

U.S. Senate Committee on Commerce, Science, and Transportation
Nominations Hearing on June 8, 2022
Questions for the Record – Minority

Robin Hutcheson, to be Administrator, Federal Motor Carrier Safety Administration (FMCSA)

Ranking Member Roger Wicker

Question 1: *In response to my question about the Safe Driver Apprenticeship Pilot Program during the hearing, you said the Administration’s additional requirement that carriers become Registered Apprenticeships with the Department of Labor (DOL), which is not mentioned in the authorizing statute, was done to expedite implementation of the pilot program. The 18 to 21 year old driver pilot program is a truck operations safety program, which is squarely within the Department of Transportation’s jurisdiction, not DOL’s. How is it the case that adding another layer of bureaucracy to a pilot program from an agency that does not regulate truck on-the-road safety expedited the implementation of the program? Does FMCSA intend to maintain the Registered Apprenticeship requirement throughout the duration of the pilot program?*

Response: The Infrastructure Investment and Jobs Act (IIJA), Section 23022, required FMCSA to establish the Safe Driver Apprenticeship Program (SDAP) within 60 days. The Department saw an opportunity to meet the short implementation deadline and attract a broad range of participants to the program by leveraging an existing, successful framework that has a proven model for success. Utilizing the DOL framework will incentivize participants to join the program through the significant benefit to participants offered by the registered apprenticeship program, including its rigorous training standards; mentorship and pay requirements; and equal employment protections. In addition, FMCSA has been able to leverage existing motor carriers already part of DOL’s Registered Apprenticeship program. Overall, FMCSA has seen a positive response from the trucking industry on the Registered Apprenticeship requirement, including from industry and continues to work closely with industry in fulfilling the goals of the pilot. Additionally, there is the potential to encourage not only recruitment, but also retention by utilizing the structure of the DOL program, which will help reduce turnover and keep safe drivers on the road. The DOL’s Registered Apprenticeship Program has a proven model for success that has shown higher retention rates and higher pay for an apprentice throughout his/her career, as current retention rates show that 91% of the apprenticeships who complete a program are still employed 9 months later.

Question 2: *Under the previous Administration, FMCSA completed several important regulatory actions. These include providing guidance on a trucker’s use of personal conveyance, clarifying the 150 air-mile radius hours of service exemption for haulers of agricultural commodities, and stating that federal regulations preempt state meal and rest break laws. Additionally, after carefully reviewing the data and thousands of public comments, FMCSA modernized the hours of service requirements. These actions taken by the previous Administration provided important regulatory flexibility while maintaining safety on our roads. If confirmed, will you commit to maintaining these actions in your role as Administrator?*

Response: My number one priority is safety. I am committed to maintaining and considering regulatory flexibilities that do not negatively impact safety.

Question 3: *You had a key role in developing DOT's National Roadway Safety Strategy. Notably, the Strategy barely mentions automated driving systems, despite their potential to significantly improve safety. However, FMCSA has received comments in response to a 2019 advanced notice of proposed rulemaking on the integration of automated driving systems, and FMCSA's fiscal year 2023 budget notes that the agency will work towards the safe integration of autonomous vehicles. Can you explain why the National Roadway Safety Strategy barely mentioned automated driving systems? If confirmed, would you work to advance FMCSA policy on automated and autonomous vehicles in a way that promotes innovation, including through FMCSA's proposed rulemaking on automated driving system integration?*

Response: The National Roadway Safety Strategy acknowledges the role ADS can play in safety:

“U.S. DOT is also cognizant of the need to plan for the safety landscape in the future. This includes a responsibility to use holistic approaches to assess the safety of emerging technologies such as Automated Driving Systems (ADS). A small number of vehicles equipped with ADS are in development and undergoing testing today. The Department is tracking their performance daily, and is actively researching test methods, procedures, and criteria to assess long-term safety benefits, as well as broader impacts on workers, drivers, and all people who use the roadways.” (NRSS, page 23).

