

Petition to Secretary Chao for Supplemental Comprehensive Underride Rulemaking

July 4, 2020

Secretary Chao,

In the seven years since our underride crash on [May 4, 2013](#), we have been contemplating how the Department of Transportation (DOT) could act to propose more effective and comprehensive underride rulemaking. On December 8, 2015, NHTSA Administrator Mark Rosekind called to tell us that the Rear Guard proposed rule was being published in the Federal Register. It was very clear, however, that the NPRM, which proposed an upgrade to the current Canadian standard, fell short of what was needed and possible -- as shown by IIHS underride crash testing research.

As [other petitioners](#), including the NTSB and the IIHS, have demonstrated, the underride problem does not occur only at the rear of trailers. Underride happens far too regularly at the sides and front of large trucks of all kinds, as well. With that in mind, we are formally petitioning the DOT to issue a Supplemental Notice of Proposed Rulemaking (SNPRM), which will lead to a comprehensive underride protection rule (as originally requested in our [May 5, 2014 petition](#)).

Our vision for rulemaking to end the deadly underride problem is thoroughly laid out in the [STOP Underrides! Act of 2019](#) -- S.665 and HR.1511. The House Transportation & Infrastructure Committee pulled portions from that bill and included them in the HR.2 Moving Forward Act of 2020, passed on July 1, 2020. While HR.2 does not include everything which we think needs to be done, it does send a clear message about what leaders of this country want the DOT to accomplish.

Therefore, based on decades of [research and recommendations](#), we are urging the DOT to move forward without further delay and issue Supplemental Underride Rulemaking, which should include everything in the [HR.2 Underride Section](#). In addition, in order to fill in the glaring gaps in HR.2, we are requesting that the DOT complete three specific studies:

1. A [Side Guard Pilot Program](#), which will fulfill the HR.2 requirements to conduct “additional research.” It is designed in such a way as to, once and for all, address the industry concerns about side guards, so that you can move forward with the development of a side guard standard.
2. A [Single Unit \(Straight or Box\) Truck Study](#). This is important because people, like [David Aguilar and Jorge Acosta-Flores](#), continue to die under these kinds of trucks as well as trailers.
3. A [Front Underride Protection study](#). This is important because people continue to die in head-on collisions and when trucks rear-end their passenger vehicle. It is time to have a conversation in this country about a problem which other countries have decided warrants a [FUP standard](#) and who have developed [FUP technology](#). In fact, truck manufacturers have installed it on their trucks sold overseas but not on their trucks sold in the U.S.

We are providing you with links, which elaborate on the validity of a strategy to transform the existing rear guard [NPRM](#) into a SNPRM in order to enable us to move forward with a sense of urgency to bring about an end to preventable truck underride tragedies:

- [33 CFR § 1.05-40 - Supplemental notice of proposed rulemaking \(SNPRM\). | CFR](#)
- [The Rulemaking Process](#) See: Before The Final Rule section, HOW DO PUBLIC COMMENTS AFFECT THE FINAL RULE?
- [14 CFR § 11.7 - What is a supplemental notice of proposed rulemaking?](#)
- [Supplemental Notice of Proposed Rulemaking \(SNPRM\)](#) A supplemental notice of proposed rulemaking is a notice and request for comment published in the Federal Register when an agency has made significant substantive changes to a rule between the Notice of Proposed Rulemaking and the final rule. The SNPRM allows the public to comment on the changes. A "significant substantive change" is any new requirement in the rule that goes beyond the scope of the requirements in the NPRM. The agency may enact the other requirements of the final rule while accepting comments on the SNPRM.

While HR.2 does not require action by the DOT until one year after enactment of the Act, we are asking that you begin the process *immediately*, including establishment of an Advisory Committee on Underride Protection. Do not let the Tyranny of the Urgent deter you from giving underride rulemaking the priority it deserves.

We organized and hosted an Underride Protection Committee meeting via Zoom on April 17, 2020, with about 45 people participating, including two trailer manufacturers. Subcommittees, including an [Engineering](#) one, have continued the process -- meeting every other week since April to brainstorm on strategies to end underride. Underride experts and advocates are eager to collaborate, and manufacturers would welcome a mandate.

This is not a new problem or request; people continue to die daily from preventable underride.

Respectfully,

Jerry and Marianne Karth