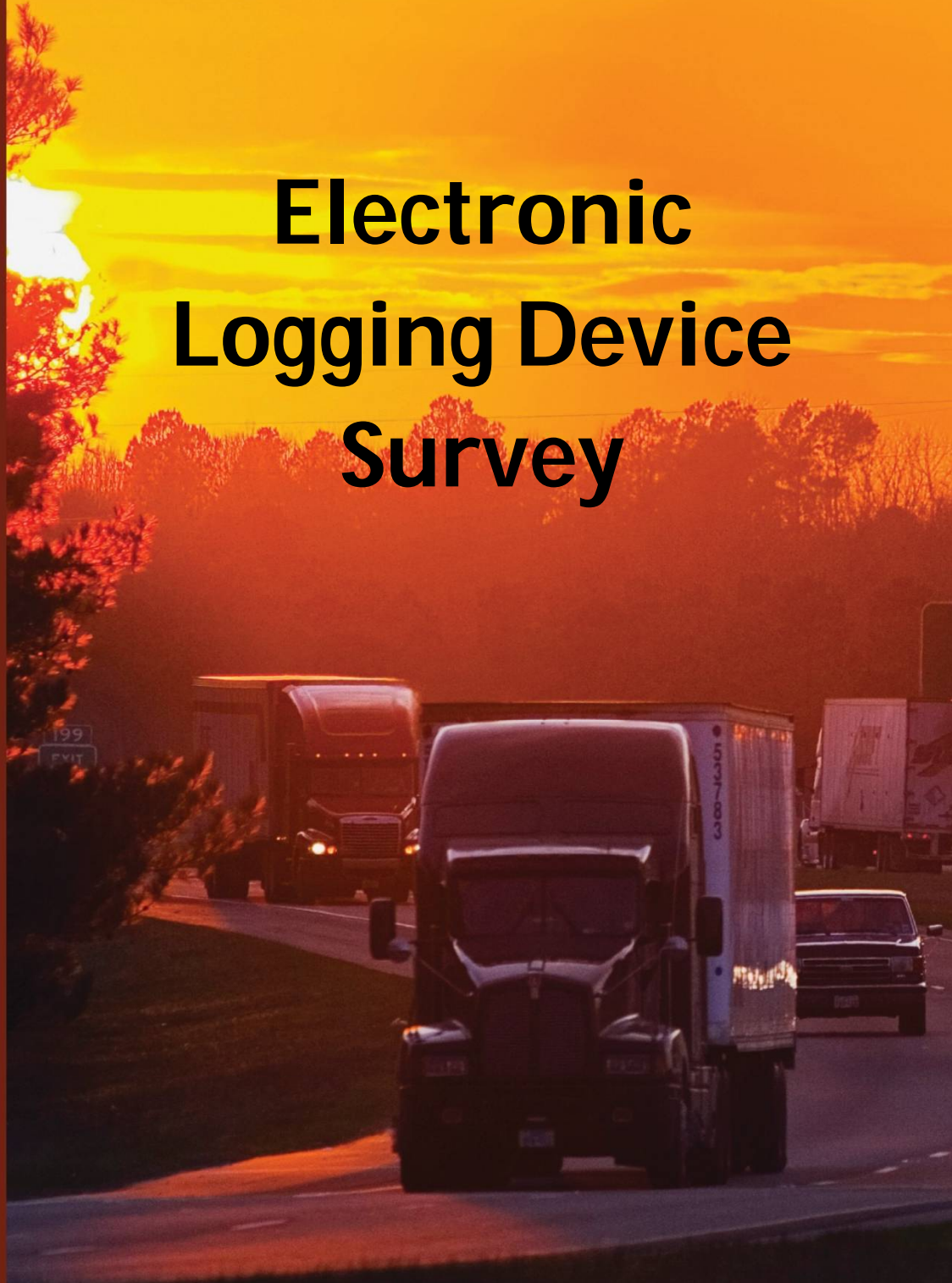


Owner-Operator Independent Drivers Association Foundation
A subsidiary of Owner-Operator Independent Drivers Association Inc.

Electronic Logging Device Survey



Electronic Logging Device Survey

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OOIDA Foundation, Inc.
One OOIDA Dr.
Grain Valley, MO 64029
FoundationDept@ooida.com

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Introduction

In September 1988, the Federal Motor Carrier Safety Administration (FMCSA) codified the Automatic On-Board Recording Device (AOBRD) regulation to permit the voluntary utilization of such devices with the condition that the device is integrally synchronized with specific operations of a commercial motor vehicle (CMV) in order to electronically capture a driver's record of duty stats (RODS). Since this time however, the FMCSA has sought to mandate the use of similar devices, called electronic logging devices (ELD), for the trucking industry under the auspices of mega carriers and the assumption that ELDs will reduce fatigue and thereby improve safety.

On December 16, 2015, the Agency published a Final Rule entitled *Electronic Logging Devices and Hours of Service Supporting Documents (MAP-21)* to establish (1) minimum performance and design standards for hours-of-service (HOS) ELDs; (2) requirements for the mandatory use of ELDs by drivers who are required to prepare HOS RODS; (3) requirements concerning HOS supporting documents, and (4) address concerns about harassment resulting from the mandatory use of ELDs.¹ Despite a number of legal challenges, as well as industry and congressional petitions to delay the implementation of the ELD Final Rule, the mandate went into effect December 18, 2017 with the stipulation that enforcement personnel would institute a soft enforcement of the rule until April 1, 2018.

