



July 8, 2016

Docket Services (M-30)
U.S. Department of Transportation
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Via <http://www.regulations.gov>

RE: Advance Notice of Proposed Rule for Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea. Docket Nos. FMCSA-2015-0419, RIN 2126-AB88

I. Introduction and Background

The American Public Power Association (APPA), the Edison Electric Institute (EEI) and the National Rural Electric Cooperative Association (NRECA) — collectively the Electric Utility Trade Associations (EUTA) — appreciate the opportunity to submit comments on the Advanced Notice of Proposed Rulemaking (ANPR) entitled *Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea*, proposed by the Federal Motor Carrier Administration (FMSCA) and the Federal Railroad Administration (FRA) (collectively, the Agencies) in Docket Numbers FMCSA-2015-0419 and FRA-2015-0111. 81 *Fed. Reg.* 12642 (Mar. 10, 2016).

Pursuant to authority granted to the FMSCA and FRA under 49 U.S.C. 31136(a) and 31502(b) and 49 U.S.C. 31449(b), respectively, the Agencies are tasked with issuing safety regulations for commercial motor vehicle (CMV) drivers (in the case of FMSCA) and railroad operators (in the case of FRA). *See id.* Because the Agencies have determined that moderate-to-severe obstructive sleep apnea (OSA) is a “critical safety issue that can affect all modes of travel in the transportation industry” (*id.* at 12, 643), the Agencies are considering taking regulatory action concerning transportation workers with safety sensitive duties who are at risk for OSA. *See id.* at

12,646. As such, the Agencies are requesting data and information regarding OSA among individuals occupying safety sensitive positions in highway and rail transportation. *Id.* at 12,643.

APPA is the national service organization for the more than 2,000 not-for-profit, community-owned electric utilities in the U.S. Collectively, these utilities serve more than 48 million Americans in 49 states (all but Hawaii). APPA was created in 1940 as a non-profit, non-partisan organization. Its purpose is to advance the public policy interests of its members and their consumers, and to provide member services to ensure adequate, reliable electricity at a reasonable price with the proper protection of the environment.

APPA members also include joint action agencies (state and regional entities formed by public power utilities to provide them wholesale power supply and other services) and state, regional, and local associations that have purposes similar to APPA. Together, public power utilities deliver electricity to one of every seven electricity consumers.

EEI is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for 220 million Americans, operate in all 50 states and the District of Columbia, and directly employ more than 500,000 workers. With more than \$100 billion in annual capital expenditures, the electric power industry is responsible for millions of additional jobs. Safe, reliable, affordable, and clean electricity powers the economy and enhances the lives of all Americans. EEI has 70 international electric companies as International Members, and 270 industry suppliers and related organizations as Associate Members. EEI members employ and train over 50,000 drivers across the United States that are considered CMV drivers.

NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to over 42 million people in 47 states. Member systems cover 75% of the United States landmass. NRECA membership is composed of 838 distribution cooperatives and 65 generation and transmission (G&T) cooperatives. Both distribution and G&T cooperatives were formed to provide reliable electric service to their owner-members at the lowest reasonable cost. NRECA members employ and train drivers who are CMV drivers.

Together, EUTA members employ a large number of CMV drivers. Therefore, EUTA members have a critical interest in any regulation which effects monitoring or testing of CMV drivers. In the ANPR, the Agencies are seeking comment on a set of questions, which deal with: 1) the Problem of OSA; 2) Costs & Benefits; 3) Screening Procedures & Diagnostics; 4) Medical Personnel Qualifications & Restrictions; and 5) Treatment Effectiveness. In these comments, EUTA will focus on the questions which address applicability and costs and benefits.

II. Comments

EUTA members are dedicated to employing drivers who have excellent safety records. While EUTA supports the stated purposes of implementing medical standards for commercial drivers, utility driver activities do not follow the same pattern as other commercial drivers.¹ Utility drivers do not engage in long-haul trips over the course of eight to ten hours per day. Instead, utility driving activities typically are intermittent, limited in scope and incidental to the work that is actually being performed. Indeed, the job functions which require utility personnel to drive generally involve a crew of workers rather than an individual. Utility workers rarely, if ever, engage in driving activities alone. Typically, the daily work shifts of utility personnel involve only a small amount of driving, rarely more than one to two hours per day. Utility driving activities often occur over a short distance. These unique characteristics help to explain the industry's exemplary driving record. Indeed, according to the Bureau of Labor Statistics, of the 1,075 fatal occupational incidents in 2014 in the category of "Roadway incidents involving a motorized land vehicle," only four of these were attributable to the utility industry.²

Moreover, adding OSA screening to the physical examination process for utility drivers will result in more cost than benefit. As noted above, utility personnel engage in only a relatively small amount of driving. An OSA screening requirement, however, will create additional time and money burdens for both the individual transportation worker and the employer. Diagnosis of OSA requires a physical examination and sleep study, usually a polysomnogram, which typically is performed, and requires an overnight stay, at a sleep laboratory.³ Particularly for rural utilities, sleep study centers and/or a sleep medicine specialist may be hundreds of miles away from the headquarters. In addition to the time that must be devoted to participating in the sleep study, different insurance companies may cover various amounts of the costs associated with OSA diagnosis or none at all.

Currently sleep studies for NRECA insured employees are a covered expense to the extent that a study is determined necessary by the individual's doctor. This coverage is not limited to electric cooperative CMV drivers. To the extent that FMCSA requires regular screening and testing of CMV drivers, insurance costs will increase. EUTA recommends that the determination of need for sleep apnea testing should remain between the employee and his or her doctor.

¹ See 49 U.S.C. 31131(a) (1994).

² See Bureau of Labor Statistics, *National Census of Fatal Occupational Injuries in 2014*, (Sept. 17, 2015) at 9, available at <http://www.bls.gov/news.release/pdf/cfoi.pdf>; Bureau of Labor Statistics, *National Census of Fatal Occupational Injuries in 2014 – Table A-2*, (Sept. 17, 2015) at 12, available at <http://www.bls.gov/iif/oshwc/cfoi/cftb0287.pdf>.

³ See *How is Sleep Apnea Diagnosed?*, National Institutes of Health, <http://www.nhlbi.nih.gov/health/health-topics/topics/sleepapnea/diagnosis> (last visited June 2, 2016).

In the event that FMSCA promulgates a new standard requiring OSA screening, EUTA requests that FMSCA draw a clear distinction between utility drivers and other drivers of other types of motor carriers. FMSCA should recognize that the limited scope and duration of utility driving activities, coupled with the increased burden of adding an OSA screening requirement, warrants an exemption from any potential OSA screening requirements. Moreover, EUTA requests that the Agencies adopt the practice of the Federal Aviation Administration of allowing the OSA evaluation to be conducted by any physician using the AASM guidelines. *See* 81 *Fed.Reg.* at 12,645. Finally, EUTA requests that Drivers who exhibit risk factors necessitating evaluation should be given 3 month cards to allow time for testing and subsequent treatment. Although the Agencies state the Body Mass Index (BMI) is a likely indicator of OSA, there is no absolute correlation between the two.

Thank you for the opportunity to submit these comments.

Respectfully submitted,

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