FMCSA is involved in ADS research to both help advance safe deployment of ADS trucks, and to explore tools and methods for objectively assessing the on-road driving performance of new and emerging ADS-equipped CMVs. FMCSA has established the Automated CMV Evaluation (ACE) Program with the intention of advancing ADS safety evaluation tools.¹

While FMCSA is moving forward with ADS research to meet future roadway safety challenges, the Agency is also working to advance the adoption of current safety technologies collectively known as Advanced Driver Assistance Systems (ADAS) as these technologies can have a more immediate impact on roadway safety. This emphasis was articulated in the NRSS as follows:

“Several Advanced Driver Assistance Systems (ADAS) technologies are known to help prevent or mitigate the impact of crashes. Examples include Automatic Emergency Braking, which can apply a vehicle's brakes automatically in time to avoid or mitigate an impending forward crash with another vehicle; and Lane Departure Warning, which monitors lane markings and alerts the driver when it detects that the vehicle is drifting out of its lane. The Department seeks to continue to leverage enhanced motor vehicle safety performance and technologies to improve safety, including commercial motor vehicle equipment ...” Incentivizing the inclusion of technologies in new motor vehicles can help

¹ See [ACE program Description](#) for more information.

to reduce the frequency of crashes, and to reduce the severity of the outcomes when they do occur. (NRSS at p. 22, footnote omitted.)

ADAS technologies form the building-block systems for ADS vehicles and can play an important role in improving roadway safety. FMCSA has initiated its Tech-Celerate Program² to help advance the safe deployment of ADAS technologies in CMVs through a series of outreach and educational tools.

If confirmed, I will continue to work to advance FMCSA policy on automated and autonomous vehicles in a way that promotes innovation, supports American ingenuity and workers, and supports deployment of technology that improves safety.

Question 4: *Under the previous Administration, FMCSA carefully reviewed the data available to it, as well as public comments, when developing regulations. Notably, FMCSA reviewed over 8,000 public comments before modernizing the hours of service requirements. If confirmed, will you ensure that any FMCSA regulatory actions are based on a thorough review of the data, consideration of the costs and benefits, and input from public comments?*

Response: If confirmed I am committed to ensuring that FMCSA's regulatory actions are data-driven, consider the costs and benefits of proposed actions and alternatives, and consider public comments submitted to the rulemaking dockets.

Question 5: *FMCSA has been working to improve its information technology (IT) system, an effort which is needed to better carry out its rulemaking, compliance, and enforcement mandates. Will improving FMCSA's IT be a priority for you? If so, can you outline how you will advance this work?*

Response: FMCSA's Information Technology (IT) applications and systems play a critical role in supporting the Agency's mission to reduce crashes, injuries, and fatalities involving large trucks and buses. If confirmed, I will ensure that improving our IT applications and systems activities will be a priority for FMCSA. To advance this work we will continue to partner with the Department OCIO in transitioning Commodity IT Services over to the Department's IT Shared Services. We will also focus on innovating and developing IT that explicitly solves problems and being customer-centered to improve the usability and the user experience of the new systems we're developing. I will ensure that FMCSA is most effectively and strategically using its resources to modernize and enhance our IT investments and services.

Senator Mike Lee

Question 1: *If confirmed as Administrator of the FMCSA, what will be your key priorities?*

Response: As Administrator, my priority will be safety and preventing commercial motor vehicle-related crashes and fatalities, which have steadily increased since 2010. The National Roadway Safety Strategy sets an ambitious goal of zero fatalities, commits to actions DOT will

² For more information see <https://www.fmcsa.dot.gov/Tech-CelerateNow>.

take and calls for action from our State and industry partners. The Strategy adopts a safe system approach, recognizing that, because humans are fallible, we need redundant systems among other things. I will also prioritize the implementation of the Bipartisan Infrastructure Law, which increases resources for safety, and also provides new research and tools improve the trucking profession and ultimately improve the supply chain.

Question 2: *Conducting cost-benefit analyses for proposed regulations has been a practice undertaken by agencies under both Democrat and Republican Administrations.*

- *Please explain your views on the use of cost-benefit analysis when considering proposed regulations. Should all FMCSA regulations be considered with a cost-benefit analysis?*
- *If a regulatory cost outweighs the benefit, should that be a determining factor that prevents the FMCSA from moving forward with the regulation?*
- *In considering safety regulations how do you balance government safety requirements with the economic and technical feasibility of implementing the regulation?*

Response: FMCSA is required by statute (49 U.S.C. section 31136(c)) to consider the costs and benefits of regulatory actions issued under the Motor Carrier Safety Act (MCSA) of 1984. The practice of providing regulatory impact analyses is also covered by Executive Order 12866 and OMB Circular A-4. I am committed to complying with the statutory requirement and following the long-standing Executive Order and OMB Circular.