The Owner-Operator Independent Drivers Association (OOIDA or Association), which represents approximately 161,000 small business owners and real, professional truck drivers, and the OOIDA Foundation (OOFI) have continued to oppose the mandatory utilization of ELDS through research and regulatory comments.² Rather than repeat such an extensive and comprehensive work detailing the failings of FMCSA and the research behind the mandate, OOIDA and OOFI thought it best to research and document the real-world effects of the ELD Final Rule. Thus, OOFI engaged the Association's membership by sending three surveys over the course of a year to a geographically representative sample of members who allow for communication via email.

OOFI initiated the first survey in January 26, 2018, when the mandate had yet to go into full effect. Whereas OOFI sent the second survey July 13, just three months after the soft enforcement had ended. OOFI emailed the final survey January 29, 2019. It was OOFI's design to launch three surveys to gain a greater understanding concerning the impact of the ELD mandate.

¹ *Electronic Logging Devices and Hours of Service Supporting Documents (MAP-21)*, FMCSA (2015).

² *Review of FMCSA's Regulatory Evaluation of Electronic Logging Devices*, OOIDA Foundation (2016); *Review of FMCSA's Evaluating the Potential Safety Benefits of Electronic Hours-of-Service Recorders Final Report*, OOFI (2014); *Review of FMCSA's Attitude of Truck Drivers and Carriers on the Use of Electronic Logging Devices and Driver Harassment*, OOIDA Foundation (2014); *Examination of Publically Available Data from FMCSA on CSA Scores and Motor Carriers 2016*, OOFI (2016); "Comments of the Owner-Operator Independent Drivers Association, Inc. In Response to the Supplemental Notice of Proposed Rulemaking and Request for Public Comments Electronic Logging Devices and Hours-of-Service Supporting Documents," OOIDA (2014)

Analysis of the Electronic Logging Device Survey

Though the ELD mandate has only been in full implementation since April 2018, it is imperative for the industry to assess the early impact of the most costly trucking regulation to date as it will undoubtedly effect the livelihoods of hundreds of thousands of truck drivers and thereby the American public. While FMCSA estimated the mandate to cost approximately \$2 billion, anecdotal evidence suggests that the real-world impact might be even larger, by not only raising the cost of goods and services, but also increasing the risks of fatigue, harassment, and crashes.

In order to gain firsthand knowledge of the effects of the rule, OOFI sent three online surveys over a years' period. More than 3,700 OOIDA members responded in total to the surveys. Congruent with other OOFI surveys, the majority of respondents either recognized themselves as an owner-operator under their own authority (39, 39, and 35% across the 3 surveys) or as an owner-operator leased on to a motor carrier (40, 41, and 45%). Despite the implementation of the ELD rule in December 2017, approximately 30 percent on average stated that they have not purchased and installed an ELD in their truck. This was especially true for company drivers as 47 percent have yet to purchase the device. However, a majority of those 30 percent who do not have an ELD operate under an exemption, in particular the model year (68%), the short haul (15%), and or the agricultural exemptions (6%), respectively. Table 1 below lists the current ELD exemptions.

Table 1: Who is exempt from the ELD Rule?³

- Drivers who use paper RODS for not more than 8 days out of every 30-day period.
- Drivers of vehicles manufactured before 2000
- Drivers who are required to keep RODS not more than 8 days within any 30-day period.
- Drivers who conduct drive-away-tow-away operations, where the vehicle being driven is the commodity being delivered, or the vehicle being transported is a motor home or a recreation vehicle trailer with one or more sets of wheels on the surface of the roadway.
- Drivers of vehicles manufactured before the *model year* 2000. (As reflected on the vehicle registration)

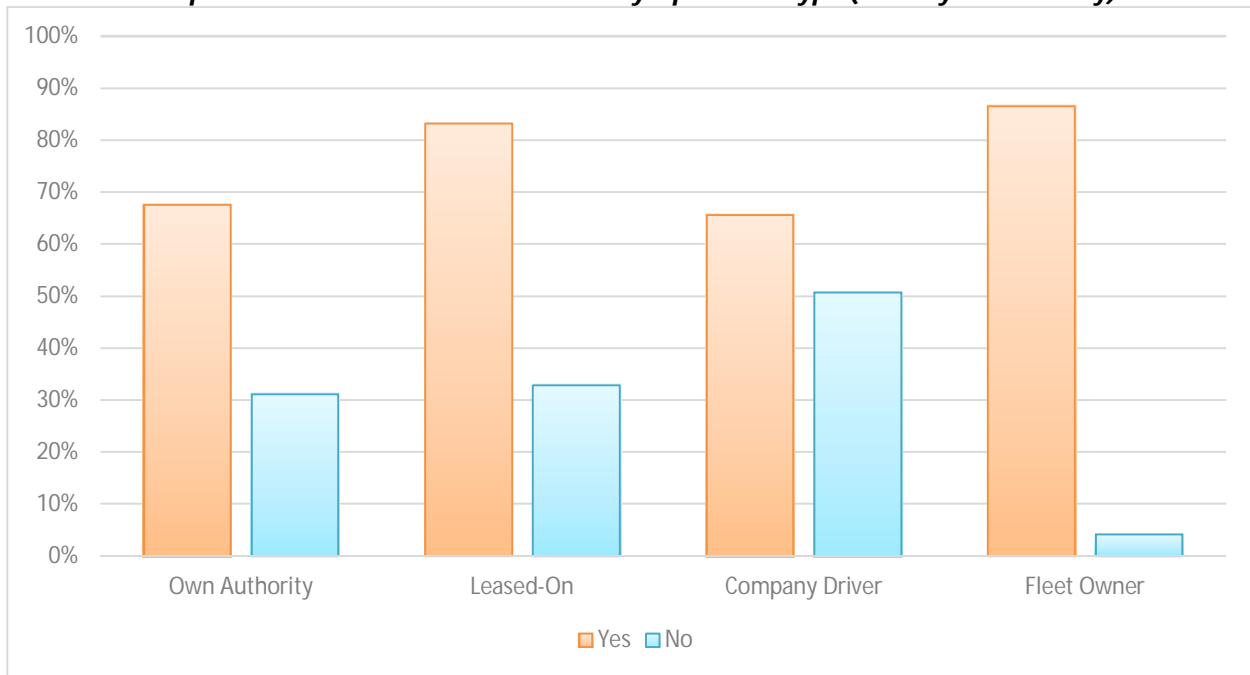
It was especially interesting to learn over the three surveys that 16 percent of those who had purchased and installed an ELD did not purchase a device listed on FMCSA's registry. However, it is evident after analyzing the members' comments that many did not realize their device is in fact listed on the registry.

