

'Class' Warfare.(OOIDA to sue if government mandates on-board recorders)
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OOIDA preparing to sue government if on-board recorders are mandated

They're about the size about a Bible but most truck drivers don't see anything holy about them. Officially, they are known in government-speak as "electronic on-board recorders." Unofficially, they are known as black boxes.

But most of the time they are referred to in language that would make even truck drivers blush.

"Totally (expletive deleted) unconstitutional," said Jim Johnston, president of the 60,000-member Owner-Operator Independent Drivers Association. "Can I help you spell that?"

There may be more intrusive forms of government regulation on the nation's 3 million long-haul truck drivers. But except for the government's decade-old mandatory random drug testing program, no proposal affecting truck drivers is causing more venom than this idea.

Mandating black boxes is part of the Federal Motor Carrier Safety Administration's proposal to help enforce its new hours-of-service rules. While those rules are on hold for at least a year, changes in the 65-year-old HOS appear inevitable -- and black boxes could be coming to an 18-wheeler near you.

In fact, many in trucking believe the inclusion of electronic on-board recorders in FMCSA's failed regulatory attempt was much more meaningful than the implications of its hours-of-service reform. That attempt has been placed on a one-year freeze but nearly everybody in trucking expects the government to renew its call for hours-of-service reform and black boxes next year.

Both have gigantic financial repercussions for the industry. Thomas L. Finkbiner, president and CEO of Quality Distribution, Tampa, Fla., estimated his company would need at least 15 percent more drivers to haul the same amount of freight if the government's first attempt was made law.

"What's just as important as the hours-of-service rules is the black box -- that's enforcement," Finkbiner said. "The problem with the trucking industry is we spend an inordinate amount of time inspecting (paper logs). With black boxes, there is no honor system. There also is no cheating."

While the government effectively would be able to accurately enforce hours of service with the black boxes, their use represents a double-edged sword, both carrier and driver interests say.

First, from the shipper and carrier perspective, "You would see a capacity reduction," Finkbiner said. "Drivers don't like to sit. Drivers want to make money. Drivers are some of the hardest working people I know. They've been hard-hit by fuel. They have to run miles. And now we propose a rule that will pay them less and less. If all you're going to do is legislate black boxes, you are going to irritate the drivers."

That could cause the government's attempt to backfire. Many trucking officials expect hordes of drivers to leave the industry if black boxes are mandated. Still, the government is under pressure to do something. Last March, Joan Claybrook, the safety advocate and co-chair of Citizens for Reliable and Safe Highways, said the government proposal was "long overdue." The National Transportation Safety Board recently included black boxes on its list of "most wanted" safety improvements.

The American Trucking Associations is on record as supporting black boxes -- sort of. ATA is in favor of them as long as they're not mandatory, which is like coming out in favor of taxes as long as they're not mandatory. ATA also opposes black boxes for the exclusive use of measuring hours-of-service compliance, which is basically the chief reason for using them.

But even within the ATA there is some division on the issue. The Arkansas Trucking Association, one of the biggest and best-run of the state federations that comprise ATA, is on record in favor of black boxes for all trucks weighing more than 26,000 pounds and "applauds" the FMCSA for trying to legislate them.

Widely used in Europe, the black boxes are able to contain as much as one year's worth of driving records. With such data, paper logbooks would be as out of fashion as a miniskirt on Hillary Clinton. Law enforcement personnel needing proof that a driver is exceeding his or her legal hours would only have to seize the electronic records to make their case.

OOIDA is preparing to challenge any such mandate in court on grounds it violates the U.S. Constitution's Fourth Amendment and is an illegal search and seizure. In fact, in its preliminary comments to the government on the issue, OOIDA prepared its comments in the form of a legal complaint.

If the government mandates black boxes on a Monday, you can be sure OOIDA will be in court filing its lawsuit on a Tuesday.

Interestingly, the government says it is making its proposal under the "Paperwork Reduction Act of 1990." According to the FMCSA, that act requires the government to reduce the information collection burden and costs imposed upon the motor carrier industry.

