

**ADVISORY COMMITTEE ON
UNDERRIDE PROTECTION (ACUP)
Statement of Concurrence / Non-Concurrence**

Voting Member Name	Doug Smith
Voting Member Organization	Ralph Smith Co./Owner-Operator Independent Drivers Association (OOIDA)
Stakeholder Representation	Motor Carriers, Including Independent owner-operators

As a voting member and full participant of ACUP, I hereby acknowledge that I have reviewed the *ACUP Final Report* and make the following declaration regarding the Report:


1. Concur with the Final Report as written

Voting Member Signature _____ Date: _____

2. Concur with the Final Report as written with the following exception(s): (Fully explain the areas of exception below, providing specific page number if appropriate. Submission of additional pages is permitted.)

Voting Member Signature _____ Date: _____

3. Non-Concur with the Final Report as written. Letter of Dissent must be provided.

Voting Member Signature  Date: 6/27/2024

I concur with the Minority Report and have included my personal views on ACUP proceedings and findings in the enclosed letter of dissent to the Majority Report.

June 27, 2024

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Advisory Committee on Underride Protection Majority Report Letter of Dissent

Dear Secretary Buttigieg,

My name is Doug Smith. I am a professional truck driver with over 50 years of experience. I am the Owner of Ralph Smith Trucking based in Bountiful, Utah, a family-owned and operated business that specializes in heavy civil construction, including demolition, flatbed, stepdeck, and heavy-haul services. Since 2017, I have served as a Board Member for the Owner-Operator Independent Drivers Association (OOIDA). OOIDA is the largest trade association representing the views of small-business truckers and professional truck drivers with approximately 150,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks.

Over the last year or so, I have served on the National Highway Traffic Safety Administration's (NHTSA) Advisory Committee on Underride Protection (ACUP) representing motor carriers, including independent owner-operators. I have appreciated the opportunity to represent the nation's professional drivers, including small-business truckers, in this advisory capacity. However, I do not believe the views I shared during ACUP meetings have been particularly reflected in the Committee's majority report. For this and other reasons, I do not concur with ACUP's majority report.

Section 23011 of the Infrastructure Investment and Jobs Act (Public Law 117-58) directed the U.S. Department of Transportation (USDOT) to establish ACUP. Beginning in May 2023, ACUP conducted a series of public meetings on various underride topics with the goal of providing consensus written advice and recommendations on safety regulations that can reduce underride injuries and fatalities. I believe all ACUP Members share a dedication to improving highway safety, saving lives, and reducing underride fatalities, but our meetings clearly exposed disagreements about the most practical policies to achieve such objectives. Unfortunately, ACUP lost its commitment to working in a collaborative and consensus manner over the course of these discussions.

Safety advocacy representatives manipulated their numerical advantage in Committee membership and the departure of an impartial Chairperson beginning in February 2024 to minimize opposing viewpoints of ACUP participants. These representatives approved a motion over the objections of industry to define "consensus" as a simple majority.

After this unjustified redefinition of "consensus", ACUP adopted dozens of proposed motions that merited substantive opposition. These finalized motions contradict the duties of a Committee

designed to identify recommendations that garnered broad agreement. Instead, ACUP advanced numerous policies that were supported by a slim margin of Committee members. The move that transformed “consensus” into a simple majority has now produced a final report that lacks any shred of legitimacy.

Cost versus Benefit Analyses

Many of the recommendations included in the majority report will only serve to increase costs for truckers, especially small-business operations that are the most experienced and safest in the industry. In their most recent cost-benefit analysis, NHTSA estimated total discounted annual cost of equipping new trailers and semitrailers with side underride guards between \$970 million and \$1.2 billion. NHTSA went on to mention that these costs on a per trailer basis are six to eight times more than the corresponding estimated safety benefits.

There was significant discussion within ACUP that USDOT, NHTSA, and law enforcement reporting mechanisms do not accurately count total underride crashes and fatalities. There was consensus among ACUP members that data collection for underride crashes and fatalities should be improved and I supported various motions to help accomplish that objective. However, there was little acknowledgment that NHTSA has omitted a number of operational costs beyond just installing and equipping new trailers and semitrailers with side underride guards, such as consideration of the long-term maintenance and durability of underride protection systems. NHTSA’s 2023 Advance Notice of Proposed Rulemaking (ANPRM) on Side Underride Guards (RIN: 2127-AM54) did not account for the following:

- Any potential effects of side underride guards on port and loading dock operations and freight capacity, and on increased greenhouse gases and other pollutants resulting from increased fuel consumption;
- The effects of side underride guards on port and loading dock operations and freight capacity, and the practicability and feasibility of side underride guards in intermodal operations;
- Any costs associated with reinforcing trailers to accommodate the side underride guards and any associated changes to trailer loading patterns;
- Additional costs that accrue due to incremental wear and tear on equipped trailers; and
- Any costs and weight of strengthening the beams, frame rails, and floor of the trailer to accommodate side underride guards.

