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**Parts and Accessories Necessary for Safe Operation;
Rear Impact Guards and Rear Impact Protection
Notice of Proposed Rulemaking
85 Federal Register 85571, December 29, 2020**

Advocates for Highway and Auto Safety (Advocates), Center for Auto Safety (CAS), Citizens for Reliable and Safe Highways (CRASH), Parents Against Tired Truckers (P.A.T.T.) and the Truck Safety Coalition (TSC) file these comments in response to the Federal Motor Carrier Safety Administration's (FMCSA, Agency) Notice of Proposed Rulemaking (NPRM) to include rear impact guards (also known as underride guards) on the list of items that must be examined as part of the annual inspection of a commercial motor vehicle (CMV).¹ While the undersigned groups support this NPRM, the Agency's delay in taking such an elementary action is deeply concerning as CMVs have been subject to an annual inspection for over three decades. Further, more actions must be undertaken by the U.S. Department of Transportation (DOT) to prevent and mitigate underride crashes that needlessly kill and horrifically injure too many individuals each year.

Commercial Motor Vehicle Crashes Needlessly Kill Thousands of People Each Year as FMCSA Fails to Advance Meaningful Safety Countermeasures

Fatal truck crashes continue to occur at an alarmingly high rate. In 2019, over 5,000 people were killed in crashes involving a large truck.² Since 2009, the number of fatalities in large truck crashes has increased by 48 percent.³ Additionally, 159,000 people were injured in crashes involving a large truck in 2019, and injuries of large truck occupants increased by 18 percent.⁴ A study by the Insurance Institute for Highway Safety (IIHS) of fatal crashes between large trucks

¹ 85 FR 85571 (Dec. 29, 2020).

² Traffic Safety Facts: Research Note; Overview of Motor Vehicle Crashes in 2019, NHTSA, Dec. 2020, DOT HS 813 060.

³ *Id.* and Traffic Safety Facts 2018: A Compilation of Motor Vehicle Crash Data, NHTSA, Nov. 2020, DOT HS 812 981. Note, the 48 percent figure represents the overall change in the number of fatalities in large truck involved crashes from 2009 to 2019. However, between 2015 and 2016 there was a change in data collection at U.S. DOT that could affect this calculation. From 2009 to 2015 the number of fatalities in truck involved crashes increased by 21 percent and between 2016 to 2019, it increased by 7 percent.

⁴ Traffic Safety Facts: Research Note; Overview of Motor Vehicle Crashes in 2019, NHTSA, Dec. 2020, DOT HS 813 060.

and passenger vehicles estimated that underride occurred in half of these incidents.⁵ The cost to society from crashes involving CMVs was estimated to be \$143 billion in 2018, the latest year for which data is available.⁶ When adjusted solely for inflation, this figure amounts to over \$150 billion.⁷

Despite the costly death and injury toll, the FMCSA is woefully behind in taking action on critical rulemakings that could be saving lives including mandating speed limiting devices and implementing proficiency examinations for new motor carriers.⁸ Additionally, FMCSA should expeditiously implement the recommendations to improve the Compliance, Safety, Accountability (CSA) program made by the National Academies of Sciences, Engineering and Medicine (NASEM) and restore the public availability of all CSA data.⁹ Moreover, the Agency should reinstate the rulemaking intended to ensure that drivers afflicted with obstructive sleep apnea are properly screened during the medical examination and are receiving the medical treatment they need so they do not become fatigued while operating a CMV on public roads.¹⁰ The National Transportation Safety Board (NTSB) has repeatedly cited fatigue as a major contributor to truck crashes and included reducing fatigue related crashes on its 2019-20 Most Wanted List of Transportation Safety Improvements.¹¹ Further, on October 29, 2020, U.S. Senator Ed Markey (D-MA) sent a letter to the Agency regarding its repeated failure to conduct proper oversight of the industry.¹² Our organizations urge the Agency to take immediate actions to advance FMCSA's statutory mission of ensuring public safety by working with the National Highway Traffic Safety Administration (NHTSA) to update the outdated performance standards for rear underride guards as well as require side and front underride guards on all CMVs.¹³

Ensuring Rear Underride Guards are Subject to an Annual Inspection Will Enhance Public Safety

This rulemaking is long overdue. Rear underride guards have been required for nearly 70 years in the U.S.¹⁴ Congress mandated the annual inspection of CMVs engaged in interstate commerce in Section 210 of the Motor Carrier Safety Act of 1984.¹⁵ However, rear underride guards are

⁵ Braver, E, Cammisa, M, Lund, A., Early, N, Mitter, E, Powell, M, Incidence of large truck-passenger vehicle underride crashes in the Fatal Accident Reporting System and the National Accident Sampling System, Transportation Research Record 1595 (Aug. 1997).