To the trucking industry, that justification is specious. Even though the black boxes cost just \$300 as part of original equipment (\$500 for a retrofit), the main intrusion isn't cost. It's privacy.

Basically the government is telling truckers they don't trust them enough to believe paper logbooks any longer.

"It's outrageous," OOIDA's Johnston said. "Are we to assume that every document we use in this country is subject to falsification? Are we going to impose electronic surveillance on everyone to ensure every official document is legal? Voluntary reporting is what our system of government is based on. The DOT wants to seek out one class of people as less than honorable and is assuming we're going to lie."

Although the government claims approximately 18,000 man-years will be saved annually through electronic on board recorders, driver interests say their only use is in a "gotcha" scenario.

According to OOIDA's comments, the government's ambitions in this area go far beyond the current technology or even next-generation smart cards. The FMCSA appears to be leaning toward integration of terrestrial or global positioning satellite systems with smart cards to enforce their HOS proposal. Tying the smart card to a GPS device is considered likely by the FMCSA because it would eliminate the need for driver input of data and thus reduce any potential for cheating. The FMCSA wants the black boxes on its "type 1" (long-haul) and "type 2" (regional) truck drivers.

The owner-operators counter that argument by saying a truck's cab is really a home where a driver typically spends more than 300 days per year on the road. The use of electronic surveillance to enforce hours-of-service regulations through black boxes is an unreasonable search and seizure protected by the U.S. Constitution's Fourth Amendment, OOIDA said.

"The real-time government-mandated electronic surveillance proposed (by the government) is an unjustified and dangerous intrusion on drivers' rights of privacy," OOIDA said recently in comments filed on the issue.

"Constant electronic surveillance is a dangerous incremental attack on a fundamental right. It is often said that the road to hell -- in this case the ubiquitous presence of Big Brother in every aspect of our everyday lives -- is paved with good intentions, i.e., safety law enforcement and reduced paperwork burdens. Yet like the frog that can only be boiled to death slowly, this precious right of privacy is being pared away incrementally."

OOIDA slams 'absurd' NAFTA ruling

Driver and management interests reacted predictably on the other side of each other's border following an arbitration panel's preliminary ruling in favor of Mexico in a North American Free Trade Agreement legal skirmish.

"Absurd," said Todd Spencer, executive vice president of the Owner-Operator Independent Driver Association, on the NAFTA panel ruling that recommended permitting Mexican trucks to operate in this country.

OOIDA and the Teamsters union are firmly against opening the U.S. border to Mexican trucks. President Clinton has appeased OOIDA and the Teamsters by keeping the border closed, despite a NAFTA provision that it was to be opened for all trucks on Jan. 1, 2000. The issue was referred to a NAFTA dispute resolution panel, which made its preliminary ruling late last month.

"The commercial vehicle safety systems in Mexico are still in their infancy when compared to the United States," Spencer said. "The compatibility of Mexican information systems with those in the U.S. that will be needed to assure safety compliance to the American public just isn't there."

At least one member of Congress agrees with OOIDA. Rep. Sherrod Brown, D-Ohio, has introduced legislation that would call on this country to refuse entry to Mexican trucks, regardless of the NAFTA dispute ruling. OOIDA claims that only 24,000 out of the 4 million trucks entering this country are inspected every year.

Meanwhile, business interests applauded the ruling.

"This ruling is an important step forward," said Thomas J. Donohue, U.S. Chamber of Commerce president and CEO, who helped lobby for NAFTA while president and CEO of the American Trucking Associations. "The United States has made a solemn commitment under NAFTA to open its border to Mexican trucks -- just as Mexico promised to do for American trucks. It's time we both kept our word."

Honor aside, there is hard, fast money to be made from increased business with Mexico. Two-way trade between this country and Mexico is projected to surpass \$225 billion this year. Trade has doubled every five years under NAFTA.

"Because NAFTA has already eliminated most tariffs and other barriers to trade with Mexico, improving our transportation infrastructure is the best thing we can do to keep this tremendous partnership on track," Donohue said.

A final ruling is expected in January. It could go into effect 30 days after it is announced.