

**BEFORE THE  
U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**DOCKET NO. FMCSA-2004-18940**

**ADVANCED NOTICE OF PROPOSED RULEMAKING**

**ELECTRONIC ON-BOARD RECORDERS FOR HOURS OF SERVICE  
COMPLIANCE**

**COMMENTS OF THE AMERICAN BUS ASSOCIATION**

The American Bus Association ("ABA") represents over 3,500 members; of those, approximately 850 member companies are bus operators, offering a variety of bus services:

- regular route intercity service between fixed points on set schedules;
- charter service, where a group of passengers (such as a company or organization) purchases all of the seats on a bus for exclusive use on a particular trip;
- tour service, which usually includes stops for sightseeing and recreational purposes;
- commuter bus services, generally from the suburbs into urban areas; and
- special operations, which are scheduled services to enhance public transportation systems (such as bus service from a city to an airport), or which may be connected with a special event or attraction at the destination.

The rest of ABA's members include representatives of the travel and tourism industry, and the manufacturers and suppliers of products and services used by the bus industry. The intercity bus industry carries over 774 million passengers a year with a safety record that is unparalleled on the highways.

As the national trade association of the intercity bus industry, ABA is submitting the following comments to Docket No. FMCSA-2004-18940 in which the FMCSA requests

comments on potential amendments to its regulations concerning the use of on-board recording devices to document compliance with the hours-of-service regulations:

**Electronic on-board recorders (EOBRs) can be falsified**

The ABA believes that mandating EOBRs will result in a large expense to the motorcoach industry without safety benefit. First, it is simply impossible for current EOBR technology to accurately measure or record all the time a driver is driving, on-duty not driving, or off-duty without driver input. The only item that an EOBR may be able to accurately measure is driving time, if it can be assured that the same driver who is being recorded is actually driving—far from a certainty, especially in team or “slip-seat” relay-driver operations common to the intercity bus industry. The end result is that honest drivers will remain honest, and dishonest drivers will still be able to list time as “off-duty” even though they may be “on-duty not driving.” The EOBR concept simply cannot work under any set of prescriptive rules that take into consideration on-duty not driving and off-duty time. In short, EOBRs in their current form are simply expensive electronic logbooks that will have no safety or compliance benefits whatsoever because they can still be falsified.

**The intercity bus industry has no history of fatigue-related problems, possesses an unparalleled safety record, and has a low hours-of-service violation rate**

The latest analysis of NHTSA’s Fatal Accident Reporting System (FARS) data for intercity buses was completed by Ken Campbell of the University of Michigan’s Transportation Research Institute in 2001. This report, commissioned by the ABA and entitled “Over-the-Road Bus Accidents in the United States, 1995-1999” showed “an average of one fatigue related fatal accident in an intercity bus per year.” (copy attached)

Intercity bus companies have an extremely low violation rate for hours-of-service, typically less than one-half the rate of trucks. For fiscal year **1999**, The MCSAP Quarterly Report Information System reported a total of 710 bus driver out-of-service

violations that relate to hours-of-service out of a total of 29,771 bus driver inspections, a violation rate of 2.3%. During that same period, the agency reported 153,649 truck driver out-of-service violations that relate to hours-of-service out of a total of 2,206,990 total truck driver inspections; resulting in a violation rate of 6.9%, 3 times that of bus drivers.

**Use of EOBRs will not reduce paperwork, streamline company procedures for compliance with HOS rules, or ensure compliance in case of system failure**

Although EOBRs are touted as labor and paperwork saving devices, our members have found the opposite to be true. For example, checking the records for falsification requires no less effort than that expended to check paper logs. In fact, additional reports and summaries must be generated to ensure that the EOBR records are accurate, and that the carrier remains in compliance in case of system failure on the road. It appears that the only way to ensure that a carrier would remain in compliance in the event of a system failure at the roadside is to either a) require the driver to keep a duplicate paper log as a backup in case of system failure; or b) communicate all change of duty status data continually in real time to the home office, and have the capability to re-broadcast the data to an enforcement officer at the scene. Scenario A completely defeats any possible benefits of the EOBR, and B would be cost prohibitive and impractical given the expense of airtime and the additional possibility of broadcast failure. Further, in addition to the provisions found in 49 CFR Section 395.15 (i)(4) which requires the device to alert the driver in case of system failure (so they can begin to fill out a traditional log book) the device itself must have the ability to document any system failure—what occurred and when (lost signal, power failure, etc.) Also, since the records can be so easily falsified, additional monitoring must occur, requiring the use of additional resources and technologies. Hard or soft-copy backups also add to the cost and burden associated with checking and retention of the electronic records.

**EOBR data must not be discoverable during judicial proceedings**

ABA is concerned that, if EOBRs are mandated, the data generated would not only be of questionable accuracy, but will also be discoverable during judicial proceedings to the detriment of the motor carrier. If EOBRs were mandated, ABA would urge the Department of Transportation to request that Congress provide FMCSA with authority to impose limitations on distribution of EOBR generated data similar to those that prohibit the National Transportation Safety Board (NTSB) from disclosing information obtained from voice or video recorders of aircraft or surface vehicles. In fact, more stringent provisions would certainly be needed, since the current statute (Section 1114(d) of Title 49) allows the release the information during a hearing.

### **Conclusion**

ABA believes that EOBRs lack the precision necessary to be considered as possible tools to monitor hours-of-service rules for drivers since they can easily be thwarted or falsified. Further, if enacted without proper protections for the users, the information generated would create a huge potential for liability for the motor carrier. Our members have reported a cost of \$1,500-3,000 per vehicle, along with the additional cost of \$10,000-80,000 for computer system upgrades, global positioning systems, high communication costs, and other associated hardware and software, etc. This would result in an approximate net cost of as much as \$120,000,000 to equip all 40,000 intercity buses, and a cost of \$280,000,000 for the necessary system upgrades to each of the 3600 intercity bus companies that would have to comply with an EOBR mandate. These high costs, and lack of accuracy make them poor enforcement tools. In sum, an EOBR is simply an expensive, electronic log book that shares virtually all of the same problems as the paper log book.

