



July 20, 2023

By regulations.gov

Sophie Shulman, Deputy Director
National Highway Traffic Safety Administration (NHTSA)
United States Department of Transportation
West Building, Ground Floor, Room W12-140
1200 New Jersey Avenue SE
Washington, DC 20590-0001

Re: Advance Notice of Proposed Rulemaking (ANPRM):
Side Underride Guards; Doc. No. NHTSA-2023-0012.

Dear Deputy Director Shulman:

The American Truck Dealers Division of the National Automobile Dealers Association (ATD) represents over 1,800 franchised commercial motor vehicle (CMV) dealers who sell new and used medium- and heavy-duty trucks, tractors, and trailers, and engage in service, repair, and parts sales. Together they employ in excess of 125,000 people nationwide, yet most are small businesses as defined by the Small Business Administration.

Earlier this year, NHTSA issued an ANPRM seeking information on the benefits, costs, and other impacts of side underride guards.¹ NHTSA issued the ANPRM pursuant to Section 23011(c) of the Infrastructure Investment and Jobs Act² and in response to a petition for rulemaking filed by trucking safety advocates, directing NHTSA to conduct research on side underride guards.³ The purpose of the ANPRM is to solicit information that will help the agency assess the feasibility of installing side underride guards on Commercial Motor Vehicle (CMV) trailers and semitrailers, and their effectiveness for protecting occupants of passenger vehicles during crashes into the sides of CMV trailers and semitrailers.⁴

ATD acknowledges that side underride guards may reduce the likelihood of serious injury or death resulting from crashes with CMV trailers and semitrailers in certain circumstances and supports NHTSA's efforts to obtain additional information through the ANPRM to study CMV side underride crashes. However, given the incomplete nature of the available research and data, as well as the exorbitant costs and detrimental impacts to CMV operators and carriers, ATD does not support a side underride guard mandate and urges NHTSA not to proceed with a formal rulemaking.

¹ 88 Fed. Reg. 24535 *et seq.* (Apr. 21, 2023).

² Pub. L. 117-58 (Nov. 15, 2021).

³ 88 Fed. Reg. 24535-37.

⁴ 88 Fed. Reg. at 24535-37, and 24542.

As NHTSA acknowledged, gaps exist in the data and reporting regarding these types of crashes, which complicates the task of estimating their prevalence and evaluating options for reducing them.⁵ NHTSA also acknowledged that only one side underride guard product is available commercially, which has only been shown to be effective for speeds below 40 mph.⁶ NHTSA made appropriate use of, and drew reasonable conclusions from, the limited available data and research. However, proceeding with a side underride mandate based on this incomplete information and testing that does not replicate realistic highway conditions is premature and untenable.

A side underride guard mandate is also not justifiable from a cost-benefit perspective. NHTSA estimates the safety benefits of a side underride guard mandate as ranging between \$129 million and \$166 million and the costs as ranging between \$970 million and \$1.2 billion.⁷ NHTSA further estimates the cost of equipping new trailers with side underride guards as between approximately \$3,930 and \$4,630 per trailer at a 3-percent discount rate, or between approximately \$3,740 and \$4,300 per trailer at a 7% discount rate.⁸ On a per trailer basis, this estimated cost is approximately “six to eight times as large as the corresponding estimated safety benefits”⁹ and in the aggregate results in a net negative annual benefit of almost \$1 billion.¹⁰ These numbers alone demonstrate that mandating installation of side underride guards is not an appropriate or cost-effective option for mitigating these crashes. But remarkably, the estimates do not account for certain operational factors that will increase the total costs, which makes a side underride guard mandate even more cost prohibitive.¹¹

NHTSA’s cost estimates are also problematic because they appear to undercount the labor cost of installing a side underride guard by (i) improperly assuming that CMV operators and carriers will have their own employees install the side underride guards and (ii) relying on an estimated hourly rate of \$31 for an in-house automotive repair worker provided by the Bureau of Labor Statistics (which does not account for employer overhead, benefits, and other employment-related costs).¹² Most operators and carriers will outsource the installation to a truck or trailer dealer’s service department. Depending upon the complexity of the installation, ATD estimates that a side underride guard installation will take 3 to 4 hours at \$150 to \$200 per hour for a total labor cost of \$450 to \$800, which is significantly higher than NHTSA’s \$93 labor cost estimate. NHTSA should also consider that, given differing trailer configurations, installation of side underride guards will not follow a one-size-fits-all approach and should consider its installation cost estimate as a baseline, not a uniform cost. Some configurations will require customization at higher cost.

⁵ 88 Fed. Reg. at 24538, 24539, 24540, 24541.

⁶ 88 Fed. Reg. at 24538, 24539, 24541.

⁷ 88 Fed. Reg. at 24536, 24539-40.

⁸ 88 Fed. Reg. at 24541.

⁹ *Id.*

¹⁰ 88 Fed. Reg. at 24540.

¹¹ *Id.*

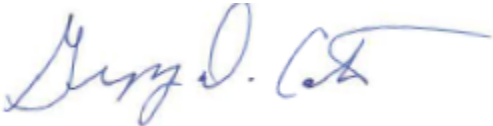
¹² *Id.*

ATD also urges NHTSA to carefully consider the operational complications that requiring side underride guards on all CMV trailers and semitrailers will impose on CMV operators and carriers. For example, some trailers, like grain hoppers, intermodal trailers and flatbed trailers, cannot physically accommodate side underride guards. For trailers that can accommodate them, repair and maintenance of things like flooring, side rails and cross-members would require removal and re-installation of side underride guards to complete. Side underride guards will also add weight to trailers and reduce load capacity and CMV operators and carriers will encounter problems with navigating railroad crossings, high curbs, speed bumps, and sloped loading docks. These issues will impact CMV operator and carrier planning and routing, and could result in increased safety risks from more trucks being on the road and lack of driver familiarity with roadway and facility features. Of course, regulatory standards and procedures for installation and inspection of side underride guards would also be needed.

As stated earlier, ATD supports NHTSA's efforts to study side underride crashes and its effort to obtain additional information through the ANPRM. However, the available research remains incomplete and the costs and impacts of requiring CMV trailers to be equipped with side underride guards significantly outweigh the potential safety benefits. Instead of proceeding with a side underride guard rulemaking, ATD urges NHTSA to consider alternatives that may be more cost-effective and focus on prevention (rather than mitigation) of side underride crashes through advanced driver assistance systems, like automatic emergency braking. ATD also encourages NHTSA to utilize the recently formed Advisory Committee on Underride Protection to identify and consider other crash prevention strategies specific to side underride crashes that may be more effective and beneficial.

On behalf of ATD, I thank NHTSA for the opportunity to comment on this matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Gregory D. Cote", with a long horizontal flourish extending to the right.

Gregory D. Cote
Director & Counsel, Regulatory Affairs