

MOTOR CARRIER SAFETY ADVISORY COMMITTEE

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C/O: Federal Motor Carrier Safety Administration

1200 New Jersey Avenue, SE

Washington, DC 20590

November 21, 2016

The Honorable T.F. Scott Darling, III

Administrator

Federal Motor Carrier Safety Administration

1200 New Jersey Avenue, SE

Washington, DC 20590

Dear Administrator Darling:

In October 2016, the Federal Motor Carrier Safety Administration (FMCSA) tasked its Motor Carrier Safety Advisory Committee (MCSAC) with providing recommendations to the Agency concerning the feasibility of developing regulations for motor carriers, commercial vehicle drivers, and medical examiners on obstructive sleep apnea (OSA). In particular, FMCSA asked the MCSAC to focus its discussion on how the OSA recommendations developed under the Medical Review Board’s (MRB) Task 16-1, if they were to become a rule, may impact current and future populations of drivers.

On October 24-25, 2016, the MCSAC met in public meetings to deliberate on the MRB’s draft OSA recommendations for MRB Task 16-1 regarding public comments from medical professionals and associations on the FMCSA’s and Federal Railroad Administration’s (FRA) Advanced Notice of Proposed Rulemaking (ANPRM) on OSA. Following this discussion, the MCSAC discussed and developed recommendations regarding the feasibility of FMCSA implementing the revised OSA recommendations as OSA regulatory requirements.

The attached report includes the MCSAC’s recommendations and discussions of the impacts of an OSA rulemaking, as requested by MCSAC Task 16-2. In addition, and related to the Agency’s implementation of a future OSA rulemaking, the MCSAC asks that FMCSA evaluate the impacts of any proposed OSA regulations on driver health, wellness, and safety.

On behalf of the MCSAC, I respectfully submit this report to FMCSA for its consideration.

Sincerely,

//signed//

Col. Scott Hernandez

Chairman, Motor Carrier Safety Advisory Committee

Enclosure

1. **Outline of FMCSA’s Analysis for a Potential Proposed Rulemaking**
   1. FMCSA should review the population of drivers that would be impacted by this rulemaking and determine how many crashes, fatalities, and injuries would be prevented.
      1. FMCSA should identify all drivers with a body mass index (BMI) > 40.
      2. For drivers with a BMI between 33 and 40, FMCSA should identify how many would be impacted if FMCSA requires sleep study testing with 3 additional risk factors versus 4 additional risk factors.
   2. FMCSA should analyze data to determine the percentage of fatigue-related crashes that are due to schedule, length of work day, length of work week, etc., in order to exclude those that are caused by issues other than OSA.
      1. There are several potential sources of BMI data:
         1. Crash data could indicate the BMI of the driver (e.g., driver’s license contains height and weight).
         2. Information could be obtained from certified medical examiners (CMEs).
         3. Compliance reviews could also have relevant data.
      2. Are drivers with BMI > 40 overrepresented in fatigue-related crashes? Peer reviewed studies show that higher BMI is associated with higher crash risk in the general driving population.
      3. If FMCSA has difficulty acquiring data, it will be difficult to receive Office of Management and Budget (OMB) approval for the rule.
   3. FMCSA should examine potential benefits of a rulemaking.
      1. If the rule could lead to health benefits for drivers in addition to crash reduction benefits, FMCSA will be able to claim those benefits in the rule.
      2. For most rulemakings, FMCSA does not attempt to quantify benefits related to reduced litigation costs for carriers (e.g., reduced liability), as it is difficult to quantify.
      3. Safety benefits do include reduced costs of treatment due to reduced injuries.
   4. Any proposed rulemaking will likely begin in the next administration.
2. **What should FMCSA consider when undertaking a rulemaking beyond already-discussed requirements?**
   1. There could be an impact on the availability of qualified commercial motor vehicle (CMV) drivers.
      1. Will these rules create a CMV driver shortage or make a CMV driver shortage worse?
         1. There is some debate in the industry about whether there is a CMV driver shortage because freight is still being moved.
         2. “Driver shortage” often refers to rapid turnover in the industry, not the actual inability to move freight due to too few qualified drivers.
      2. Since May 2014, FMCSA has temporarily disqualified over 200,000 drivers out of the 8.5 million who attempted to get a medical card, showing that drivers have difficulty already meeting the current health regulations.
   2. There could be costs of additional sleep studies on drivers and insurance agencies.
      1. There also could be costs associated with time away from work.
      2. Railway workers and school bus drivers who hold commercial driver’s licenses (CDLs) would also incur a cost.
   3. Will FMCSA be able to prove the benefits of the rule?
      1. Can FMCSA justify the costs of this mandate?
      2. Did the national registry of CMEs make the driver population safer?
   4. This rule should be viewed in context of all other regulations already existing for drivers (e.g., the cumulative effects of regulation).
   5. The MCSAC offers to convene a subcommittee to aid FMCSA in the process of working on this rule if the Agency decides to go forward and would like assistance.
   6. Regulatory guidance for CMEs would reduce inconsistency in selecting individuals for sleep studies (e.g., currently some CMEs require sleep studies based on only 1 risk factor, others not at all despite several risk factors).
3. **What impact would OSA regulations have on current and future drivers?**
   1. Driver disqualifications could occur.
      1. Under current medical requirements, few drivers are disqualified for long periods of time.
      2. Drivers could lose their CDL if they do not have a medical card.
      3. FMCSA will not downgrade a CDL if the driver receives a conditional medical card while undergoing studies and treatment for OSA.
   2. Proper treatment leads to better health, better quality of life, and likely a longer career as a driver.
      1. There could be a payoff for industry in keeping experienced drivers for a longer period of time.
      2. Fewer crashes would be expected with a more experienced driver pool.
      3. Drivers treated for OSA will have a longer and healthier life.
      4. There could be ancillary benefits of reducing comorbidities and the costs of treating them (e.g., medication for hypertension, diabetes).
   3. Regulations could provide greater clarity around testing and screening for health issues.
   4. Regulations could provide increased consistency in screening and diagnostic tools across CMEs and could reduce variability in how CMEs screen for OSA and need for testing.
   5. A higher number of required sleep studies being conducted will increase options for screening and diagnostic tests and reduce costs.
   6. Increased costs on the CMV industry could occur:
      1. New regulations would increase burden on drivers by increasing the number of drivers required to do sleep studies as well as costs to drivers if they do not have insurance.
      2. New regulations could result in increased costs on insurance agencies.
      3. New regulations could result in increased costs on railway workers and school bus drivers who hold CDLs.
      4. FMCSA should consider costs on these workers, including time costs.
      5. Drivers could lose medical benefits if they are unable to work if they are put out of service due to needing to complete a sleep study.
   7. Regulations could inspire drivers to be healthier and increase the general wellness of the population.
   8. Impacts on the size of the driver population could occur.
      1. Some drivers may decide it will be too burdensome to renew their medical card and will stop driving.
      2. Would a regulation of this type (e.g., focus on BMI and other health issues) have a stifling effect on bringing new drivers into the industry?
   9. New drivers would need to be educated about driver health requirements.
4. **Support From Peer Reviewed Studies**
   1. Higher BMI is associated with higher crash risk in the general driving population.