



April 18, 2007

Docket Management Facility
U.S. Department of Transportation
400 Seventh Street, S. W.
Nassif Building
Room PL-401
Washington, D. C. 20590-0001

**Re: Proposal To Incorporate New Performance Standards for Electronic
On-Board Recorders (Docket No. 2004-18940)**

Dear Sir or Madam:

The Food Marketing Institute (FMI) is pleased to submit the following comments in response to the Federal Motor Carrier Safety Administration's (FMCSA's) notice of proposed rulemaking that would amend the Federal Motor Carrier Safety Regulations (FMCSRs) relating to performance standards for Electronic On-Board Recorders (EOBRs) used for compliance with Hours-Of-Service (HOS) regulations. As discussed more fully below, FMI supports the proposed rules and encourages the FMCSA to take the additional steps outlined herein to encourage increased use of EOBR's on short haul commercial motor vehicles.

By way of background, FMI is a non-profit association that conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 member companies – food retailers and wholesalers – in the United States and around the world. FMI's domestic member companies operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion, which is three-quarters of all retail food sales in the United States. FMI's retail membership is composed of large multi-store chains, regional companies and independent supermarkets. Our international membership includes 200 companies from 60 foreign countries.

In light of the supermarket and food distribution industry's heavy reliance on commercial motor vehicles for the daily transport and delivery of food products, groceries, perishables and a vast array of consumer items, including prescription drugs and over-the-counter (OTC) medications, to our nation's grocery stores, FMI has a substantial interest in this proposed rulemaking. In fact, our industry is one of the largest users and operators of commercial motor vehicles, and a number of FMI member companies operate some of the largest truck fleets in America.

The FMCSA proposes to require that EOBRs installed in commercial motor vehicles (CVMs) manufactured two years after the final rules takes effect meet certain new performance

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standards. However, the proposed rulemaking would not mandate that EOBRs be installed in these new trucks. Additionally, the rulemaking would grandfather on-board hours-of-service recording devices that meet FMCSA's current requirements and were voluntarily installed in commercial motor vehicles manufactured prior to the implementation date of a final rule allowing these devices to be used for the remainder of the service life of the vehicle.

Significantly, under the proposed rule, motor carriers that have demonstrated a history of serious noncompliance with the hours-of-service rules would be subject to mandatory installation of EOBRs that meet the new performance standards. If FMCSA determines based on HOS records reviewed during each of two compliance reviews conducted within a two-year period, that a motor carrier had a 10 percent or greater violation rate (pattern violation) the carrier would be required to install EOBRs in all of its vehicles regardless of their date of manufacture and to use the EOBRs for HOS recordkeeping for a period of two years. Finally, the proposed rules would encourage industry-wide use of EOBRs by providing various incentives to those motor carriers that voluntarily use EOBRs.

In general, FMI supports the proposed rule. We commend the FMCSA for issuing a proposal that encourages voluntary compliance for motor vehicles currently in service while setting forth a new voluntary compliance standard for EOBRs that would be applicable two years after the effective date of final regulations for newly manufactured commercial motor vehicles. This is an orderly and cost-efficient proposal that will help promote a greater degree of safety among commercial motor carriers while improving HOS compliance, and which allows for a reasonable phase-in period for carriers to comply with the EOBR requirements.

To the extent that this proposed rulemaking is directly related to HOS compliance and FMCSA is soliciting input on other incentives that would relieve carriers of regulatory burdens made unnecessary by the direct or indirect safety benefits that EOBR technology provides, FMI urges FMCSA to propose certain additional revisions to its HOS regulations as well. As stated in FMI's March 10, 2005 comments to the Department of Transportation (DOT) on its HOS rulemaking, FMI strongly supports a common-sense change to the HOS regulations that would promote breaks for our drivers. Under the current, regulatory framework, breaks and other non-driving activities are now counted as on-duty time which may not exceed the maximum of 14 consecutive hours from the time a driver clocks in for work. Previous HOS regulations allowed for 15 hours and break times and other non-driving activity did not count toward the 15 hour maximum of on-duty time

While the intended purpose of the HOS rules is to promote driver safety and reduce fatigue, the current HOS regulations have just the opposite effect because the current rule encourages our drivers, who are mostly short-haul operators, delivering groceries, perishables and other consumer products to their retail supermarkets, to forgo their breaks and meals in order to complete their

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deliveries within the allotted 14-hour period, so that they can return home to their families in the evening.

FMI members are fully committed to driver safety and to the safety of the trucks on the road, many of which bear their company names. At the same time the number one operational challenge facing our industry is the ongoing need to deliver groceries and food products to retail outlets on a daily basis so that store shelves will remain fully stocked. To the extent that the 2005 HOS rules reduced on-duty time for CMV drivers, FMI member companies have had to make counterproductive adjustments. Some have added additional trucks to their fleets to compensate for lost driver time and to compensate for other factors including peak driving periods, rush hour traffic road construction or adverse weather conditions. A number of FMI members require additional trucks during major holidays, especially from Thanksgiving week thru New Years Day, which is the busiest time of the year for consumer shopping in our stores.

Regrettably, the current HOS rules have increased the number of trucks on the road, adding to traffic congestion, greater fuel consumption and reduced air quality. These are all undesirable results which FMI believes can be ameliorated by making a modest change to the rules as they apply to short-haul operators. In this connection, we urge FMCSA to revise the HOS rules so that breaks, meals and other idle, non-driving times do not count toward the maximum 14-hour on-duty time limitation for those short-haul operators who have installed EOBRs in their CMVs. In our view, this would be a major incentive for short-haul operators to install EOBRs sooner rather than later, and such a narrow change to the HOS rules would have no deleterious effect on driver safety or result in greater driver fatigue as it would only be available to short-haul operators who have installed EOBRs in their CMVs.

In closing, FMI appreciates the opportunity to file comments on this proposal and we urge FMCSA to adopt the modifications to the HOS rules described above.

Sincerely,

Deborah R. White
Vice President &
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