⁶ 2020 Pocket Guide to Large Truck and Bus Statistics, FMCSA, Oct. 2020, RRA-20-004.

⁷ CPI Inflation Calculator, BLS, available at https://www.bls.gov/data/inflation_calculator.htm.

⁸ U.S. Department of Transportation, Report on DOT Significant Rulemakings (Feb. 2020).

⁹ National Academies of Sciences, Engineering, and Medicine 2017. Improving Motor Carrier Safety Measurement. Washington, DC: The National Academies Press. <https://doi.org/10.17226/24818>.

¹⁰ 81 FR 12642 (Mar.10, 2016).

¹¹ NTSB, 2019-2020 Most Wanted List of Safety Improvements (Feb. 2019).

¹² Letter from U.S. Senator Edward J. Markey to FMCSA Deputy Administrator James Wiley Deck (Oct. 29, 2020). See also: Laura Crimaldi, Markey calls out trucking regulator for 'dereliction of responsibility,' demands reform, Boston Globe (Oct. 29, 2020).

¹³ 49 U.S.C. §113(b) (1999). In the Agency's enabling statute, Congress expressly directed that "[i]n carrying out its duties, the Administration shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in motor carrier transportation."

¹⁴ 85 FR 85572.

¹⁵ Pub. L. 98-554 (1984).

not included in the equipment subject to this annual inspection.¹⁶ As noted by the Agency, “[t]his means that a vehicle could pass the annual inspection with a missing or damaged rear impact guard.”¹⁷ However, a CMV with a missing or damaged underride guard would be in violation of 49 CFR 396.3(a)(1), which requires CMVs to be properly maintained and thus, would not receive a valid inspection decal. Requiring the guard also be subject to the annual inspection requirement advances important safety objectives as outlined in the petition for rulemaking on this matter submitted by the Commercial Vehicle Safety Alliance (CVSA).¹⁸ First, requiring that these guards are annually inspected will place additional emphasis on ensuring that this lifesaving equipment is in proper condition and improve carrier compliance with an essential Federal Motor Carrier Safety Regulation (FMCSR). As CVSA notes, in fiscal year 2017, there were 2,300 violations related to rear underride guards and over half of those infractions were related to missing, damaged or improperly constructed guards.¹⁹ Furthermore, a March 2019 report by the Government Accountability Office (GAO) determined that “the lack of an annual inspection requirement for rear impact guards potentially affects the safety of the traveling public and the FMCSA’s ability to achieve its safety mission.”²⁰ The GAO further stated that “without explicitly including the inspection of the rear guard in Appendix G, there is no assurance that rear guards in operation will be inspected at least annually to ensure they perform as designed or prevent or mitigate an underride crash.”²¹ The undersigned organizations concur with the above recommendations and conclusions, endorse the Agency to require annual inspections and urge completion of this overdue rulemaking without further delay.

The U.S. DOT Must Undertake Additional Actions to Prevent and Mitigate Underride Crashes – Solutions are Available but Ignored

In 2015, the NHTSA issued a NPRM to update the standards for rear impact guards that are installed on the rear of trailers.²² However, the NPRM proposed only to upgrade the federal standard to meet the Canadian standard issued over a decade ago. This proposal is completely inadequate and inferior compared to guards currently available in the marketplace which have demonstrated superior performance capabilities. In addition, the NHTSA in the NPRM indicated that it did not intend on requiring single-unit trucks (SUTs) to be equipped with underride guards, instead determining that retroreflective tape on the side and rear should be installed.²³ While requiring retroreflective tape is long overdue, it alone is obviously an insufficient and unsatisfactory countermeasure to prevent a passenger vehicle from going under the back of a truck. To properly address the public safety threat posed by rear underride crashes, the federal motor vehicle safety standards (FMVSS) that apply to rear underride guards should be updated at a minimum to meet the standards set by the Insurance

¹⁶ 49 CFR 396.17 Appendix G.

¹⁷ 85 FR 85573.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* See also: GAO, Truck Underride Guards, Improved Data Collection, Inspections, and Research Needed, GAO-19-264 (Mar. 2019).

²¹ 85 FR 85574.

²² 80 FR 78418 (Dec. 16, 2015).

