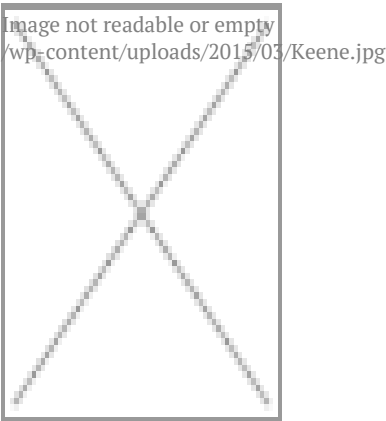


Motor Carriers, Commercial Drivers to Potentially Face New Rules Relating to Fatigue & Sleep Disorder



By Dennis Keene, Bouhan Falligant

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According to the National Survey of Long-Haul Truck Driver Health and Injury conducted by the American Transportation Research Institute (ATRI), more than half of commercial truck drivers smoke, 70 percent are considered obese and nearly one-third suffer from sleep apnea.

Someone who has sleep apnea repeatedly starts and stops breathing while sleeping. Obstructive sleep apnea (OSA) is classified by the Federal Motor Carrier Safety Administration (FMCSA) as a respiratory disorder is a more common form of sleep apnea in which the throat muscles relax. Symptoms of OSA include loud snoring, episodes of breathing cessation during sleep, attention problems, irritability, insomnia, and excessive daytime sleepiness.

It is no wonder, then, why OSA is such a concern within the trucking industry. The ATRI study cited statistics that a fatigued driver may have as much as a 50 percent decrease in decision-making skills and a 75 percent decrease in attention, resulting in being five times more likely to be involved in a preventable crash. On the other hand, drivers who are treated for moderate to severe OSA, usually with a continuous positive air pressure (CPAP) machine, generally

report more sleep, feeling better upon waking, and lower blood pressure—all things that can assist a driver to be more alert.

To that end, the government body that regulates the trucking industry, the FMCSA, has an interest in commercial truck drivers who suffer from OSA. The original OSA rules, established by the FMCSA's Medical Review Board and Motor Carrier Safety Advisory Committee, established guidelines for sleep apnea screening in 2012. Last spring, the FMCSA held public meetings to gather comments and input on whether the agency's regulations needed to be updated, and in August, FMCSA's Medical Review Board outlined its recommendations on screenings and disqualification criteria for truckers suspected to have moderate to severe OSA.

Based on those recommendations, the FMCSA is considering whether to require sleep apnea screening for drivers based on their body mass index (BMI) and a number of other objective physical criteria, such as the age of the driver, presence of hypertension, diabetes, a neck circumference greater than 17 inches (men) or 15.5 inches (women), a history of heart disease, loud snoring, a small airway, and a number of other conditions also found to lead to OSA.

While these are only recommendations and the FMCSA is under no legal requirement to adopt them, the agency will surely have to consider the medical board's recommendations in developing appropriate regulations relating to OSA. However, implementing such recommendations doesn't come without a price.

Should the medical board's recommendations be approved, there are a number of pros and cons to consider. Commercial truck drivers note male truck drivers with a BMI of 33 only need to meet one other criterion to qualify for screening, leading one to comment in an online forum that unless you're as fit as an Olympic athlete, you shouldn't apply for a truck driving job. In addition, more than half of truckers diagnosed with sleep apnea have out-of-pocket costs of more than \$1,000 and up to \$2,500, and report as many as 30 hours missed from work due to multiple sleep studies done as part of the process to diagnose OSA. While some consider these to be the cost of doing business, the downtime and costs for drivers is significant and can have tremendous impact on some drivers' livelihoods.

Likewise, motor carriers are under pressure to select, hire and retain drivers to meet the demands of consumers who require shipments of products, manufacturers who need goods shipped to stores and stores that need product brought from ports and terminals for resale. Turnover of commercial drivers, which can be as costly as \$9,000 per driver for training and hiring costs, can be reduced by making sure drivers are qualified upfront, although it can be the physical demands of the job itself that cause poor health and eating habits that can lead to OSA and other disqualifying medical conditions. Since regulators buckled down in 2014 on the medical qualifications of drivers, about 70,000 drivers have been disqualified from driving due to OSA alone. All of these issues must be balanced against the need for safe, alert commercial drivers on the road.

While the outcome and impact of any new rules remain to be seen, safety advocates would argue the benefits of potentially safer highways outweigh what others perceive to be over-regulation. It's clear, however, that as regulations continue to change, it is imperative for motor carriers' internal compliance departments or outside legal counsel to stay informed and compliant. Failure to do so can result in enormous legal and financial implications for motor carriers, truck drivers and society as a whole.

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Practice Areas

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