

May 15, 2024

The Honorable Eric J. Soskin
Inspector General
U.S. Department of Transportation Office of Inspector General
1200 New Jersey Ave SE
Washington, DC 20590

Dear General Soskin:

We the undersigned urge the Office of Inspector General to investigate whether officials at the Department of Transportation engaged in misconduct and abuse, breached ethics rules and agency standards of conduct, and violated federal law when they suppressed taxpayer-financed research on reducing pedestrian and bicyclist fatalities in crashes with the sides of large commercial freight trucks. These gruesome traffic deaths are known as “underrides” because the unprotected sides of large trucks allow people to be swept under them and decapitated or crushed beneath the rear axles.

This letter follows up our previous letter dated September 14, 2023 in light of troubling new information. A whistleblower has come forward and provided safety advocates with a notarized statement and other supplementary materials that have validated concerns raised by FRONTLINE and ProPublica's [previous reporting](#) on the undue influence of the trucking industry over federal regulators and the consequences for public safety. The industry has opposed requirements for underride protection since the 1970s.

The whistleblower submitted written testimony and was due to testify recently to the federal Advisory Committee on Underride Protection.¹ However, the National Highway Traffic Safety Administration (NHTSA) prohibited the advisory committee from discussing or receiving testimony on the matter. The whistleblower then sent his testimony and supporting documentation to safety advocates.

DOT Suppressed Taxpayer-Funded Safety Research in 2020

In 2017, Mr. Quon Kwan, formerly a GS-14 general engineer at the Federal Motor Carrier Safety Administration (FMCSA), proposed and oversaw an underride protection research project conducted by the Volpe National Transportation Systems Center and funded with \$200,000 in taxpayer monies. Mr. Kwan states,

¹ Pub. L. No. 117-58 (2021), Section 23011(d).

I wanted to know whether the protection offered to pedestrians and bicyclists could be combined with the fuel efficiency offered to a truck by aerodynamically designed side guards to achieve synergistic cost-effectiveness.

In the same year, he received the Secretary’s award for “exemplary performance in furthering the Department’s number one strategic goal— safety and security.”

The Statement of Work for this project, contract number SA9PAI, required the following objectives:

- (i) project plan;
- (ii) literature review of side guards domestically and internationally;
- (iii) a detailed examination of technical concerns such as how external parts of the truck, such as fuel tanks and fire extinguishers, would interact with a side guard;
- (iv) cost benefit analysis;
- (v) final report; and
- (vi) technology demonstration.

According to his testimony, by May 31, 2019, when Mr. Kwan retired from government service, the project was completed, the Volpe Center’s report was final, and it was only awaiting final review from DOT senior officials.

Significantly the final report found that large commercial trucks, despite the fact that they are primarily driven on interstate highways, are responsible for as many fatalities of Vulnerable Road Users as smaller single-unit trucks. Nearly all of these deaths are preventable when side impact guards are installed on them. The final report’s cost-benefit conclusion read, “The results under these scenarios show that side guard deployment would be an effective technology for generating net societal benefits in wide-scale U.S. deployment.”

“The data strongly support side guards as cost beneficial,” Mr. Kwan stated in a briefing earlier this week for advocates.²

A year later, in May 2020, DOT published report #FMCSA-RRR-19-004, “A Literature Review of Lateral Protection Devices on Trucks Intended for Reducing Pedestrian and Cyclist Fatalities,” in fulfillment of FMCSA contract SA9PAI.³ But the published report bore little

² Video presentation by Mr. Quon Kwan to safety advocates (Apr. 22, 2024)(online at <https://annaleahmary.com/2024/04/senior-agency-officials-suppressed-side-guard-research-impacting-regulatory-analysis/>).