When purchasing a device, members indicated that cost and user-friendliness were the two most important factors. This was true for all operational types. Nevertheless, 15 percent of members noted that they have switched vendors at least once since the implementation of the mandate in December 2017. The reasons for the change varied from the vendor going out of service, to changing carriers, to the

³ <https://www.fmcsa.dot.gov/faq/what-exceptions-are-allowed-electronic-logging-device-rule>

poor performance of the device itself. Some members indicated that their initial devices were not reliable and that they did not report mileage or location data accurately, while others simply wanted to switch the type of device they were using (i.e., from a BYOD to a dedicated unit). In the final survey, 56 percent stated they had a dedicated unit, representing a 12 percent increase from the second survey. Moreover, both those under their own authority and those leased on decreased their usage of bring your own device's (BYOD) by 26 percent and 22 percent, respectively.

Graph 1: Purchased and Installed ELDs by Operation Type (January 2019 Survey)



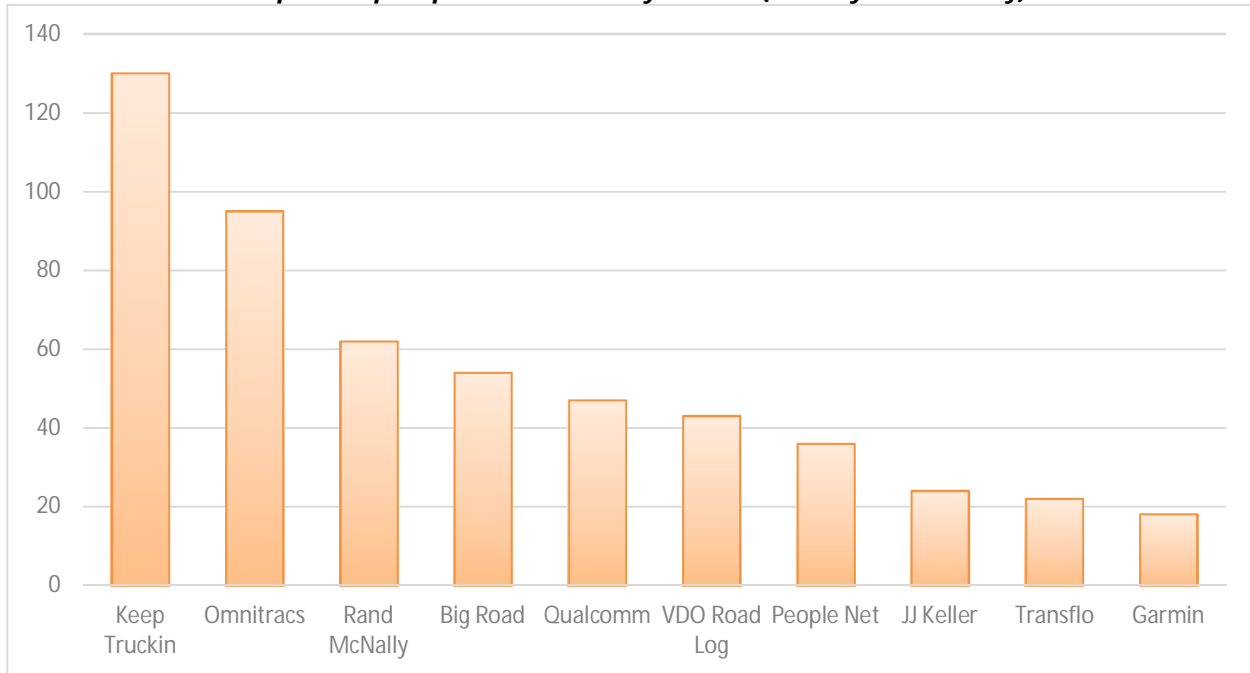
Although §376.12(i) of the Federal Motor Carrier Safety Regulations specifies that a lessor is not required to purchase or rent any products, equipment, or services *from* the authorized carrier as a condition of entering into the lease arrangement, carriers often require leased-on owner-operators to utilize equipment that is compatible with their system. According to the results for the final survey, 81 percent of leased-on owner-operators who had installed an ELD were restricted as to which ELD they could utilize by their motor carrier, and 50 percent were responsible for purchasing the device. OOIDA is concerned that carriers who require owner-operators to purchase a particular ELD might be in conflict with the current leasing regulations.

