



July 8, 2016

Docket Services
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, SE
Washington, D.C. 20590-0001

RE: Docket No. FMCSA-2015-0419 and FRA-2015-0111; Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea

On behalf of the Agricultural Retailers Association (ARA) and its members, I am writing to submit comments in response to the Federal Motor Carrier Safety Administration (FMCSA) and Federal Railroad Administration (FRA) Advance Notice of Proposed Rulemaking regarding Evaluation of Safety-Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea published March 10, 2016 in the *Federal Register*.

Statement of Interest

ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include: fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

Comments

FMCSA is requesting data and information concerning the prevalence of moderate-to-severe obstructive sleep apnea (OSA) among individuals occupying sensitive positions in highway and rail transportation, and on its potential consequences for safety of rail and highway transportation. OSA is a breathing-related sleep disorder that causes brief interruptions of breathing during the night. According to FMCSA, sleep apnea occurs in all age groups and both sexes, but there are a number of factors that may put an individual at higher risk: family history of sleep apnea; having a smaller upper airway; being overweight; large neck size; smoking or alcohol use; being age 40 or older; and ethnicity. ARA is concerned with the costs associated with the sleep apnea study, the inconsistent standards being applied by certified medical examiners, and lack of proper health insurance coverage for the costs of tests and sleep apnea breathing devices.

ARA supports and promotes driver safety and compliance with all federal and state transportation



regulations to its members. Agricultural retailers primarily rely on trucks to deliver crop input products to the farm. Retailers usually employ their own drivers and the work is generally seasonal as the business is busiest during the planting and harvesting seasons. ARA members pose a small safety risk relative to other types of motor carrier operations due to the nature of farming and the way the commercial motor vehicles (CMVs) are used, i.e. primarily on a seasonal basis, for short distances (under 150 air miles), and in rural areas. Accident data that has been collected by FMCSA over the years confirms our industry has a strong transportation safety record.

ARA members are experiencing issues when they go to renew their DOT medical cards from certified medical examiners listed on the FMCSA's National Registry of Certified Medical Examiners. On many occasions the certified medical examiners are requiring the drivers to go for a sleep apnea evaluation, even though they have not experienced any previous health or sleep problems and most would not be considered obese. The sleep apnea test is primarily being required due to the driver's neck size.

The costs of these sleep apnea tests are significant and may not be covered under health insurance plans, and can take a significant amount of time to complete. For example, one ARA member has a driver whose medical card did not expire until February 2016 but decided to plan ahead by trying to obtain their renewal in late November 2015. By the time all of the required tests were completed, the driver had less than one week to spare before the renewal deadline. The total out of pocket expenses for all of the tests was over \$6,000. The overnight study in the hospital alone was \$4,200. In the end the out-of-pocket costs for the driver was \$1,800 and would have been more if they were not able to acquire a used sleep apnea machine from a family member. This driver had not experienced any previous health or sleep apnea issues yet was required to go through all of these tests and obtain a sleep apnea machine that makes it more difficult to get a good night's rest. Our industry is already having a difficult time hiring and maintaining qualified, experienced drivers. If the FMCSA regulations keep expanding and certified medical examiners continue to apply FMCSA standards differently for qualifying drivers, it will be very hard for our industry to deliver farm supplies in a timely way to their farmer customers. Without drivers, America's economy and major industries like the agricultural sector will be adversely impacted.

In May 2016, the American Transportation Research Institute (ATRI) issued a white paper entitled "Commercial Driver Perspectives on Obstructive Sleep Apnea." This study reviews data obtained from commercial drivers on a number of OSA-related issues and provides conclusions for consideration by FMCSA as it moves forward with any potential OSA proposed rulemaking. As a first step, FMCSA needs to address the fact there are conflicting studies linking OSA to crash risk. Secondly, as ATRI points out the agency will need to clearly link any OSA regulations (screening and treatment requirements) with safety outcomes as part of its Regulatory Impact Analysis (RIA). The ATRI study confirms what ARA has heard from our members that the driver sleep study costs are significant and extremely varied depending on a number of factors: depending on who pays, the sleep study costs, what type of sleep study a driver takes, whether a driver is insured, whether a



driver's insurance covers sleep studies, and how high a driver's deductible is. Some of these costs could be mitigated by allowing drivers to utilize home sleep studies.

ARA remains concerned about the inconsistent screening procedures being imposed by certified medical examiners. Depending on the medical examiner a driver goes to they could receive substantially different recommendations and results. A driver could see one medical examiner that informs them they have OSA while another medical examiner could come to a completely different diagnosis of no OSA or mild OSA. It is important for there to be standard, effective screening procedures to reduce the number of drivers completing unnecessary sleep studies and the associated costs. We also have concerns with the effectiveness of the sleep apnea machines being sold / prescribed to the drivers as many seem to be ineffective or actually adversely impact their sleep quality. If FMCSA does decide to move forward with any sleep apnea regulations, it should fully address any conflicts of interests with certified medical examiners, clinics, or sleep specialists profiting from driver sleep study referrals and sales of sleep apnea machines.

According to research on sleep apnea published by FMCSA and authored by Dr. Allan Pack of the University of Pennsylvania, "there is no statistical evidence in these data to suggest that the presence of sleep apnea significantly increases the likelihood or the risk of motor vehicle crashes." In fact, there appears to be no statistical evidence in the data to suggest that drivers with sleep apnea are more likely than drivers without sleep apnea to have a commercial vehicle crash. FMCSA's Large Truck and Bus Crash Facts 2014 shows only 1.8 percent of crashes reported a fatigued or sleeping driver. As part of the FMCSA's and FRA's advanced notice of proposed rulemaking, the agency cited only 1 incident of an accident involving a tractor-trailer that was blamed on sleep apnea. That accident occurred 16 years ago, and the crash report indicated several other factors as potential causes of the crash.

Conclusion

Thank you for your review and consideration of our comments! ARA supports common-sense, targeted regulations that properly address a proven safety issue. We are not sure that is the case regarding current FMCSA sleep apnea guidelines and inconsistent, expensive medical diagnosis being issued by certified medical examiners. FMCSA will need more valid data sets and scientifically peer reviewed studies to show that sleep apnea significantly increases the likelihood of commercial motor vehicle crashes before moving forward on any new rulemakings. ARA looks forward to working with FMCSA on this important issue and participating in any ongoing proceedings.

Sincerely,

A handwritten signature in black ink that reads 'Richard D. Gupton'.

Richard D. Gupton
Senior Vice President, Public Policy & Counsel