Consistent with Executive Order 12866, agencies should assess costs and benefits of available regulatory alternatives. Costs and benefits include both quantifiable measures and qualitative measures that are difficult to quantify, but nevertheless essential to consider.

Consistent with the Administrative Procedure Act, the MCSA of 1984, and Executive Order 12866, I will ensure that FMCSA's regulatory actions have a legal basis, are data driven, can be shown to provide a cost-effective approach for improving safety, and provide practicable technical means of achieving compliance.

Question 3: *When considering regulatory proposals, should FMCSA prioritize policies that allow market participants to freely compete without FMCSA regulatory action or is the market more successful when the FMCSA actively guides the market through regulatory action?*

Response: FMCSA prioritizes safety and preventing commercial motor vehicle-related crashes in our regulatory proposals. FMCSA regulatory policies should and will continue to be consistent with Executive Order 12866 which includes consideration of private-sector actions and other applicable considerations.

Question 4 : *I would like to learn more about your views on the use of the FMCSA's rulemaking power:*

- *Should the FMCSA promulgate rules if the rulemaking power is not expressly granted by Congress?*
- *Can the FMCSA use its rulemaking power to circumvent legal precedents with which it disagrees?*
- *Can the rules passed by the FMCSA insulate market incumbents from competition?*

Response: If confirmed, I will ensure that FMCSA’s regulatory actions are based on clear legal bases and are prescribed in accordance with the requirements of the Administrative Procedure Act and our statutory authorities. I recognize that the Agency is obligated to fulfill specific statutory requirements for certain rulemakings and it is provided general authorities that allow FMCSA to take actions to address safety matters not explicitly listed in the authorizing statutes.

I commit that the Agency will not initiate a rulemaking or regulatory action for which there is insufficient legal basis, nor will the Agency engage in rulemaking actions with the specific intent to circumvent legal decisions.

Our top priority is safety. Consistent with Executive Order 12866, I would not engage in regulatory actions designed to discourage marketplace competition.

Question 5: *At the beginning of the pandemic, the FMCSA granted emergency relief to Hours-of-Service requirements for COVID-19 emergency relief. As we look to a post COVID-19 world, would you support making any of these regulatory suspensions permanent? If not, why not?*

Response: Following the Presidential declaration of a National emergency in March 2020 related to COVID-19, FMCSA instituted a nationwide declaration granting emergency regulatory relief for motor carriers and drivers transporting essential supplies and commodities impacted by the pandemic, including food, livestock and livestock feed, community sanitation and medical supplies, fuel, and supplies to assist individuals impacted by the consequences of the COVID-19 pandemic. Throughout the COVID-19 pandemic, FMCSA has continuously monitored the unprecedented disruptions caused by the National emergency and expanded and removed categories of supplies, equipment, and persons covered by the declaration to respond to changing needs for emergency relief.

The efficient movement of freight around the country by trucks is vital, and FMCSA understands that during emergencies some operational flexibility can make it easier to get essential supplies where they are needed. FMCSA has exercised its emergency authority to give truck drivers more time to make deliveries of critically needed commodities.

FMCSA’s safety mission is paramount, and the hours-of-service regulations are vital safety regulations to help ensure that drivers rested, awake, and alert to reduce crashes, injuries, and fatalities involving large trucks. FMCSA will continue to evaluate and balance regulatory relief and waivers with its safety mission.

Question 6: *Are there any lessons that we can learn from the FMCSA emergency relief that can reform our Hours-of-Service requirements to provide more flexibility and thus promote greater driver safety?*

Response:

Beginning September 1, 2021, FMCSA's COVID-19 emergency declaration included a requirement for motor carriers to report, on a monthly basis, their reliance on the emergency declaration during operations. While the information collected is limited, we will commit to evaluating all the data collected for the duration of FMCSA's emergency declaration to determine whether there are potential lessons learned that could be applied to future agency action.