In addition, OOIDA is concerned with ELD vendors who require contracts for a set period as FMCSA did not establish interoperability standards as part of the rule and many carriers utilize different devices and back office systems. Leased-on owner-operators in particular might be straddled with additional expenses if they are continually required to switch ELD providers depending on the carrier (14 percent indicated they have switched vendors since December 2017). Fleet owners and owner-operators under their own

authority are also subject to extra expenses when switching vendors or when forced to purchase a different device if FMCSA revokes their ELD from the registry, such as with ONE20.

It is essential for truck drivers to research all aspects of a device before purchasing an ELD. A carrier does not want to be chained to a defunct or obsolete ELD simply because they have signed a contract. On average, 29 percent of members indicated that they signed a contract for a certain time length across the three surveys. This was most predominant for fleet owners in each survey (51, 56, and 55%) and the least prevalent for those leased-on (18, 21, and 14%). The average contract overall was nearly 18 months.

Graph 2: Top 10 purchased ELDs by Vendor (January 2019 Survey)



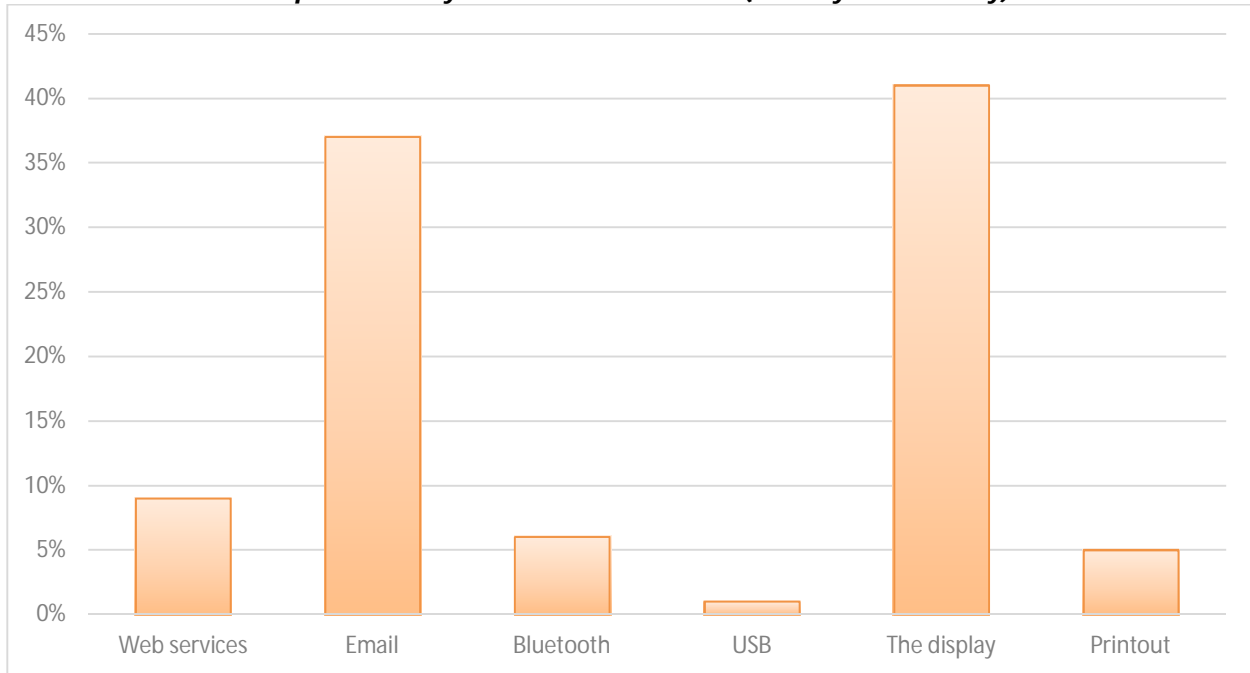
In terms of enforcement, 69 percent noted that they had received at least one driver inspection since the ELD Final Rule went into effect. Of these, 75 percent had their electronic logs examined by an enforcement officer. The two most common methods of data transfer by far were via the device's display (41%) and through email (37%). While a vast majority did not encounter any issues during their inspection, some members experienced various issues, such as poor signal, certain states requiring a printout over other data transfer methods, or simply officers not understanding how to inspect the electronic logs.

The premise behind the ELD Final Rule was to increase HOS compliance that would thereby reduce the risk of fatigue-related crashes. However, a firm supporter of the technology, Werner Enterprises, testified to Congress "there is little, if any, empirical evidence showing that EOBR [electronic on-board recorders] use reduces driver fatigue, prevents accidents, improves safety and lowers costs.⁴" In fact, Werner, along

⁴ *Electronic On-Board Recording Devices (EOBRs) and Truck Driver Fatigue: Hearings before the Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security of the Committee on Commerce,*

with the American Trucking Association, recommended an extensive pilot program in order to generate enough evidence to assess the safety benefits and cost-effectiveness of the devices properly, stating “there is a significant need for, and interest in, research that scientifically documents the linear relationship between EOBRs, compliance, fatigue, and safety.”⁵

Graph 3: Primary Data Transfer Method (January 2019 Survey)



FMCSA however constructed their entire regulatory impact analysis by using data from two carriers who had voluntarily installed AOBDRs because of their poor HOS ratings, and three carriers who had agreed through settlement agreements to install AOBDRs in lieu of paying civil penalties for their habitual HOS compliance violations. The Agency ultimately formulated their baseline on the effectiveness of ELDs for the entire trucking industry based upon data from just three of these five carriers even though FMCSA recognized that these carriers were not representative of the industry.

