Before the

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE, SAFETY, AND SECURITY
OF THE
U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Statement of

THE AMERICAN TRUCKING ASSOCIATIONS

On

"ELECTRONIC ON-BOARD RECORDERS (EOBRs) AND TRUCK DRIVER FATIGUE REDUCTION"

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Driving Trucking's Success

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INTRODUCTION

Mr. Chairman, Mr. Vice Chairman and other Members of the Subcommittee, thank you for the opportunity to express the American Trucking Associations' views on the issues of electronic on-board recorders (EOBRs) and truck driver fatigue. I am Richard S. Reiser, Executive Vice-President & General Counsel of Werner Enterprises, Inc. in Omaha, Nebraska. Werner Enterprises is among the five largest truckload motor carriers in the U.S. with a portfolio of transportation services that includes: medium to long haul, regional and local van capacity, temperature-controlled, flatbed, dedicated and expedited service. Werner is in its 51st year of business and has a fleet of more than 8,800 tractors, over 25,000 trailers and has more than 14,000 employees and independent contractors. The principal types of freight transported by Werner include retail store merchandise, consumer products, manufactured products and grocery items. Werner's mission is to provide premium transportation service while maintaining a high standard of safety, profitability and integrity.

Werner has operated a paperless electronic logging system since 1998 under a pilot program and exemption granted by the Federal Motor Carrier Safety Administration (FMCSA). As a result, Werner has a significant amount of experience in designing, installing, maintaining and managing an electronic on-board recorder (EOBR) system, as well as designing and implementing a training program for drivers. The costs, complexities and outcomes associated with using an EOBR system are well known to us.

It is my pleasure to appear before the Subcommittee today on behalf of the American Trucking Associations, Inc. (ATA). Werner is a longstanding and active member of ATA and I am currently the Chairman of ATA's Hours of Service Committee.

ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and indirectly through its affiliated organizations, ATA encompasses over 35,000 companies and every type and class of motor carrier operation.

ATA is encouraged that FMCSA has initiated the process to update regulations involving EOBRs used to record a drivers' hours of service. ATA is also aware that the agency is contemplating the promotion of several new "safety technologies" to be potentially used in the future. As such, the agency and industry have undertaken studies to determine what is needed to motivate the industry to adopt and deploy on-board safety devices and technologies. The shared objective is to reduce truck-involved crashes by deploying proven, effective equipment that has the best return-on-investment (ROI). Integration of these concepts in the development of an EOBR rule would help to produce a useful regulation and provide incentives for implementation. (*See Attachment A for recent research findings*).

In our testimony today, we will:

- Explain our policies and views on FMCSA's proposed rule on EOBRs.
- Offer ATA's recommendations to make use of EOBRs more viable and effective.
- Offer an insight into the size of the truck driver fatigue issue and public policy development associated with it.

ATA'S POLICY CONDITIONALLY SUPPORTS A MANDATE

ATA foresees a future state where certain trucking operations are required to use EOBRs for hours of service recordkeeping. ATA's membership established in October 2005 a nine-point policy regarding EOBRs aimed at achieving prudent utilization of this technology. We have attached this policy for the Subcommittee's review. *(See Attachment B)*

A primary point within our policy concerns the safety benefits of EOBR usage. This is stated as:

> *"There should be sound, consensus-based evidence that EOBR use leads to enhanced fleet safety performance by such means as accident rate reduction and improved compliance, therefore, increasing the credibility of EOBR systems as a cost-effective technology for motor carriers."*

There is little, if any, empirical evidence showing that EOBR use reduces driver fatigue, prevents accidents, improves safety and lowers costs.[1] This empirical evidence is necessary not only to support a regulation and its associated benefits, but also to provide motor carriers meaningful information in deciding whether to deploy such systems in their fleets.

While the safety benefits are the primary issue, as they should be, investment and ongoing costs are also a concern to ATA's members. When assessing the economic impact on a motor carrier of any future proposed requirement for EOBRs, it is necessary not only to consider the cost of purchasing and installing the system in each truck to record a driver's hours of service, but also other associated and potentially significant ongoing costs *(See Attachment C*). On this point, it is unfortunate that FMCSA's Regulatory Impact Analysis (RIA) did little to help clarify the costs and benefits of the proposed rule, other than finding that costs of EOBRs almost always outweigh the benefits. The RIA makes it clear that there is a dearth of research identifying safety benefits of EOBR use, while the costs of the EOBR systems used in the RIA indicate that the technology remains a significant investment for motor carriers.