³ “A Literature Review of Lateral Protection Devices on Trucks Intended for Reducing Pedestrian and Cyclist Fatalities,” Federal Motor Carrier Safety Administration, May 2020 (Online at <https://rosap.ntl.bts.gov/view/dot/49250>).

resemblance to the final report from the Volpe Center. Nearly all of the elements of the report had been removed, including the cost-benefit analysis. As Mr. Kwan states,

Recently I read the published report on side guards that was released in May 2020, and I was shocked and appalled by what I saw. The published report does not resemble the Volpe final report I had worked on... Moreover, the published report does not even fulfill the five required tasks in the official Statement of Work that U.S. DOT contracted with the Volpe Center to do. Most of the chapters, including the critical one on cost-benefit analysis, have been stripped out and the report now is nothing more than just a literature review. The published report also completely left out any discussion of aerodynamic side skirts, which of course was at the core of the Statement of Work and purpose of this project. This published report does not fulfill what I hired the Volpe Center to do.

The published report did not contain the Volpe Center's findings favorable to side guards, particularly the cost-benefit analysis, because they had been removed by DOT officials.

How Findings Favorable to Side Guards were Removed

Mr. Kwan states that one NHTSA senior official "strongly urged him not to release the sideguard report" and that this person was not in his chain of command or the agency in which he worked.

Emails obtained through the Freedom of Information Act independently confirm that senior officials at the DOT discussed revising the Volpe Center research findings from 2019 to 2020, before and after Mr. Kwan retired from public service. Non-redacted information in those emails confirms that the senior official at NHTSA, identified by Mr. Kwan in his statement, convened and set the agenda for a meeting of senior officials at FMCSA and the Office of the Secretary of Transportation (OST) to discuss the final report without Mr. Kwan, edited the final report on behalf of NHTSA, and was responsible for the contents of the published report. The following are relevant examples:

- A February 26, 2019, email, subject "Meeting with OST and FMCSA on side guards for trailers and SUTs," from the NHTSA official to senior leaders in the Department, saying, "Here's the agenda for the meeting."
- A March 1, 2019, email from the NHTSA official to senior leaders in the Office of the Secretary and NHTSA, saying, "All, the FMCSA report we discussed in the meeting on Wednesday is attached."

- A February 27, 2020, email from the NHTSA official to senior FMCSA leaders, subject “Literature Review on Lateral Protection Devices,” writing, “Here are the edits from NHTSA. I’ve attached a redline and a clean version.”
- A May 19, 2020, email from a senior FMCSA official to the NHTSA official, saying, “We’ve published the LPD report on ROSA-P earlier this week. See the attached version. Thank you very much for your time and effort in helping us publish this report.”

The Office of Inspector General could probe deeper with its access to redacted information from these communications.

Waste, Fraud, and Abuse; and Violations of Scientific Integrity and Ethics

If validated, Mr. Kwan’s allegations of suppression of taxpayer-financed research and findings favorable to promoting public safety are highly disturbing and would constitute serious misconduct.

First, the published report does not satisfy the requirements of the contract it purports to fulfill. Moreover, the suppression of the final report’s research findings could constitute a waste and abuse of taxpayer funds, since the work was completed but removed from public view. Mr. Kwan said,

The published report FMCSA-RRR-19-004 does not resemble the final report DOT-VNTSC-FMCSA- 19-01 I had worked on when I departed from U.S. DOT. Moreover, the published report does not even fulfill the six required tasks in the official Statement of Work that U.S. DOT contracted with the Volpe Center to do. Most of the chapters, including the critical one on cost benefit analysis, have been stripped out and the report now is nothing more than just a literature review. The published report also completely left out any discussion of aerodynamic side skirts, which of course was critical to the Statement of Work and benefit-cost analysis. This published report does not fulfill what I hired the Volpe Center to do. What is posted on the U.S. DOT public website as *the published report on side guards defrauds the public because the Technical Report Documentation Page indicates that this is the final report of contract no SA9PAI when clearly it is not*; DOT-VNTSC-FMCSA-19-01 is the final report of contract SA9PAI. (emphasis added)

Second, the actions of senior DOT and NHTSA officials to suppress the findings of the final report could have violated scientific integrity and ethical standards. Mr. Kwan said,

[I]t is one thing to disagree with another professional, but to "doctor" the report of other professionals to suit one's own predetermined conclusion violates scientific integrity and could constitute misconduct.