In January 2019, a joint study conducted by Northeastern University, University of Arkansas, and Michigan State University concluded that while HOS compliance had increased since the implementation of the ELDs, “the ELD mandate did not noticeably improve safety.” The research team stated further, “we are able to produce no statistically significant evidence that ELD adoption by the smaller firms corresponded to any reduction in accident rates.”⁶ In fact, some of the data suggests that crashes are increasing. These

Science, and Transportation, Senate, 110th Cong. 38-50 (Testimony of Richard S. Reiser on behalf of the American Trucking Associations, Inc.).

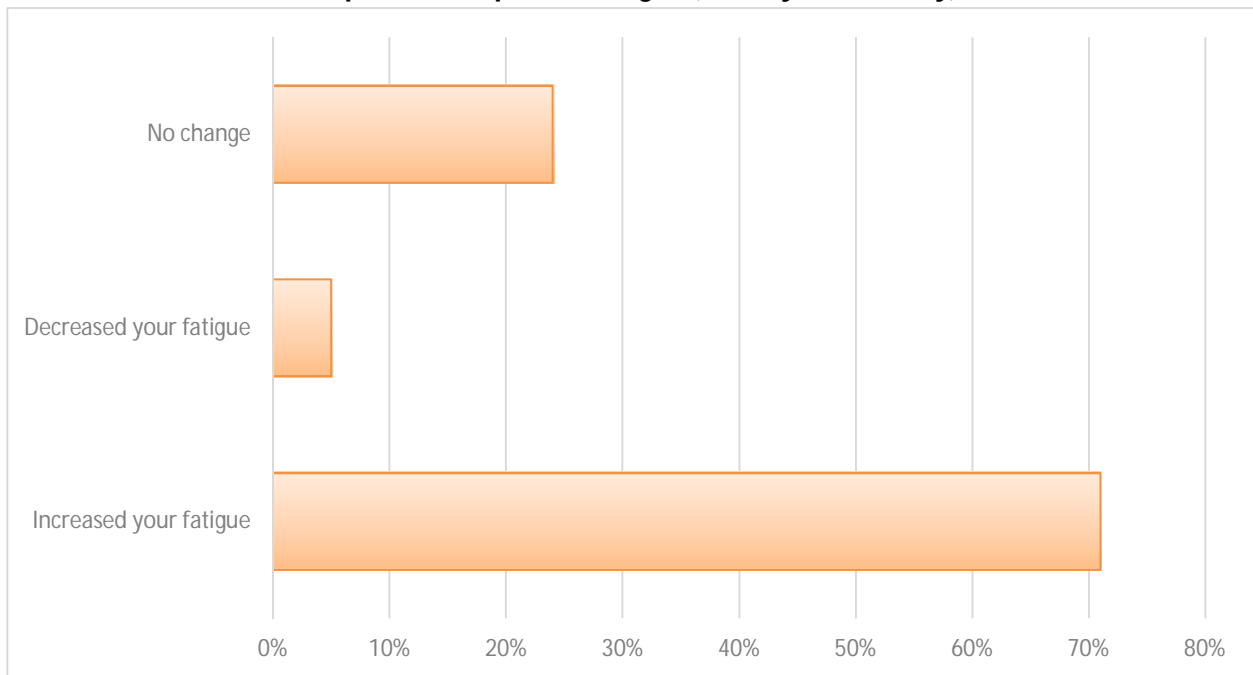
⁵ Ibid.

⁶ Alex Scott et al, *Did the Electronic Logging Device Mandate Reduce Accidents?* (Jan 2019), pg. 32

results highlight the fact that compliance does not equal safety, which is especially evident in OOFI's ELD surveys.

When OOIDA members were asked in the final survey how the ELD mandate was impacting safety thus far, 76 percent stated it was decreasing safety overall, 78 percent felt more pressured to speed, 71 percent felt more fatigued, and 29 percent felt more harassed. Moreover, 55 percent stated that they have not seen an improvement in their Compliance, Safety, and Accountability (CSA) scores since the mandate went into effect. These statistics were similar in the previous surveys.

Graph 4: ELD impact on Fatigue (January 2019 Survey)