Given that FMCSA does not have safety benefit data sufficient to support an overall mandate, ATA generally supports the agency's policy approach to provide incentives to drive voluntary industry adoption of EOBRs, with mandates limited to

[1] "Electronic On-Board Recorder Adoption In the Trucking Industry: Issues and Opportunities," September 2006, The American Transportation Research Institute.

targeted enforcement against carriers and drivers shown to be historically non-compliant with hours of service rules.

However, ATA believes the agency must make important changes to the proposed rule to make it effective in practice and to better promote the voluntary use of EOBRs.

This brings us to our next point within ATA's policy. That is:

> *"EOBR systems should be based on the minimal, functional and performance specifications necessary to accurately record and report hours-of-service compliance and assure reliability and utility of operation."*

The industry has asked for uniform, minimum performance criteria for EOBR devices and systems, which provides for flexibility in the design and delivery to the market. There needs to be design and operational requirements that will dependably, reliably and comprehensively replace manual logbooks. Without consistent and recognizable specifications for EOBR devices and systems, there will continue to be questions related to utility, reliability, tamper-resistance, accuracy, durability and effectiveness.

ATA members have expressed that they are much less likely to invest in EOBRs for hours of service compliance until there are accepted, feasible and finalized performance specifications. These performance specifications are needed to firmly establish uniform and reliable EOBR systems that will accurately record and report drivers' hours of service.

Motor carriers must make decisions in the course of product selection and need assurance that:

- The EOBR design requirements are fully and adequately determined.
- Performance specifications are recognized as the standard to be met by EOBR equipment and service providers.
- The EOBR system will function as expected in a secure environment.

ATA recognizes that recent court challenges to the existing hours of service rules have also hindered progress in defining specific information and parameters that would be entered into EOBRs. The hours of service rules need to be stable and firmly in place so that this integral information can be included in the software of deployable ("ready-to-use") EOBR systems, and thus eliminate the need for redeployment of operational systems in the future.

Even more immediately significant is that without final, definitive and acceptable performance specifications for EOBRs:

1) It is highly unlikely that motor carriers will invest in such systems (preferring to wait and buy the compliant version).

2) The EOBR vendor community will likely promote current designs and systems rather than make technological improvements (preferring to wait and produce a compliant version).

3) Research that could illustrate the benefits and costs of EOBRs will be placed on hold (preferring to model methodology with the new compliant version).

While we addressed two of our nine policy points above, we encourage a review of the additional points in the attached ATA policy. *(See Attachment B)*

ATA's RECOMMENDATIONS

Complete the Performance Specifications for EOBRs

The importance of satisfactorily completing and issuing final performance specifications should not be underestimated. This is essential to deployment of EOBRs and ATA recommends that FMCSA issue in the very near future a supplemental rulemaking notice with better and more technically sound performance specifications for EOBRs. ATA's comprehensive written comments to FMCSA included a number of specific recommendations in this area.

Conduct a Pilot Program

FMCSA should conduct a pilot program of sufficient duration with adequate controls in place to determine whether or not driver fatigue is reduced and there are real safety benefits to EOBR use. Congressional oversight Committees should support this type of pilot program. A presumption has been made that there are safety benefits; however, there is little, if any, empirical evidence to support that position. The pilot program should use a form of EOBRs which FMCSA certifies as meeting its requirements. This is critical since driver acceptance of the technology and the ability of drivers to understand and use it will be critical to the ultimate success of any such device. Additionally, it should ensure that a complying device is available at a cost which will obtain voluntary participation by carriers and which can be used for a benefit-cost analysis.

Given the size of the trucking industry, and the scope and complexity of this issue, mandating EOBRs without adequate testing through a pilot program may impose a huge financial and operational burden upon the trucking industry, for which no real benefit is derived by either the public or the industry.

ATA and several of its members are very much interested in participating with FMCSA in conduct of a pilot program and plans to submit a petition for such a program.

Provide Meaningful Incentives

If FMCSA moves forward with its current regulatory approach, it should offer motor carriers more substantial incentives to promote voluntary adoption of EOBRs. It can directly encourage motor carrier adoption of EOBRs by providing reasonable and defensible flexibility in certain areas of the hours of service requirements, and offering administrative incentives. For example, allowing the 14 hour 'running clock' on-duty limit to be stopped for up to 2 hours for rest and meal breaks, providing flexibility in how drivers may take their rest periods when using a sleeper berth, and providing positive credit or points for carriers in the criteria used to select carriers for audits.

