



Owner-Operator's Business
Association of Canada

Association professionnelle des
routiers autonomes du Canada

...from the
director's chair

What's in a name?

Be careful what you ask for – you just might get it

EOBRs. Like death and taxes, they're inevitable. Or are they? When the US Court of Appeals for the Seventh Circuit tossed out the US government's proposed rule mandating the use of electronic on-board recorders (EOBRs) last month, it raised a number of questions that regulators may not be able to answer for quite some time.

The US-based Owner-Operator Independent Drivers Association (OOIDA) had challenged the regulation on three counts: failure of the cost-benefit analysis to demonstrate the benefits of the technology, violation of the Fourth Amendment (which guards against unreasonable searches and seizures), and the "arbitrary and capricious" nature of the rule that does nothing to ensure that the devices won't be "used to harass vehicle operators."

The court made it clear that many aspects of the rule were problematic – referring to "a litany of issues that would make for a difficult and exhaustive Administrative Law final exam" – but at the end of the day, judges ruled that the failure of FMCSA to address the harassment aspect of the rule was enough to send the Agency back to the drawing board.

What struck me while reading the Court's 20-page opinion is this: with all the debate over whether or not governments should be mandating electronic monitoring of HoS regulations, there is one critical question that hasn't been answered. In fact, it really hasn't even been asked in a serious way. What is an EOBR, and what data will it be required to collect?

There is universal agreement among those who support laws requiring electronic monitoring of HoS that the devices be used for the sole purpose of documenting compliance with the rules. Current Canadian and US HoS regs require certain information be recorded on a log sheet, i.e., truck and driver identification, change of duty status times and locations, cumulative hours, etc. But that is all that is required.

So are proposed EOBR regulations about electronic logbooks? 'Fraid not.

Although in broad terms the Canadian Council of Motor Transport Administrators (CCMTA) describes an EOBR as "a device used to automatically track, collect, and record electronic information about the operation of commercial motor vehicle and its

driver," lawmakers in both countries would require specifically that the monitoring device be integrated with the truck's ECM.

And there's the rub. Any device that's hooked into the ECM is capable of harvesting a great deal more data than would be required by HoS regs.

How do we keep government's prying eyes out of that as-yet unrequired information, and how do we establish some common platform on which devices ranging from the simplest hand-held units to the more comprehensive systems used by Qualcomm or PeopleNet can be made readable and acceptable to law enforcement?

This is a fundamental question as it relates to the methodology of collecting the HoS information that will be required by any forthcoming mandate.

During the US rulemaking procedure back in 2003, when FMCSA decided not to require EOBRs as part of its comprehensive overhaul of the HoS rules, one of the reasons for that decision was that it wanted more time to address the concerns that had been expressed about secondary uses of data and about the effects of EOBRs on privacy.

One of those secondary uses of the data relates to the concept of harassment explored in the recent Court ruling, i.e., drivers pressured by their motor carriers to perform at higher levels (and drive even when tired) as a result of the fact that an EOBR can send the carrier data in real time. Even if the rule does not require that level of reporting, the technology certainly allows it.

FMCSA had explicitly argued that it requires EOBRs to monitor safety, not workplace productivity (although, presumably, any carrier would want to monitor many aspects of its operation), but the Court put the onus squarely on the regulator to explain the distinction between productivity and harassment, and also to describe what precisely will prevent harassment from occurring.

According to the Court, the Agency "needs to consider what types of harassment already exist, how frequently and to what extent harassment happens, and how an electronic device capable of contemporaneous transmission of information to a motor carrier will guard against



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(or fail to guard against) harassment."

After a decade of dithering around the EOBR issue, Canadian transportation ministers tasked CCMTA with developing a National Safety Code standard for EOBR use in Canada, and the steering committee is expected to table a "draft final standard" at a CCMTA meeting in October.

Although the standard is being developed with Canadian needs in mind, regulators have made it clear they intend to adopt key elements of the US approach and technical standards. It may be a while before we have a proposed rule on the table in Canada, but it's almost certain regulators here will look closely at the US Court of Appeals ruling when they put pen to paper.

No one is denying that privacy concerns need to be addressed; governments and industry alike acknowledge that there must be certain policies, practices, and procedures in place that ensure the driver's personal privacy is effectively protected even while allowing enforcement officials to achieve the goal of compliance with HoS.

But privacy and harassment are two different – even if related – concepts, and even then, any rule involving an EOBR that collects data unrelated to a driver's HoS should come under careful scrutiny.

Maybe we need to re-think just what we're asking for.

Perhaps it's not an EOBR after all.

In fact, in adopting a policy to support electronic logging devices, the Truckload Carriers Association uses the term "ELDs" instead of "EOBRs" to differentiate between electronic devices used solely for HoS logging purposes (ELDs) and those devices that can track hard braking, acceleration, and other safety-critical events (EOBRs).

What's in a name you say? Remember when the GPS was simply a carrier's satellite tracking system instead of "supporting documentation" for verifying HoS compliance during audits? Be careful what you ask for – you just might get it.