

ISSUE BRIEF

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Bureaucrats on Board: Mandating Electronic Recorders for Truckers

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America's truckers are known for their independence, often driving alone in their rigs from one end of the country to the other. Now Congress wants to give them company in the form of an electronic “big brother.”

Under a provision buried in the 600-page transportation bill recently passed by the Senate, truckers large and small would be required to buy and maintain “electronic on-board recorders” (EOBRs) that would document their travel time and distance. The annual cost to truckers and trucking firms: \$2 billion.

This is an unnecessary burden on the smallest of America's small businesses that provides few if any safety benefits. When congressional conferees meet to craft a final transportation bill, they should leave this proposed federal mandate on the roadside.

Tracking Time and Distance.

EOBRs are devices that record how long a truck is in motion and the distance traveled. Typically costing about \$1,500 each, they can—when combined with GPS capability—also record the location of the vehicle.

In 2010, the Federal Motor Carrier Safety Administration (FMCSA) required truckers who had shown serious non-compliance with the agency's limits on drive time (“hours of service”) to install EOBRs rather than rely on paper logbooks. In early 2011, FMCSA proposed expanding the rule to cover all trucks subject to hours-of-service requirements.

The proposal was supported by a number of larger trucking firms, many of which already have such devices installed in their trucks for fleet management purposes. But small trucking firms and independent truckers, who would be much less able to absorb additional costs, strongly opposed the new rule.

Last August, the original 2010 FMCSA mandate was overturned by a federal district court, which found that the agency had not adequately considered complaints that the devices would be used to “harass” drivers, a consideration the agency was required by statute to consider before adopting any such

rule. Despite this setback, FMCSA is moving forward with its broader rulemaking with more extensive consideration of the issues, including a public hearing planned for later this month.

Congressional Mandate.

Congress, however, may intervene to end the agency's fact finding. Under legislation proposed by Senator Frank Lautenberg (D-NJ) and incorporated into the transportation authorization bill recently approved by the Senate (S. 1813), FMCSA would be required to mandate EOBR use within one year—regardless of the costs.

And these costs would be high, totaling more than \$2 billion each year, according to an analysis by the FMCSA,¹ making it one of the most expensive regulations in the regulatory pipeline. This new burden would significantly add to the already eye-popping \$46 billion in annual regulatory costs imposed since the start of the Obama Administration.² Overall, according to FMCSA, the proposed mandate would affect some 500,000 firms and close to 4 million vehicles.³

In addition to the dollar costs of the regulation, there is also a significant potential cost in terms of privacy. The Senate proposal requires EOBRs to have real-time tracking

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capability, meaning it will record where and when the truck has traveled. Mandatory recording of such information presents opportunity for abuse.⁴

Unclear Benefits. The potential benefits, by contrast, are unclear at best. Close to 70 percent of the benefits identified in the regulatory impact analysis prepared by FMCSA are paperwork savings, as truckers would have to spend less time manually filling out the hours-of-service logs required by FMCSA. The actual safety benefits, according to FMCSA's estimates, are only about one-third of the costs.

And even these estimates should be viewed with some skepticism. The rule would have little direct impact on safety—EOBRs do not monitor the working condition of the trucks and currently would not be required to monitor speed. (They do perform that function in Europe, although the effectiveness and accuracy with which they do so is subject to debate.)

The safety rationale for EOBRs is largely based on improved compliance with the hours-of-service rules. But even here, the benefits are uncertain. The devices track only the amount of time the truck is actually moving. But for much of a driver's "on duty" time, the vehicle is stationary, waiting for a trailer to be loaded or idling at a truck stop. This time still has to be reported manually by the trucker, leaving significant room for error or misreporting. Similarly, the EOBRs do nothing to ensure that drivers have had the required hours of off-duty time—all they can verify is how long that particular vehicle was not moving, not how long the individual driver was resting.

The relationship between compliance with hours-of-service standards and safety is also questionable. Certainly, driver fatigue is a hazard, and drivers need sufficient rest in order to drive safely. But fatigue-related accidents are only a small portion of trucking accidents.

According to the National Highway Safety Administration, driver fatigue was a factor in only 1.4 percent of fatal truck accidents in 2009.⁵

FMCSA, of course, is still gathering information on the potential benefits of EOBRs and the consequences of mandating their use and is still soliciting public input on the proposed rule. But this argues *against* congressional intervention.

Drop This Load. EOBRs can and should be an option for truckers and trucking firms that wish to use them. But the cost of mandating their use—both in dollars and in lost privacy—outweighs the uncertain benefits of such action. When congressional conferees from the House and Senate move forward on the transportation reauthorization bill, they should leave this new mandate behind.

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1. Federal Motor Carrier Safety Administration, "Preliminary Regulatory Evaluation," January 24, 2011, http://issuu.com/regulationroom/docs/eobr2_ria_20110125_final_dvid122721_bs?mode=embed&viewMode=presentation&layout=http%3A%2F%2Fskin.issuu.com%2Fv%2Fcolor%2Flayout.xml&backgroundColor=348ACE&showFlipBtn=true (accessed May 7, 2012).
2. See James L. Gattuso and Diane Katz, "Red Tape Rising: Obama-Era Regulation at the Three-Year Mark," Heritage Foundation *Backgrounder* No. 2663, March 13, 2012, <http://www.heritage.org/research/reports/2012/03/red-tape-rising-obama-era-regulation-at-the-three-year-mark>.
3. Federal Motor Carrier Safety Administration, "Preliminary Regulatory Evaluation."
4. The possibility that the technology could be used by trucking firms to "harass" drivers is also a concern, and FMCSA is barred under current law from adopting any rules that facilitate this. The definition of harassment is, however, unclear. In most cases, the issue should be one that can be settled by contract between drivers and the firms they are driving for.
5. Ralph Craft, FMCSA Office of Analysis, Research and Technology, "2009: Historic Truck Crash Declines," presentation given September 29, 2010, <http://www.fmcsa.dot.gov/facts-research/media/webinar-10-09-29-slides.pdf> (accessed May 7, 2012). See also Comments of the Owner Operator Independent Truckers Association, FMCSA Dkt. No. 2010-0167, filed May 23, 2011, <http://www.ooida.com/Issues&Actions/Regulatory/issues/docs/EOBR2-OOIDA-Comments.pdf> (accessed May 7, 2012).