

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2022-0004]

Parts and Accessories Necessary for Safe Operations; Speed Limiting Devices

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: FMCSA announces its intent to proceed with a speed limiter rulemaking by preparing a supplemental notice of proposed rulemaking (SNPRM) to follow up on the National Highway Traffic Safety Administration's (NHTSA) and FMCSA's jointly issued September 7, 2016 notice of proposed rulemaking (NPRM) on this subject. The SNPRM will propose that motor carriers operating commercial motor vehicles (CMVs) in interstate commerce with a gross vehicle weight rating (GVWR) or gross vehicle weight (GVW) of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, that are equipped with an electronic engine control unit (ECU) capable of governing the maximum speed be required to limit the CMV to a speed to be determined by the rulemaking and to maintain that ECU setting for the service life of the vehicle. With this notice of intent, FMCSA requests public comments and data regarding the adjustment or reprogramming of ECUs.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2022-0004 using any of the following methods:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov/docket/FMCSA-2022-0004/document>. Follow the online instructions for submitting comments.
- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: Dockets Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Office of Vehicle and Roadside Operations, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001; (202) 366-0676; MCPSV@dot.gov. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

A. Submitting Comments

If you submit a comment, please include the docket number for this notice of intent (NOI) (FMCSA-2022-0004), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you

include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2022-0004/document>, click on this NOI, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the NOI contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NOI, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NOI. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington

DC 20590-0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this NOI as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2022-0004/document> and choose the document to review. To view comments, click this NOI, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy Act

DOT posts comments received without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy.

I. BACKGROUND

On September 7, 2016, NHTSA and FMCSA jointly proposed regulations that would require vehicles with a GVWR of more than 11,793.4 kilograms (26,000 pounds) to be equipped with a speed limiting device set to a maximum speed to be specified in a final rule and would require motor carriers operating such vehicles in interstate

commerce to maintain functional devices set to that speed for the service life of the vehicle (81 FR 61942).

Specifically, NHTSA proposed to establish a new Federal Motor Vehicle Safety Standard (FMVSS) requiring each vehicle with a GVWR of more than 11,793.4 kilograms (26,000 pounds), as manufactured and sold, to have its device set to a speed not greater than a specified speed and to be equipped with means of reading the vehicle's current speed setting and the two previous speed settings (including the time and date the settings were changed) through its on-board diagnostic connection.

FMCSA proposed a complementary Federal Motor Carrier Safety Regulation (FMCSR) requiring each multipurpose passenger vehicle, truck, and bus and school bus with a GVWR of more than 11,793.4 kilograms (26,000 pounds)¹ to be equipped with a speed limiting device meeting the requirements of the proposed FMVSS applicable to the vehicle at the time of manufacture, including the requirement that the device be set to a speed not greater than a specified speed. Motor carriers operating such vehicles in interstate commerce would be required to maintain the speed limiting devices for the service life of the vehicle.

At the time the 2016 NPRM was published, NHTSA and FMCSA stated that all vehicles with electronic engine control units (ECUs) are generally electronically speed governed to prevent engine or other damage to the vehicle. This is because the ECU monitors an engine's RPM (from which vehicle speed can be calculated) and also controls the supply of fuel to the engine. The NPRM stated that the information NHTSA analyzed indicated that ECUs have been installed in most heavy trucks since 1999,

¹ The jurisdictional definitions of GVW and GVWR applicable to NHTSA regulations are slightly different from the FMCSA definitions applicable to the SNPRM.

although the Agency was aware that some manufacturers were still installing mechanical controls through 2003 (81 FR 61947). Based on this background, it is likely the required means of achieving compliance with a speed limiter requirement would be to use the ECU to govern the speed of the vehicle rather than installing a mechanical means of doing so.

The Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions,² published December 10, 2021, lists both speed limiter rules, from NHTSA (Regulation Identification Number 2127-AK92) and FMCSA (Regulation Identification Number 2126-AB63), as long-term actions. This notice informs the public that FMCSA intends to move forward with a separate motor carrier-based speed limiter rulemaking. FMCSA believes that placing the requirement on motor carriers will ensure compliance with the rule, and potentially avoid confusion on who is responsible. FMCSA believes the requirements can be met by the motor carriers but asks questions below to validate that approach. FMCSA will continue to consult with NHTSA during the development of this rule. If necessary, NHTSA will evaluate the need for additional regulatory actions concerning CMV manufacturer requirements to address issues raised during implementation that are beyond the scope of FMCSA's authority.

FMCSA Intention

FMCSA intends to issue an SNPRM that would, if adopted, impose speed limitations on certain CMVs subject to the FMCSRs. The rulemaking would propose that motor carriers operating certain *commercial motor vehicles*, as defined in 49 CFR 390.5,

² "Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions." *Current Unified Agenda of Regulatory and Deregulatory Actions*, https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST Accessed December 22, 2021.

in interstate commerce that are equipped with an ECU capable of setting speed limits be required to limit the CMV to a speed to be determined by the rulemaking and to maintain that limit for the service life of the vehicle. The agency is considering making the rule only applicable to CMVs manufactured after a certain date, such as 2003, because this is the population of vehicles for which ECUs were routinely installed and may potentially be used to govern the speed of the vehicles. FMCSA seeks data below, to determine if that approach should be revised in the forthcoming SNPRM. The agency is considering whether a retrofit requirement would be necessary and requests information below.

FMCSA is not yet proposing regulatory language to amend the FMCSRs in this notice. FMCSA does, however, solicit comments on the questions listed in Section II. REQUEST FOR PUBLIC COMMENTS, which will assist in the development of the SNPRM.

II. REQUEST FOR PUBLIC COMMENTS

FMCSA requests comments on the programming or adjustment of ECUs that could be made to impose speed limits on CMVs, including responses to the questions below.

General Questions: Setting and Maintaining ECUs

1. What percentage of the CMV fleet currently uses speed limiting devices?
2. If in use, at what maximum speed are the devices generally set?
3. What skill sets or training are needed for motor carriers' maintenance personnel to adjust or program ECUs to set speed limits?
4. What tools or equipment are needed to adjust or program ECUs?
5. How long would adjustment or reprogramming of an ECU take?

6. Where can the adjustment or reprogramming of an ECU be completed?
 - 6.a Can the adjustment or reprogramming of an ECU be made on-site where the vehicle is ordinarily housed or garaged, or would it have to be completed at a dealership?
7. Do responses to questions 3 through 6 change based on the model year of the power unit?
8. Since publication of the NPRM, how has standard practice or technology changed as it relates to the ability to set speed limits using ECUs?
9. Are there any challenges or burdens associated with FMCSA publishing a rule without NHTSA updating the FMVSS?
10. Should FMCSA revisit using the 2003 model year as the baseline requirement for the rule?
11. Should FMCSA consider a retrofit requirement in the rule and, if so, should it be based on model year or other criteria, and what would the cost of such a requirement be?
12. Should FMCSA include Classes 3-6 (i.e., 10,001 – 26,001 lbs. GVWR) in the SNPRM?



Robin Hutcheson
Deputy Administrator