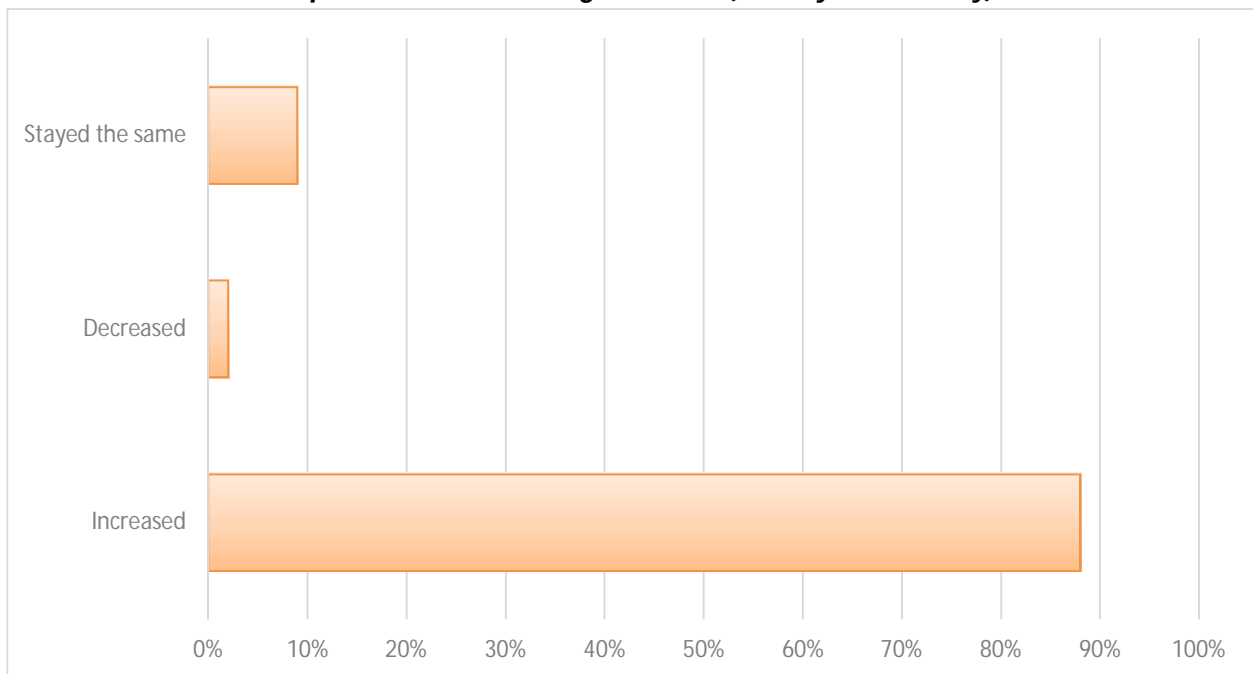
A common theme from the members is that they are feeling rushed to take breaks when they do not need them and forced to drive when they would rather take a break since the implementation of the Final Rule. Several more believe ELDs have created an unsafe work environment with truck drivers speeding through construction zones, tailgating, and driving too fast in parking lots and around fuel islands. This has sequentially increased the stress levels of members who are continually concerned with managing their time due to time spent in traffic, loading and unloading, and adverse weather. Time management is especially crucial when considering truck parking, as some noted that they have seen trucks parked alongside busy interstates and have been forced to park at unsafe locations. "This is absolutely the worst thing FMCSA has done in the name of safety. It's a joke." In the view of one member, all of these elements combined have "had a profound impact on the amount of trucks on the road during the daytime, increasing traffic density, accidents, and delays."

Members also expressed that the devices themselves have increased fatigue, as they do not always function properly. One member wrote, "The device's poor functionality has created an unwanted stress

that a single independent truck driver does not need.” Several mentioned that they feel as if they are always racing against a clock now, which is not only stressful during their on-duty period, but especially during their off-duty period. “Worst is feeling timed during my 10-hour break. The feeling that I have to go to sleep now before my time is up. I don’t feel like I rest the same.” While proponents state that no one is forced to drive because of a device, it is the driver’s choice, one member said, “We realize that we could still technically take the break whenever we want too. However, doing so often comes with a major impact to our available hours, so most of us hesitate doing so and in turn drive when we may be more tired than we should be or during peak hours of traffic that we could previously avoid. Each of these elements decrease safety and increase risk.”

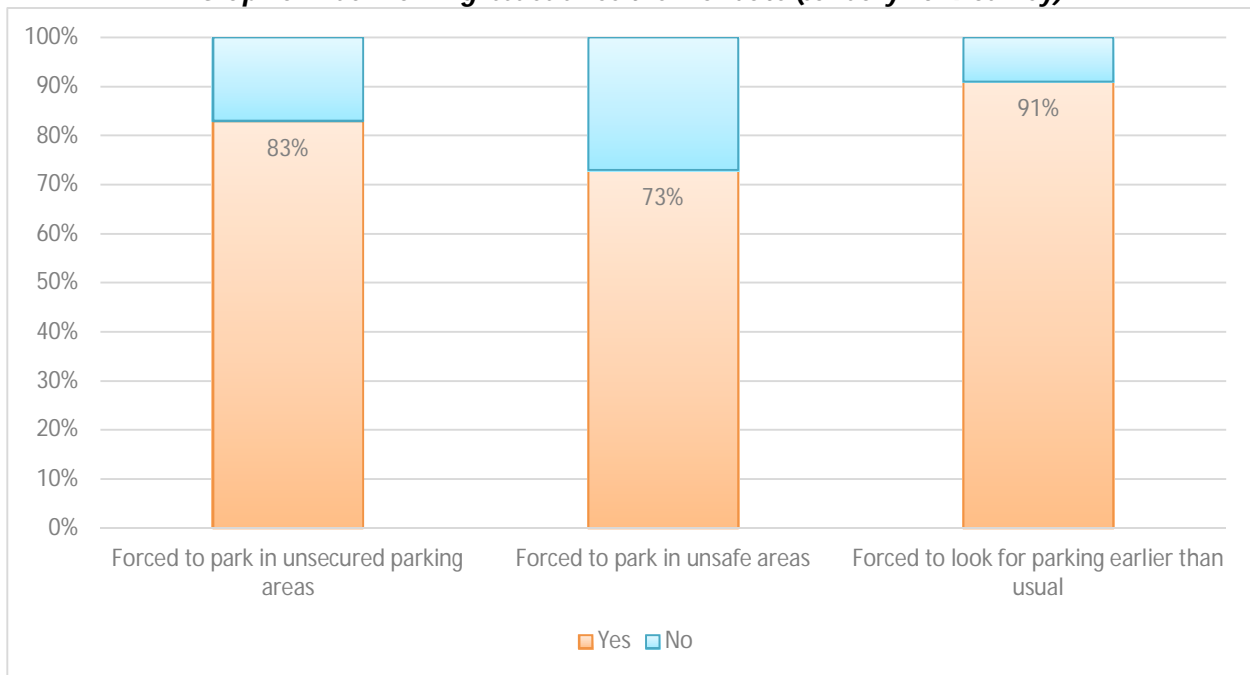
It appears that the definition of harassment might be changing for some members with the advent of ELDs. Instead of harassment coming from the motor carrier, several members commented on the increasing number of inspections they are incurring on the road, which leads to increased delays and additional pressure. However, the amount of harassment from carriers has increased as well for some members. One member in particular, a fleet owner, stated that he felt forced to pressure his drivers, saying, “Which in return doesn’t allow them to make the best decision for each situation.” Others felt harassed by the device itself, stating that they are unable to make even the smallest of mistakes. Conversely, a few members experienced less harassment, stating that carriers and shippers were no longer pressuring them to make unrealistic delivery schedules and that they were better equipped to document hours sitting in detention.

