

Good morning –

For some unknown explanation, I've been receiving quite a few questions encompassing 'sleep apnea', hence my email for the greater good:

As you may recall, on March 10, 2016, the FMCSA and FRA jointly published an 'Advance Notice of Proposed Rulemaking' (ANPRM) on the Evaluation of Safety Sensitive Personnel for Moderate to Severe Obstructive Sleep Apnea. The ANPRM requested submission of data and information concerning the prevalence of moderate-to-severe OSA among individuals occupying safety sensitive positions in highway and rail transportation, and on its potential consequences for the safety of highway and rail transportation. In August of 2017, the ANPRM was withdrawn because the agencies believed the information received in response to the ANPRM was not sufficient to move forward with a rulemaking.

The withdrawal of the 'Advance Notice of Proposed Rulemaking' (ANPRM), (82 FR 37038; August 8, 2017), (OSA) concerning individuals occupying safety-sensitive positions in highway and rail transportation did not change any existing physical qualification standards or medical advisory criteria in the Federal Motor Carrier Safety Regulations (FMCSRs).

Moderate-to-severe obstructive sleep apnea is a serious medical condition that if left untreated, is likely to contribute to fatigue while performing safety-sensitive duties. The Federal Motor Carrier Safety Regulations [FMCSRs] [49 CFR 391.41(b)(5)] require that a person must have no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with the ability to safely drive a commercial motor vehicle (CMV) in interstate commerce. The Medical Advisory Criteria (Appendix A to Part 391 Section E), identifies sleep apnea as one of several respiratory dysfunctions that may be detrimental to safe driving as this condition may interfere with driver alertness, and may cause gradual or sudden incapacitation. Link: http://www.ecfr.gov/cgi-bin/text-idx?SID=ab07838321033378947d4f7475666577&mc=true&node=ap49.5.391_171.a&rgn=div9

The Medical Advisory Criteria, (which has been in place since the year 2000) pertaining to the Respiratory Standard, says that if medical examiner detects a respiratory dysfunction likely to interfere with a driver's ability to safely control and drive a CMV, that the driver must be "referred to a specialist for further evaluation and therapy".

While FMCSA has not established specific mandatory criteria through rulemaking for referring "to a specialist for further evaluation and therapy" (i.e. OSA screening, testing, treatment, and compliance) and how it is to be conducted on individuals who operate CMVs in interstate commerce, our agency does rely on the evaluation by the certified medical examiner to determine whether an individual meets the physical qualification standards and may be issued a medical certificate.

At present, decisions concerning specific referral, treatment, and evaluation processes for OSA rests with the training, expertise, and medical judgment of the certified medical examiner in determining whether an individual exhibits symptoms and/or multiple risk factors for OSA. In applying medical judgment, medical certification decisions may vary between medical examiners and medical examiners should explain to the individual the basis for their decision if the examiner decides to issue a medical certificate for a period of less than two years to allow for further evaluation, or to deny a driver the medical certificate.

The FMCSR's do not prohibit commercial motor vehicle (CMV) drivers or employers from seeking second opinions from another certified medical examiner. Ultimately it is the motor carrier's policies that would govern this and the motor carrier's decision whether to accept or reject a medical certificate from a medical examiner.

I hope the information was helpful.

Take care,

Matthew Marrin
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