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November 1, 2018

Dear Administrator Martinez:

We appreciated the opportunity to meet with you on October 22 to discuss truck underride. Based upon that conversation and our previous research of the underride problem, we would like to petition you to make the following changes to the FMCSA commercial motor vehicle regulations as soon as possible through appropriate procedures:

1. Add underride guards to Appendix G and 396.17 ("Periodic Inspection").
2. In addition, change the definition of Out of Service Criteria to read as follows: "*A vehicle(s) is placed out-of-service only when by reason of its mechanical condition or loading it is determined to be so imminently hazardous as to likely cause an accident or breakdown, or when such condition(s) would likely contribute to loss of control of the vehicle(s) by the driver, **or to allow death and/or injuries from truck underride (passenger compartment intrusion) upon collision.***"

The argument for this change in definition is as follows:

1. One could assume that the current definition of Out-Of-Service Criteria (OOSC) was created for the purpose of getting vehicles off the road which were in such a condition that they could cause injuries or deaths. This is indicated by the language used in 49 U.S. Code § 521 - Civil penalties, "In this paragraph, "~~imminent hazard~~" means any condition of vehicle, employee, or ~~commercial motor vehicle~~ operations which substantially increases the likelihood of serious injury or death if not discontinued immediately."
2. The definition currently reads like this: *A vehicle(s) is placed out-of-service only when by reason of its mechanical condition or loading it is determined to be so imminently hazardous as to likely cause an accident or breakdown, or when such condition(s) would likely contribute to loss of control of the vehicle(s) by the driver.*
3. This limits the conditions for inclusion to only those factors which will lead to an accident or breakdown.
4. Fortunately, an underride guard which has not been properly maintained (on top of already being too weak to begin with) will not lead to an accident or breakdown.
5. Unfortunately, an underride guard which has not been properly maintained and is involved in a collision can lead to catastrophic injuries and/or deaths.
6. Therefore, in order to adhere to the unstated intent of the Out-Of-Service Criteria to prevent injuries and deaths, it would be necessary and appropriate to add the phrase "**or to allow death and/or injuries from truck underride (passenger compartment intrusion) upon collision,**" *in order to be able to add improperly maintained underride guards to the OOS.*

Sincerely,

Jerry and Marianne Karth

Lois Durso