Graph 5: The Truck Parking Issue has: (January 2019 Survey)



Nevertheless, 78 percent of members noted that they have felt more pressure to drive when they felt it was better to stop and 69 percent have more felt pressured to drive in unsafe road conditions since the mandate went into effect. Members have witnessed an increase in risky driving behavior as well as an exacerbation of the truck-parking crisis. "Safety has been decreased. The reason is now you are on a time clock that is always pushing you. I panic when I am at a shipper or receiver and I see the clock running out on my drive time. I refuse to sleep on the side of the road. It is not safe." Another member stated, "I cannot work to my full potential because I am constantly concerned with where I am going to park before I am out of hours."

Graph 6: Truck Parking Issues since the Mandate (January 2019 Survey)

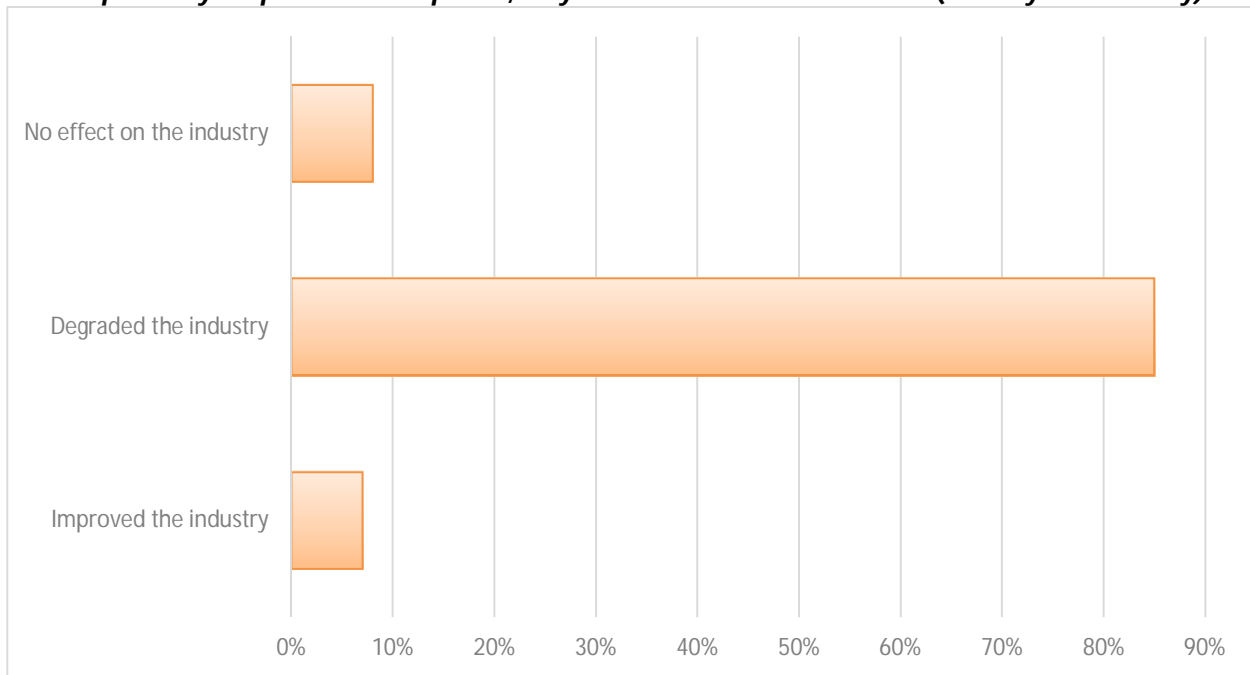


In addition to the safety and parking concerns, a vast majority of members feel that the ELD mandate has degraded the industry (85%). Some of this sentiment is due in particular to the 30-minute rest break provision. Since the implementation of the rule, 76 percent of members have experienced an increased issue with the rest break requirement, a 13 percent increase from the first survey in January 2018. When asked if eliminating the 30-minute rest break would help alleviate issues associated with the ELD mandate, 69 percent stated yes, which marked a 23 percent increase from the first survey.