Congress can also assist in stimulating voluntary adoption of EOBRs for improved compliance. Two legislative approaches that might be considered are statutory data protections and tax incentives.

Statutory protections should be afforded to motor carriers pertaining to the control, ownership and admissibility/discoverability of data generated and derived from EOBRs, and to assure the privacy rights of drivers. The enactment of statutory protections for data beyond that currently required under 49 CFR Part 395 could alleviate a major impediment to industry acceptance of EOBRs. Government policy also needs to support data privacy. Without certain protections afforded to motor carriers and drivers, the shadow of external access to EOBR collected data that is outside the scope of the hours of service rules could serve as a disincentive to motor carrier investment.

Congress should also consider tax incentives (e.g., credits) to encourage motor carrier investment in EOBRs and to offset the cost of purchasing EOBR devices and associated support systems. As noted in *Attachment A*, tax incentives for expense of equipment are prime "non-safety" motivators for investment.

TRUCK DRIVER FATIGUE AND RELATED ISSUES

It is important for policymakers to understand the size of the driver fatigue issue in relationship to truck-involved crashes. The most recent and, by far, most comprehensive truck crash causation study was completed last year, and a report was issued to Congress in March 2006.[2] That study found that fatigue was 11th on the list of the "Top 20" associated factors list. This report did not list fatigue as a "critical reason" or causation factor for the crashes investigated, rather it listed it along with other issues as an "associated factor." Associated factors in the study were defined as conditions or circumstances present at the time of the crash, and no judgment was made as to whether it was related to the crash—just that it was present. This study also found that the majority of truck crashes are multi-vehicles crashes involving at least one truck and one passenger vehicle, and that fatigue was coded as an associated factor twice as often for

[2] Report to Congress on the Large Truck Crash Causation Study, MC-R/RRA, March 2006, U.S. Department of Transportation, Federal Motor Carrier Safety Administration

passenger vehicle driver and speeding more often for truck drivers.[3] We have included two tables from this report showing fatigue listed as an associated factor. *(See Attachment D).* This study was authorized and funded by the Congress, performed by the U.S. Department of Transportation, and is widely recognized as the most comprehensive study of truck-involved crashes ever performed.

Of course, EOBRs are intended to assist companies and drivers record on-duty shifts and off-duty rest periods consistent with the applicable hours of service rules in order to minimize the risk of operating while fatigued. These rules have changed twice over the last 4 years, after remaining constant for more than 6 decades. Unfortunately, the current rules are unsettled again because they are the subject of ongoing litigation in the U.S. Court of Appeals for the D.C. Circuit by advocacy groups and organizations representing different parts of the industry. Depending upon the outcome, the rules could change yet again. FMCSA's EOBR rulemaking process could well be impacted by the Court's decision.

In addition, as a result of the rapid change in the hours of service rules in the last 4 years, the jury is still out on whether the revised rules are achieving their intended safety benefit. But the majority of stakeholders in this debate would likely agree that effective hours of service rules are only part of a solution aimed at keeping commercial operators alert and safe when working and driving. Managing operator alertness and fatigue in a trucking setting is a complex issue that calls for a more comprehensive approach. ATA is hopeful that the national dialogue on this issue moves beyond simple on-duty and driving limits toward a more comprehensive programmatic approach to managing alertness. This will take years, but movement toward this goal needs to begin.

SUMMARY & CONCLUSION

ATA foresees and supports a future state where certain trucking companies are required to use EOBRs for documenting hours of service compliance. But given the lack of empirical evidence showing a safety benefit of EOBR use, ATA understands and generally supports FMCSA's proposed regulatory approach. In order to get to the desired future state, ATA recommends:

- A pilot program aimed at producing empirical evidence that EOBR use has safety benefits and is cost effective,
- That the basic performance specifications for EOBRs be clearly defined and finalized,

If FMCSA moves forward with its current regulatory approach, it should provide meaningful incentives for motor carriers to voluntarily adopt EOBRs for compliance purposes.

In addition, both government and industry need to recognize that hours of service rules are a fairly rudimentary approach to addressing the complex issue of human fatigue and alertness. The transportation industry and regulators need to move toward alertness

[3] Ibid, p. 3.

and fatigue management programs that more comprehensively address this important issue.

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity for ATA to offer its views and policies on EOBRs and driver fatigue. We look forward to working with this Subcommittee, the Congress, FMCSA, and other reasoned stakeholders to improve the safety and productivity of our Nation's highway transportation system.