

Congress of the United States

Washington, DC 20515

August 25, 2022

The Honorable Steven Cliff
Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue SE
Washington, D.C. 20590

Dear Administrator Cliff,

We write to express our deep concerns regarding the final rule (RIN 2127-AL58) recently issued by the National Highway Traffic Safety Administration (NHTSA) that modifies NHTSA's safety standards (FMVSS Nos. 223 and 224) addressing rear underride protection.

As you well know, an underride crash occurs when a car slides under a large truck, such as a semi-trailer, during a collision. When these crashes happen, critical safety features in a car are rendered useless because most of the car slides under the trailer and the trailer undercarriage crashes straight through the windows and into the passengers. The passengers in the car often suffer severe head and neck injuries, including decapitation. These crashes are frequently fatal, even at low speeds. Data indicates that at least hundreds of people are killed in these crashes each year—with the actual number likely being much higher.

As a part of the *Infrastructure Investment and Jobs Act* (IIJA, P.L. 117-58), NHTSA was required to issue a final rule on rear impact guards within a year of the enactment of the bill, which NHTSA announced on June 30, 2022. This final rule (RIN 2127-AL58) changed NHTSA's standards by adopting "similar requirements to Transport Canada's standard for rear impact guards."¹ Specifically, the rule requires large trucks be equipped with rear impact guards that prevent passenger compartment intrusion (PCI) when: (1) 100 percent of the width of a car overlaps the rear of the truck; and (2) 50 percent of the width of a car overlaps the rear of the truck. However, the rule does not require such rear impact guards when 30 percent of the width of a car overlaps.

While we were hopeful when initially notified about the final underrides rule, we were extremely disappointed to see that it functionally lowers the bar for truck safety in the United States. Instead of meaningfully raising the standards that transportation and logistics companies must meet, the rule merely comports the standards to general industry practice. As stated by NHTSA itself in the final rule, "94 percent of new trailers sold in the United States subject to FMVSS Nos. 223 and 224 already comply with the requirements of this final rule."²

¹ Federal Motor Vehicle Safety Standards; Rear Impact Guards, Rear Impact Protection, 87 Fed. Reg. 42,339, 42,339 (Jul. 15, 2022).

² *Id.* at 42,344.

Not only are most trailers currently equipped with rear guards that already meet the new standards, but many trailers also have rear guards that even mitigate PCI in 30% overlap crashes. In fact, the Insurance Institute for Highway Safety has been testing and rating semitrailers on their response to 30% overlap for five years and nine companies, which represent 80% of the market, have received the Toughguard Award. Again, NHTSA acknowledges this high level of compliance—and has been repeatedly directed by the House and Senate Appropriations Committees to require rear guards that meet the standards for Toughguard awards³—but still concludes that mandating such superior guards would be unreasonable and impracticable. Most worrying of all, NHTSA justifies its determination by arguing that the lives saved would not be worth the cost—which seems directly contrary to the Department of Transportation’s policy of “prioritizing the elimination of crashes that result in death and serious injuries.”⁴

To be clear, we are not questioning NHTSA’s motives or efforts with regards to this final rule. We know the staff is passionate about making our transportation system safer, and we understand the challenges and constraints inherent in agency rulemaking processes. That said, this issue is simply too important for us to stay silent.

In light of our concerns, and to shed light on NHTSA’s approach to underide protection going forward, we ask that you provide responses to the following questions by September 6, 2022;

1. What specific actions are being taken by NHTSA to develop more comprehensive data regarding rear, side and front underide crashes?
2. Did NHTSA reach out to (a) the manufacturers of rear guards that meet the IIHS standard of providing protection in 30% overlap crashes or (b) trucking companies that currently use rear guards that meet the stronger requirement to collect data on performance and crashes? If not, why? If so, what was their response?
3. Does NHTSA plan to work with law enforcement to improve police accident reports in order to enhance the collection of data on fatal and injury-producing truck crashes resulting in rear, side and front underide?
4. What factors did NHTSA consider when it decided to forgo the directive from the House Appropriations Committee?
5. When will NHTSA re-evaluate its current determination that requiring rear guards that mitigate PCI in 30% overlap crashes would be unreasonable and impracticable despite approximately nine manufacturers currently offering rear guards that meet the stronger requirement? And how will NHTSA incorporate the advisory committee on Underide Protection into future rulemakings that comply with the requirements of the Administrative Procedure Act?

³ Joint Explanatory Statement – Division L of P.L. 117-30, at 40 (2022); Joint Explanatory Statement – Division L of P.L. 116-260, Book IV of the Congressional Record at H8819 (Dec. 21, 2020); H. Rept. No. 117-99, at 53 (2021) (stating that “[t]he Committee reiterates direction from the past several years that NHTSA . . . complete rulemaking to improve rear guards in order to ultimately meet the Insurance Institute for Highway Safety standards for Toughguard awards.”).

⁴ What is a Safe System Approach?, U.S. Department of Transportation (last updated Jan. 27, 2022), <https://www.transportation.gov/NRSS/SafeSystem>.

Thank you for your attention to this important matter. We look forward to your response.

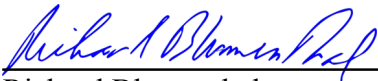
Sincerely,



Kirsten Gillibrand
United States Senator



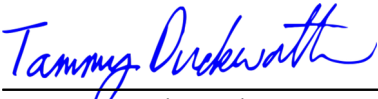
Steve Cohen
Member of Congress



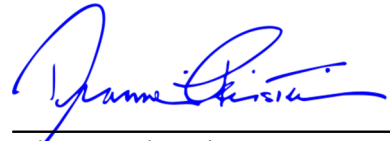
Richard Blumenthal
United States Senator



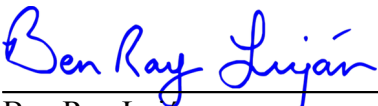
Sherrod Brown
United States Senator



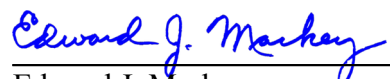
Tammy Duckworth
United States Senator




Dianne Feinstein
United States Senator



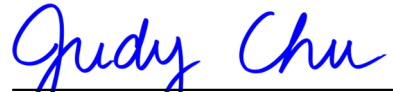
Ben Ray Lujan
United States Senator



Edward J. Markey
United States Senator



Charles E. Schumer
United States Senator



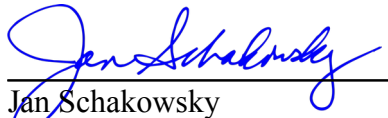
Judy Chu
Member of Congress



Mark DeSaulnier
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Adriano Espaillat
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Jan Schakowsky
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Dina Titus
Member of Congress