

# Congress of the United States

Washington, DC 20515

March 27, 2023

The Honorable Robin Hutcheson  
Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Administrator Hutcheson,

We write today to make clear our frustration with the implementation of the Safe Driver Apprenticeship Pilot Program (“SDAP”) by the Federal Motor Carrier Safety Administration (“FMCSA”). Congress established this program in Section 23022 of the Infrastructure Investment and Jobs Act (“IIJA”) to demonstrate how 18 to 20-year-old drivers may safely operate trucks in interstate commerce, just as many young truck drivers already do in 49 states and the District of Columbia. Managed correctly, this program could give young drivers the experience they need to enter a crucial transportation job. Instead, FMCSA saddled the program with unnecessary requirements—none of which are found in the program’s authorizing statute—that appear designed to doom SDAP. Indeed, enrollment data recently provided to Congress by FMCSA reveals that these barriers are impeding program participation.

Two of these FMCSA-generated barriers are particularly problematic. The first—and perhaps most objectionable—is the requirement that a motor carrier participating in the SDAP must also participate in the Department of Labor (“DOL”) Registered Apprenticeship Program (“RAP”). This requirement is nowhere to be found in the law’s text. Even Secretary of Transportation Pete Buttigieg acknowledged this when he testified to the Senate Commerce Committee in May 2022, saying that he “[didn’t] think that’s in the text of the law.”<sup>1</sup> Nevertheless, he rationalized superimposing RAP participation onto SDAP because it would allow FMCSA to establish the program “both swiftly and safely.”<sup>2</sup>

Rather than accelerating SDAP’s deployment, FMCSA’s decision to implicate DOL has hindered implementation. Now, instead of registering for one program, interested motor carriers must spend considerable administrative time to enroll in two. The American Trucking Associations called it a “substantial burden.”<sup>3</sup> Moreover, FMCSA should not voluntarily cede authority to a different agency, particularly one without any expertise in motor vehicle safety, without direction from Congress.

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<sup>1</sup> CQ Congressional Transcripts, *Senate Commerce, Science and Transportation Committee Holds Hearing on Fiscal Year 2023 Department of Transportation Budget*, CQ (May 3, 2022), available at <https://plus.cq.com/doc/congressionaltranscripts-6525153?3>.

<sup>2</sup> *Ibid.*

<sup>3</sup> Mariah Barr, *Industry Reactions to the New Apprenticeship Pilot Program*, Foley (Mar. 17, 2022), available at <https://www.foleyservices.com/news/industry-reactions-to-the-new-apprenticeship-pilot-program/>.

The RAP requirement is also unnecessary for safety reasons. Congress mandated two separate probationary periods for 18 to 20-year-old drivers with clear competency requirements in the law. Nor would FMCSA derive any safety benefits from using the DOL apprenticeship model when FMCSA could rely on its own prior work setting up training programs. For example, in 2018, FMCSA established a pilot program to examine the safety of 18 to 20-year-old drivers with military driving experience.<sup>4</sup> Similarly, in 2020, FMCSA proposed a pilot program, comparable to SDAP, to allow 18 to 20-year-old drivers to operate in interstate commerce.<sup>5</sup> Adding the RAP requirement for this purpose was unnecessary.

The second problematic provision FMCSA imposed on SDAP is the requirement that participating motor carriers must possess certain technologies, such as inward-facing cameras, in addition to those technologies that the IIJA already mandates. Like the DOL apprenticeship requirement, the inward-facing camera requirement is nowhere in the statute's text. In fact, FMCSA added it approximately eight months after the IIJA's enactment. Furthermore, it is likely that this requirement is needlessly deterring applicants from participating in the program, in part due to reasonable privacy concerns.

Rather than permitting FMCSA to “swiftly and safely” stand up SDAP, these two requirements have depressed participation despite our understanding of significant interest in the program. The most recent data shows that 21 motor carriers have been accepted into the SDAP, 28 motor carriers have RAP applications pending, just four drivers are enrolled in the program, and only two drivers have completed it.<sup>6</sup> It is therefore likely that FMCSA will not have adequate data to assess the program's usefulness unless it removes these unnecessary barriers to participation.

In order to understand FMCSA's decision to impose the RAP and inward-facing camera requirements, we request that you provide written responses to the questions below no later than April 10, 2023. In your response, please specifically identify the question(s) to which you are responding.