²³ *Id.*

Institute for Highway Safety (IIHS) in its TOUGHGUARD award and should be applied to SUTs as well as trailers.²⁴

The IIHS has also conducted two tests of a side underride guard. The guard succeeded in blocking a midsize car traveling 35 miles-per-hour (MPH) from going underneath the side of the trailer.²⁵ A subsequent test showed it also prevented underride at 40 MPH.²⁶ In addition, front guards that prevent a truck from overriding or traveling over a passenger motor vehicle when the truck strikes the rear of the vehicle have been in use in the European Union for years.²⁷ The NTSB has recommended improving comprehensive underride protection.²⁸ It is time for DOT to act and for this lifesaving equipment to finally make its way onto U.S. roads.

Other Proven Lifesaving Standards Languish While the Truck Crash Death and Injury Toll Mounts Unabated

According to the NHTSA, from 2003 through 2008, large trucks were the striking vehicle in approximately 32,000 rear-end crashes resulting in 300 fatalities and injuring over 15,000 people annually.²⁹ In 2015, Advocates, along with the CAS, TSC and Road Safe America, filed a petition with NHTSA seeking the issuance of a rule to require forward collision avoidance and mitigation braking systems (F-CAM), now more commonly referred to as automatic emergency braking (AEB), on CMVs with a gross vehicle weight rating (GVWR) of 10,000 pounds or more.³⁰ These systems alert the driver to an object in front of the CMV, such as a motor vehicle, and can apply the brakes to stop the CMV if the driver fails to respond. The NHTSA estimated in 2012 that fleetwide adoption of advanced AEB systems in CMVs could save 166 lives per year and prevent 8,361 injuries.³¹ In addition, IIHS has determined that equipping large trucks with AEB could eliminate more than two out of five crashes in which a large truck rear-ends another vehicle.³² In fact, since November 1, 2015, CMVs in Europe have been required to be equipped with lifesaving AEB.³³ Lastly, the NTSB has recommended that AEB systems be required on all highway vehicles.³⁴ The NHTSA granted consumer groups' petition in October

²⁴ IIHS, Topics, Large Trucks, Truck Underride, available at: <https://www.iihs.org/topics/large-trucks/truck-underride>

²⁵ *Id.*

²⁶ *Id.*

²⁷ GAO, Truck Underride Guards, Improved Data Collection, Inspections, and Research Needed, GAO-19-264 (Mar. 2019).

²⁸ NTSB Safety Recommendations H-10-013, H-14-002, H-14-003, H-14-004.

²⁹ Woodrooffe, J., et. al., Performance Characterization and Safety Effectiveness Estimates of Forward Collision Avoidance and Mitigation Systems for Medium/Heavy Commercial Vehicles, p. xvi, Rep. No. UMTRI-2011-36, UMTRI, pp.xxii-xxiii (Aug. 2012).

³⁰ Petition of Rulemaking: Requesting Issuance of a Rule to Require the Use of Forward Collision Avoidance and Mitigation Systems for Commercial Motor Vehicles, Advocates et. al., Feb. 19, 2015, NHTSA-2015-0099-0001.

³¹ Woodrooffe, J., et al., Performance Characterization and Safety Effectiveness Estimates of Forward Collision Avoidance and Mitigation Systems for Medium/Heavy Commercial Vehicles, Report No. UMTRI-2011-36, UMTRI (August 2012). Docket No. NHTSA-2013-0067-0001.

³² Teoh, E, Effectiveness of front crash prevention systems in reducing large truck crash rates, IIHS (Sep. 2020).

³³ See, eg: InterRegs.net, [New UN ECE Regulation on Advanced Emergency Braking Systems Adopted](https://www.interregs.com/articles/spotlight/new-un-ece-regulation-on-advanced-emergency-braking-systems-adopted-000208), (Aug. 2019), at: <https://www.interregs.com/articles/spotlight/new-un-ece-regulation-on-advanced-emergency-braking-systems-adopted-000208>.

³⁴ NTSB, 2019-2020 Most Wanted List of Transportation Safety Improvements.

2015 but has not undertaken any further regulatory proceedings.³⁵ This needless delay is unconscionable when crashes could be prevented and lives could be saved by technology which is available and already in many CMVs.

Conclusion

The undersigned support the FMCSA's proposal to include underride guards on the list of items that must be examined as part of the annual inspection of a CMV and urge the Agency to complete this rulemaking promptly. In addition, the U.S. DOT must undertake additional actions to prevent and mitigate underride crashes including updating the outdated performance standard for rear guards as well as requiring the installation of side and front guards. Lastly, AEB should be required as standard equipment on all CMVs.

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³⁵ 80 FR 62487 (Oct. 16, 2015).