Indeed if detractors of the final report disputed its methodology or analysis, one could have expected science and engineering professionals to discuss, debate, and re-run the calculations. But that was not the case here. Rather, there was no formal discussion with Mr. Kwan, a revision process took place out of his view and without his participation, and the entire cost-benefit analysis was removed from the published document — it was not merely revised. Furthermore, it is our understanding that the Volpe Center still uses their calculations and findings from the final report in current presentations, indicating that they continue to believe in their accuracy.

Third, these actions by DOT officials could constitute an abuse of the agency’s mission. In 1999, known as the “second founding” of the DOT, Congress required that the Department pursue “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.”⁴ We find it hard to believe that safety concerns were the Department’s motivating factor for not allowing this research to be published.

Advocates’ Request

We hereby request that the Office of Inspector General investigate this matter to determine if federal law and government ethics standards were violated to suppress safety findings. To aid the IG in this important undertaking, we are providing the evidence Mr. Kwan shared with us:

- Mr. Kwan’s written statement;
- The slide presentation Mr. Kwan was prevented from delivering to the Advisory Committee on Underride Protection;
- Exhibit A — the Statement of Work for contract number SA9PAI. FMCSA contracted with the Volpe National Transportation Systems Center for these deliverables to fulfill the research project entitled, Truck Side Guards to Reduce Vulnerable Road User Fatalities;
- Exhibit B — Truck Side Guards and Skirts to Reduce Vulnerable Road User Fatalities: Final Report on Net Benefits and Recommendations, the final report received from the Volpe Center, meeting all the requirements of the Statement of Work. Among other things, this final report found that it was cost effective to require tractor-trailers and single-unit trucks to be equipped with lifesaving side impact guards. The cost-benefit analysis and most of the rest of this final report were suppressed from the published report by U.S. DOT; and

⁴ Pub. L. No. 106-159 (1999), codified at 49 U.S.C. § 113.

- Exhibit C — email communications obtained through the Freedom of Information Act which document that meetings and discussions concerning the Volpe Center report occurred among senior officials at DOT, NHTSA, and FMCSA in 2019 and 2020 without Mr. Kwan’s participation.

Thank you for your consideration of this important matter.

Yours truly,

Joan Claybrook
Former NHTSA Administrator (1977-1981)
President Emeritus, Public Citizen

Caron Whitaker, Executive Director
League of American Bicyclists

Robert Weissman, President
Public Citizen

Jen Walsh, Principal
Institute for Safer Trucking (IST)

Zach Cahalan, Executive Director
Truck Safety Coalition (TSC)

Tami Friedrich Trakh, President (TSC)
Citizens for Reliable & Safe Highways (CRASH)
Families of Truck Crash Victims

Daphne & Steve Izer, Co-Chairs
Russell Swift, Co-Chair (TSC)
Parents Against Tired Truckers (P.A.T.T.)
Families of Truck Crash Victims

Amy Cohen, Co-Founder
Families for Safe Streets (FSS)

Stephen Bingham, Board Member
Ride of Silence
Member, San Francisco Chapter, FSS

Mike McGinn, President
America Walks

Jerry & Marianne Karth
In Memory of AnnaLeah & Mary
Rear Underride Victims
AnnaLeah & Mary for Truck Safety

Francoise Blusseau
In Memory of Sylvia Bingham
Bicyclist Side Underride Victim

Lois Durso-Hawkins & Mark Hawkins
In Loving Memory of Roya
Side Underride Victim
Stop Underrides

Eric Hein
Father of Riley Hein
Side Underride Victim

Wendy Sievertson
Mother of Riley Hein
Side Underride Victim

Jay Hightman
In Memory of Robyn Hightman
Bicyclist Side Underride Victim

Keith D. Wolf
In Memory of Alexander Wolf
Bicyclist Side Underride Victim

Cindy & Todd Zimmerman
In Memory of Kaylyn Hunter Gatlin
Side Underride Victim

Elisa Braver, Adjunct Assoc. Professor
Epidemiology & Public Health
University of Maryland School of Medicine

Perry Ponder, PE
Seven Hills Engineering

Laurie & Randy Higginbotham
In Memory of Michael Higginbotham
Side Underride Victim

Bruce Enz
Injury & Crash Analysis