The survey results not only demonstrated a decrease in overall safety since the implementation of the mandate, but members have also experienced increased expenses and economic adversity. For example, 58 percent of those who had purchased an ELD in the final survey were required to pay an initial upfront cost. This was especially true for fleet owners and those under their own authority. The average price was approximately \$650 over the course of the three surveys, with 89 percent of members indicating the fee was per truck. For fleet owners, who owned approximately 13 trucks on average, this means they

might be paying almost \$8,500 in just initial costs. Another 58 percent were required to pay a monthly fee as well, which was nearly \$45 per truck.

Graph 7: In your professional opinion, do you feel the ELD mandate has: (January 2019 Survey)



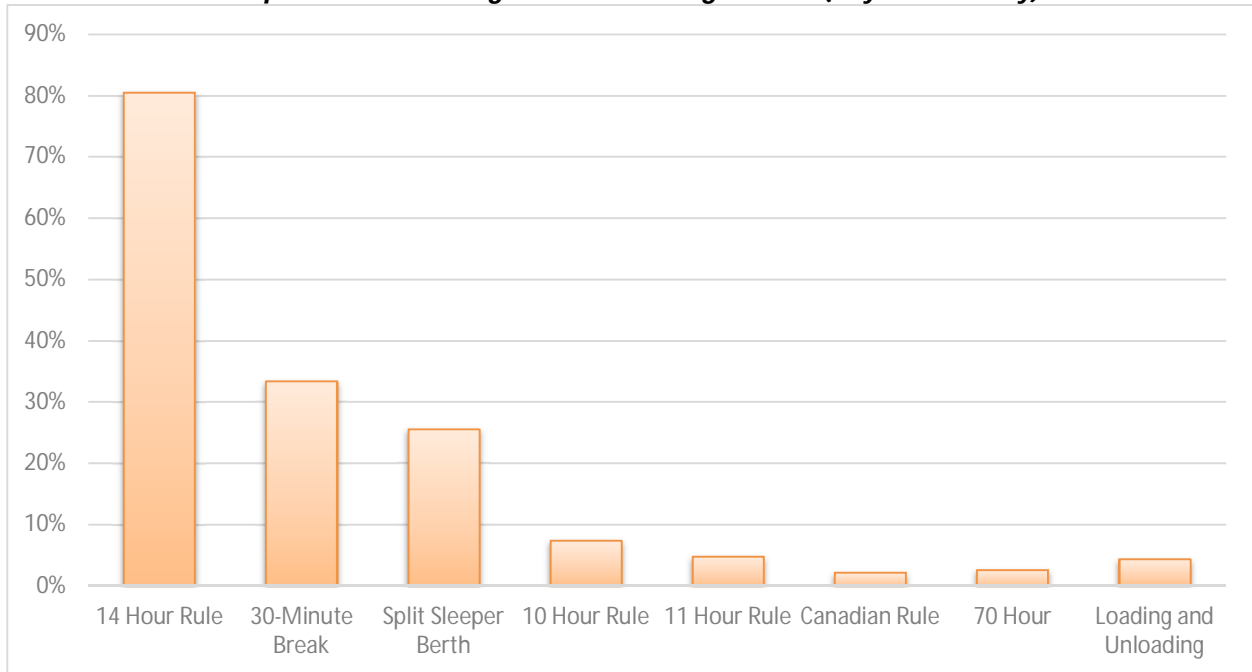
The mandate has not only increased expenses but it has also decreased gross income and thereby our members bottom line. While the mandate has only been in effect for a little more than a year, members estimated that the ELD Final Rule would decrease their annual income by a median of \$23,000 due to miss loads and delays. "I have lost an average of two loads per week since the implementation. For years I've had a perfect CSA score. I have never been put out of service for a logbook violation, yet I'm required now to run an ELD." For 66 percent of fleet owners across the three surveys, and 46 percent of members overall, these costs meant that they would not be able to expand their business, while another 25 percent overall were forced to downsize their business.

One member commented in the January 2018 survey, "If the ELD rule is to remain, the HOS regulations need to be changed." Overall, the ELD mandate has ultimately highlighted the inflexibility issues of the HOS regulations and brought them to the forefront. In fact, 73 percent of members indicated in the final survey that they would be less concerned with the rule if FMCSA were to add flexibility to the HOS. Of those, a majority desired to see a change in the 14-hour rule. Either to eliminate the rule altogether or to have the flexibility to stop the clock in some manner or fashion.

This added flexibility would allow them to work better around unpredicted problems such as traffic jams, detention time, or even the need to rest when fatigued. Several commenters desired that the Agency would remove the word "consecutive" from the rule and replace it with "accumulative." Thus allowing drivers the ability split up their on-duty clock as needed to meet the issues of that day. Some suggested

allowing drivers to complete their 14-hours in a 24-hour period, or simply eliminating the 14-hour rule completely, as they still viewed the ability to stop the 14-hour clock as regulation. Instead, a few members proposed to allow drivers to drive for up to 11-hours in a 24-hour period. The other two changes that members would like most to see are the elimination of the 30-minute rest break and added flexibility in the split-sleeper berth rule. FMCSA is planning to release a notice of proposed rulemaking in early 2019 to address HOS reform. Particularly the short-haul limit, the adverse driving condition exception, the 30-minute rest break, and split-sleeper berth provision.

Graph 8: Desired changes in the HOS Regulations (July 2018 Survey)



Ultimately, several members remarked that the ELD mandate has forced them to drive when they are tired, lose family time, increase stress and fatigue, and finally caused them to shut down their business altogether. One member summarized it best, "The job and lifestyle is tough, the business is challenging, the industry is a complete mess, the FMCSA is a total joke and the ELD is the punchline. And I can assure you, nobody is laughing."