Question 7: *FMCSA recently published a notice of intent for a rulemaking regarding speed limiters for commercial motor vehicles.³*

- *If confirmed, will you be supportive of moving forward with this rulemaking?*
- *Why shouldn't this practice be left to individual states given that states generally retain the authority to mandate their own traffic laws?*
- *Could this rule result in the increased likelihood of collisions given that more frequent lane changes will certainly be needed to pass slower commercial motor vehicles? If not, why not?*
- *Given the current supply chain crisis, do you have concerns that this required speed limit could slow the movement of goods, and even create dangerous incentives for trucks to make up for lost time on slower roads in order to deliver their goods on time? If not, why not?*

Response:

On May 4, 2022, the FMCSA published an advance notice of supplemental proposed rulemaking (SNPRM) announcing the Agency's intent to move forward with a rulemaking to require that motor carriers operating commercial motor vehicles (CMVs) in interstate commerce set the electronic engine control unit (ECU) to a maximum speed to be determined through the rulemaking.

The public comment period ends on July 18, 2022.

As of June 15, there were approximately 14,600 public comments to the notice in the docket. At the end of the comment period, the Agency will consider the data and information provided by

³ Department of Transportation, Federal Motor Carrier Safety Administration; Docket No. FMCSA-2022-0004; Parts and Accessories Necessary for Safe Operations; Speed Limiting Devices; https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2022-04/FMC-PRR-220107-001_AB63%20Speed%20limiters%20NOI%2004.20.22signed.pdf

commenters in determining the specifics for the SNPRM and will continue to work with member offices, stakeholders, and industry,

The rulemaking proposal does not interfere with State and local jurisdictions' ability to establish speed limits; the SNPRM would propose a maximum safe speed for CMVs sharing the roads with other roadway users.

Numerous large fleets currently operate speed-limited CMVs with no reported safety problems linked to speed differentials between their trucks and passenger cars. We will review the public comments to our May 2022 notice and determine the most appropriate actions to address these and other concerns.

As numerous large fleets currently operate speed-limited CMVs, we do not anticipate the proposed rulemaking would have an adverse impact on the safe and efficient movement of freight.

Question 8: *The FMCSA issued new entry level driving training regulations on February 7, 2022. While I do appreciate the need to focus on safety, I have been informed by many in my state that additional costs to take the required classes will range from \$2500 to \$8500.*

- *In your view, will additional costs like this actually make it more difficult to fill the driver needs that we already have? If not, why not?*

Response:

The Entry-level Driver Training (ELDT) rules were mandated by Congress to improve driver safety. In developing the new ELDT rule, which was the product of a negotiated rulemaking involving a full range of driver, motor carrier, training providers, safety advocates, State licensing agencies and other stakeholder participants, FMCSA kept the additional costs to a minimum by requiring driver training only on the knowledge and skills essential to safe operation.

The cost of the necessary training can also be made more affordable through various programs. Some motor carriers, for example, offer in-house training programs and/or pay employees while they are going through the required training. Through its Commercial Motor Vehicle Operator Safety Training grant program, FMCSA provides financial assistance to organizations that provide CMV operator training to help cover tuition costs. Veterans and their families, as well as those from underserved communities, are provided priority access to these funds. FMCSA has and will continue to engage with States, constituents, and stakeholders on implementation and identifying opportunities for additional assistance.

Senator Rick Scott

Question: *Drivers who have driven a speed-governed truck have said that it takes additional time and practice to learn how to operate with a speed limiter. If a speed limiter mandate were implemented, all drivers, regardless of their driving experience, would have to use a speed limiter, requiring them to relearn and adjust their driving skills. For drivers who have decades*

of experience and millions of safe driving miles, this mandate would pose serious safety challenges.

- *If confirmed, would you commit to studying the potential operational and safety challenges for drivers with significant experience driving a non-speed-limited truck, and incorporating driver feedback on this issue in any rulemaking decisions?*

Response: On May 4, 2022, the FMCSA published an advance notice of supplemental proposed rulemaking announcing the Agency's intent to move forward with a rulemaking to require that motor carriers operating commercial motor vehicles (CMVs) in interstate commerce set the electronic engine control unit (ECU) to a maximum speed to be determined through the rulemaking. The public comment period ends on July 18, 2022. The Agency will review all the comments, including docket submissions from CMV drivers, to determine whether there are issues or concerns about training for drivers of speed-limited vehicles and how best to address those concerns.