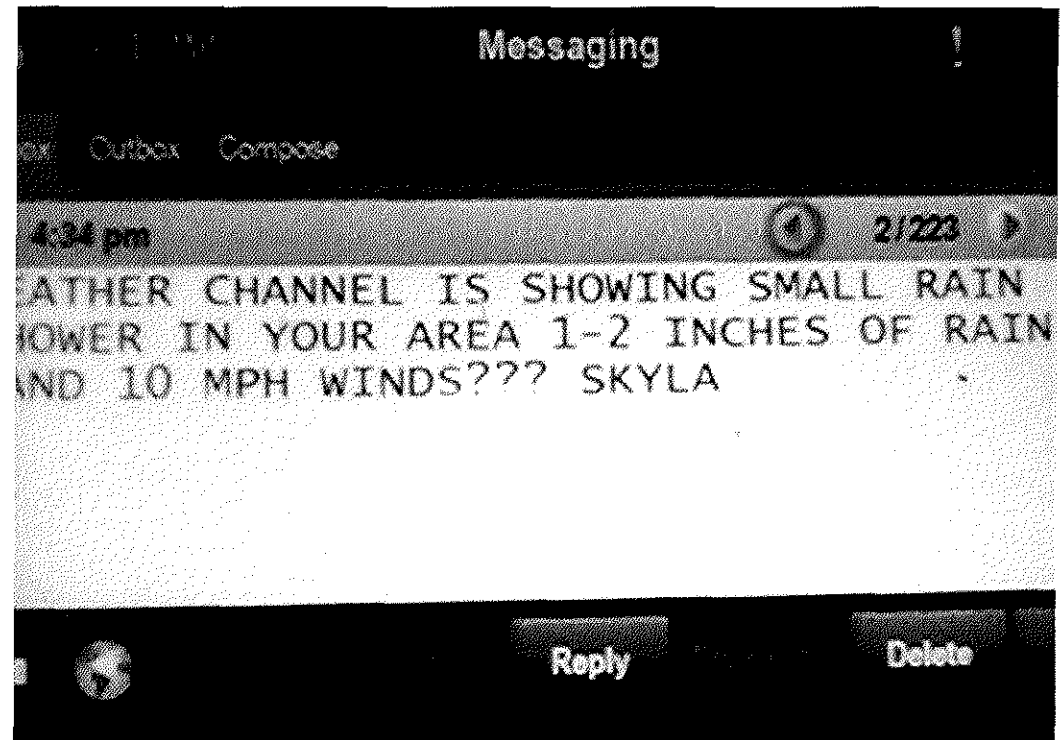
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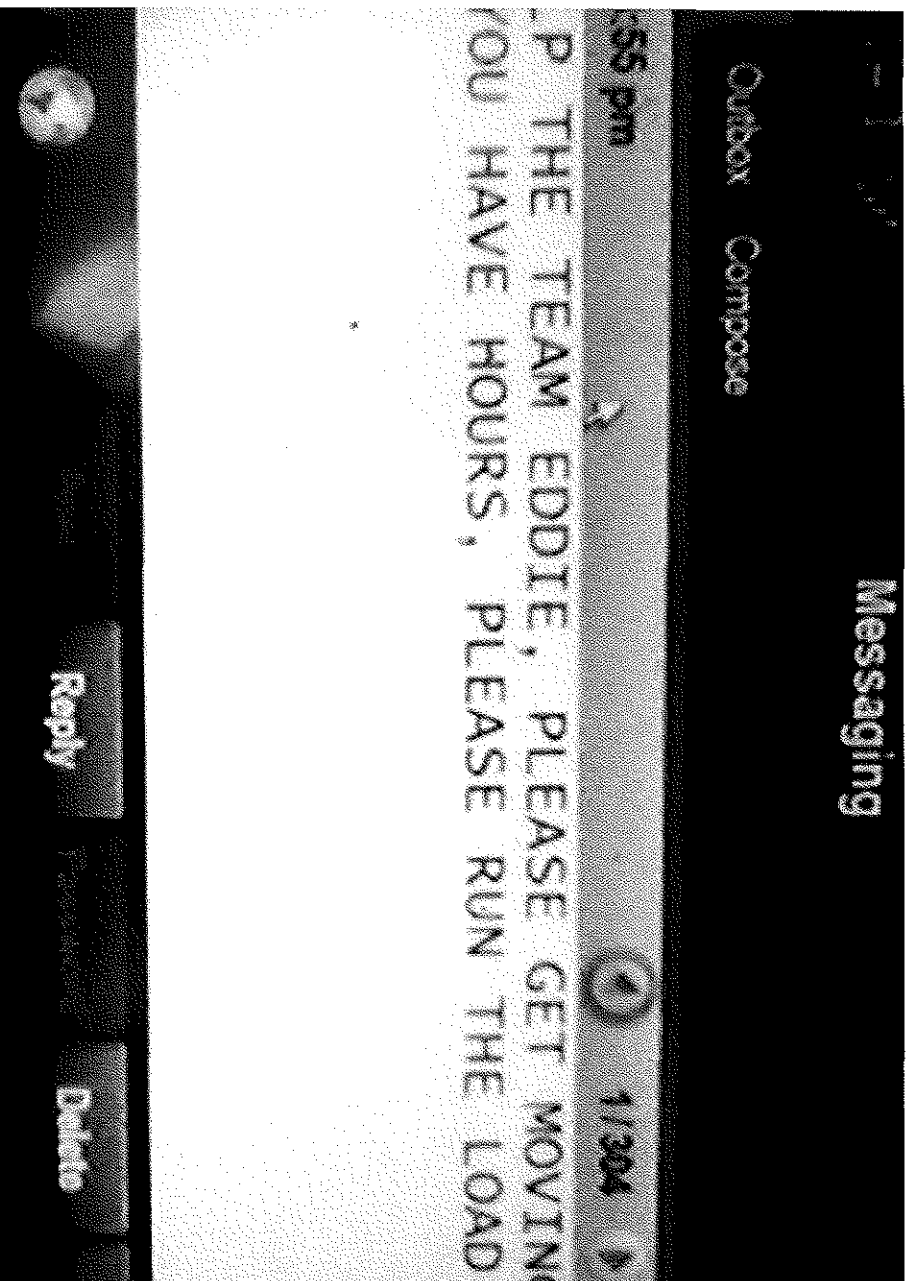
From Driver Back to Carrier & Response



Bad storm, can't roll now.



Please get moving; you have hours.



You have hours. Get loading.
Runn [sic] your 11 hours out.