1. Identify all individuals (by name and title) who participated in the decision to add the RAP requirement to SDAP. Identify who had final decision-making authority regarding this decision.
2. Identify all individuals (by name and title) who participated in the decision to add the inward-facing camera requirement to SDAP. Identify who had final decision-making authority regarding this decision.

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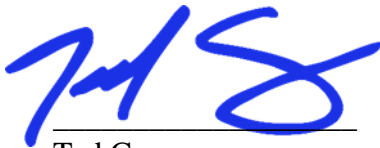
<sup>4</sup> Section 5404 of the Fixing America's Surface Transportation (“FAST”) Act directed FMCSA to establish this program.

<sup>5</sup> See *FMCSA Proposes New Under-21 Commercial Driver Pilot Program*, FMCSA (Sept. 4, 2020), available at <https://www.fmcsa.dot.gov/newsroom/fmcsa-proposes-new-under-21-commercial-driver-pilot-program>.

<sup>6</sup> This information was provided to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure by FMCSA on February 23, 2023, via email.

3. Provide all data and analysis supporting FMCSA's decision to impose additional requirements for SDAP participation that are not included in the IJA itself, including the RAP and inward-facing camera requirements.
4. State whether FMCSA considered that either the RAP requirement or the inward-facing camera requirement could affect participation in SDAP. If so, please identify the data and/or analyses supporting your decision to nevertheless impose these requirements.
5. Explain why rather than (a) limiting requirements for SDAP participation to those set forth in the text of the IJA and/or (b) making any additional actions optional for SDAP participation, FMCSA believed that the RAP and inward-facing cameras requirements were necessary.
6. State whether FMCSA considered that potential SDAP participants could have privacy concerns with the inward-facing camera requirement. If so, please provide any data and/or analyses supporting your decision to nevertheless impose this requirement.
7. State whether, in light of the low SDAP participation rates, FMCSA will remove any of the non-IJA requirements that it has imposed on SDAP, including the RAP and inward-facing camera requirements? If not, provide all analysis and data supporting that decision.

Sincerely,



Ted Cruz  
Ranking Member  
Senate Committee on Commerce,  
Science, and Transportation



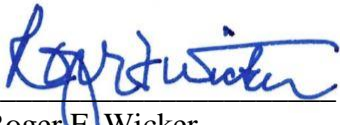
Sam Graves  
Chairman  
House Committee on Transportation  
And Infrastructure



Todd Young  
Ranking Member  
Surface Transportation,  
Maritime, Freight, and Ports



Rick Crawford  
Chairman  
Subcommittee on Highways  
And Transit



Roger F. Wicker  
U.S. Senator



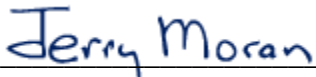
Brian Babin, D.D.S  
Member of Congress



Deb Fischer  
U.S. Senator



Aaron Bean  
Member of Congress



Jerry Moran  
U.S. Senator



Tim Burchett  
Member of Congress



Marsha Blackburn  
U.S. Senator



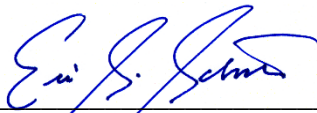
Mike Collins  
Member of Congress



Ted Budd  
U.S. Senator



John Duarte  
Member of Congress




Eric Schmitt  
U.S. Senator



Chuck Edwards  
Member of Congress



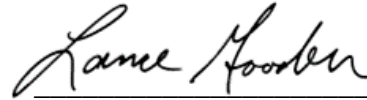
J.D. Vance  
U.S. Senator



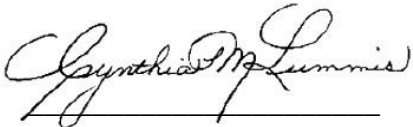
Mike Ezell  
Member of Congress



Shelley Moore Capito  
U.S. Senator



Lance Gooden  
Member of Congress



Cynthia Lummis  
U.S. Senator



Dusty Johnson  
Member of Congress



Thomas H. Kean Jr.  
Member of Congress



Tracey Mann  
Member of Congress



Troy E. Nehls  
Member of Congress



Burgess Owens  
Member of Congress



Scott Perry  
Member of Congress



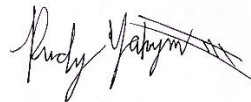
David Rouzer  
Member of Congress



Jeff Van Drew  
Member of Congress



Daniel Webster  
Member of Congress



Rudy Yakym III  
Member of Congress



Garret Graves  
Member of Congress