

Kassa Logistics LLC – Comments FMCSA-2012-0309-00023

This is a Comment on the **Federal Motor Carrier Safety Administration (FMCSA) Notice: Agency Information Collection Activities; Proposals, Submissions, and Approvals: Driver and Carrier Surveys Related to Electronic On-Board Recorders, and Potential Harassment Deriving from EOBR Use**



P.O Box 251
Pine Brook N.J. 07058
973-885-1584
BK1696@aol.com

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave. SE
West Building Ground Floor, Room W12-140,
Washington, DC 20590-0001

Re: Docket number, FMCSA-2012-0309

Sir or Madam,

The proposed mandatory use of electronic on board recorders should not be used for a variety of reasons. As a small business owner, often referred to as a owner/operator (a truck driver that owns and operates his own truck), I as well as many other owner operators believe mandating the use of EOBRs on Commercial Vehicles is extremely harmful to our small businesses for a variety of reasons.

The first reason is cost to install and maintain such a device. My trucking business of one truck is currently operating at a 62% overhead rate...meaning that 62% of my income goes to business expenses including but not limited to fuel, insurance, truck payments, and maintenance to name a few. My business of one truck generating one income for myself is not large enough to absorb the additional expense of implementing the use of an EOBR system. It is not necessary for us owner operators and all Commercial Vehicles to be forced to use a system that will only cost us money and not generate any additional income. The trucking industry itself is already stacked with regulations

that inhibit us from making a decent living and prevent us from expanding our businesses. We simply cannot afford any more overhead and will be forced out of business if this mandate goes through.

Secondly I believe our fourth amendment rights are being jeopardized. The Supreme Court in *United States v. Jones* recently decided that the District of Columbia's Police Department's attachment of a GPS device to a suspected drug dealer's car without a proper warrant violated the Fourth Amendment's prohibition against unreasonable search and seizures. I do not believe that just because we as truck drivers operating Commercial Vehicles should be forced to give up this right. Our trucking businesses should not be subjected to "tracking" by any government agency.

Another reason is driver harassment. Although I as a self employed truck driver am not subjected to this, I know that often times company drivers are forced to drive when they are not physically able to. For example, below is a scenario based on the current hours of service Laws no in effect.

Robert begins a cross country haul from NYC to Los Angeles on Monday at 7am. He drives until he reaches his 11 hr mark and stops working at 6pm. Robert is not allowed to drive for 10 hrs and in that time expected to sleep. At 4am his break is over and Robert is able to drive the second day from 4am until 3pm. Robert is now off duty and expected to get his sleep from 3pm until 1am. Robert begins his duty at 1am on his third day of work.

The problem with the above scenario is seen on Robert's second and third day. Drivers are not robots and most of us cannot go to sleep at 3 in the afternoon and most of us probably will be tired to start driving at 1 am when our bodies want to sleep. It is instances where a company will pressure a driver to work and drive for the 11 hrs when he or she may need to sleep. I believe examples like this are when drivers are more likely to fall asleep behind the wheel. They need to be given the choice to drive when or not they are able to.

Aside from driver harassment from within the company, drivers will also be subjected to harassment from motor carrier officials. Our world in trucking is faced with many time consuming setbacks such as traffic, weather, load/unloading schedules, and detention times. In order to run a profitable business, especially when someone like me has only one or two trucks, there are times where we cannot complete a delivery in the 14 hours allowed. The industry fought against the reduction of hours that fell upon deaf ears which forces some to run non compliant or beyond the 14 hours allowed. Although they are not doing anything more dangerous than an accountant working a long day at his office and driving his car home for an hour commute, commercial drivers are demonized as "outlaws" for simply trying to make a respectable living (long haul driver make about \$35k-\$50k per year after spending weeks on the road away from family).

Any commercial driver will give you examples of how law enforcement officers harass drivers already. For example they are sometimes known to write violations for insignificant violations such as not signing a log book or including a zip code. There are countless other examples I can name but basically, FMCSA rules are not uniformly interpreted by all officers in every state across the country. With this in mind, creating further regulations with "big brother" can subject a driver to violations and fines if he were to operate in situations beyond his control. Imagine getting stuck in

traffic in New York City with nowhere to take a break and running beyond the permitted hours. Later in the day, or even the next, an officer can read the EOBR and punish a driver for the violation.

Finally, there has been no evidence that shows the mandatory use of EOBR will make our highways safer. Log books have been used in the industry for well over 40 years and statistics show that in that time, there are significantly more Commercial Vehicles on the road since then with lower rate of accidents and a higher rate of safety. Although the American Trucking Association is an advocate of EOBRs, I've learned organizations such as these are made of up large carriers that dominate the industry. They know that mandating EOBRs will push out small businesses, such as myself, eliminating the competition in the name of "safety."

In closing, the challenges that Owner Operators and other commercial drivers are faced with can be compared to a retail business. Can you imagine opening up a barber shop and having the government tell you when you can open your store, for how long, and how many people's hair you can cut? Imagine having to open at 1am like Robert's third day? How many customers would come in for your service in the middle of the night? Would you think it is necessary to for an electronic device be mounted in your barber shop to make sure you following the rules?

I would strongly encourage any legislator to ride along with a truck driver to become personally acquainted with the challenges we face in our industry.

If you have any questions I encourage you to contact me as I would be happy to offer my insight and assistance to you. I believe people like me are highly under-represented in controversial issues such as this.

Regards,

Brian Kassa