If NHTSA acts on any approved motions that recommend amending previous underride cost-benefit analyses, then all of these costs must be fully considered. I would also point out a few motions that needlessly place additional cost burdens on the agency that were approved by a slim majority of ACUP Members rather than a consensus:

- Motion: NHTSA should withdraw its previously submitted ANPRM or reissue a revised ANPRM and cost-benefit analysis that acknowledges and accommodates critiques made by commenters that the cost-benefit approach taken artificially constrained the number of lives saved and also failed to account for cost-savings (such as fuel efficiency gains provided by side-underride guards).

- Response: The report claims side guards will offer fuel efficiency benefits but does not provide empirical data or studies that quantify these savings. There is a reliance on theoretical aerodynamic improvements, without concrete evidence from real-world applications. Statements like “fuel efficiency gains provided by side underride guards” are made without specifying how these savings were calculated or validated.
- Motion: To require semitrailers, and single unit trucks manufactured after 1998 that have crash incompatible open space(s) along the side(s) to be equipped with side guards capable of preventing injurious passenger compartment intrusion (PCI) when struck by a midsize vehicle at any angle, at any location, and at any closing speed up to and including 40 mph.
 - Response: The recommendation to retrofit all trailers manufactured after 1998 with side guards would impose significant financial burdens on small operators, and there is no detailed consideration of retrofit costs versus the economic capabilities of small businesses. If the 1998 retrofit date were adopted, the cost would be greater than 26 times the annual estimated cost which doesn’t include the real-world annual costs. These retrofit costs would be approximately 30% higher than new equipment costs with equipment manufacturer’s economies of scale. Costs for retrofitting, downtime, and maintenance are not evaluated against the financial constraints of small motor carriers. Small-business truckers comprise 96 percent of registered motor carriers in the United States, making them a key component of the nation’s supply chain.
- Motion: NHTSA/USDOT should produce all documents related to rear guard standards including test data, contracts, studies, scoping documents, analyses, reports, memoranda, and/or other communications or references related to trailer and/or straight truck rear guard strength, design, quasi static or dynamic testing, and/or test protocols between 1970 and 1998.
 - Response: It’s unclear how this information, some of which will be close to 60 years old, will help inform and facilitate the development of policies that are relevant to current conditions.

Operational and Safety Concerns

In addition to considering practical cost-benefit studies, NHTSA should be aware of operational and safety issues associated with underride equipment. There are a number of factors that USDOT must comprehensively consider, analyze, and test before promulgating new or amending existing underride standards. NHTSA cannot move forward with any side underride rulemaking without fully considering the practicability and feasibility the equipment has on trailer and semitrailer operations as there are numerous concerns limiting the real-world effectiveness of these devices. I specifically highlighted rail-crossings, loading docks, low ground clearances, jersey barriers, and deflected vehicles in ACUP presentations.

In 2022, there were more than 2,000 highway-rail crossing collisions in the U.S. and more than 30,000 reports of blocked crossings submitted to the Federal Railroad Administration’s public

complaint portal. When commercial motor vehicles (CMVs) get grounded on highway-rail crossings, there are obvious safety concerns that can lead to collisions, injuries, and fatalities. Furthermore, these events cause equipment damage and other expenses.

There are potential maintenance concerns resulting in damage from curbs, roundabouts, raised humps on roads, speed bumps in parking lots, loading dock ramps, and other highway features that the equipment would undoubtedly encounter. These interactions would damage the side underride guards, forcing additional repair and possibly replacement costs. These damages could also force a driver out-of-service that would result in additional downtime costs. It's unclear if any of these costs would be covered by vehicle insurance policies or equipment warranties. These escalating costs would all have harmful safety outcomes as motor carriers/drivers would have less funding for routine maintenance and other vehicle-related upkeep.

Additionally, more real-world research and testing is warranted before quantifying possible benefits of side impact guards in crashes at speeds above 40 mph. The report advocates for side guards and underride protection technologies but does not provide robust, independent evidence supporting their effectiveness in real-world conditions for the variety of scenarios truckers encounter. Claims about the efficacy of side guards in preventing PCI in various crash scenarios lack supporting field data.

I fully support the following motions recommending conducting more review and analysis on these varying factors impacting underride safety.

- Motion: NHTSA should work with the Federal Railroad Administration to conduct research to examine potential impacts the installation of side underride guards would have during highway-rail grade crossings.
- Motion: NHTSA should investigate the potential for collision mitigation technologies for light and heavy-duty vehicles to prevent or reduce the risk associated with side underride crashes.
- Motion: NHTSA should assess risks associated with deflection into adjacent lanes associated with partial offset rear crashes as well as side underride crashes. Final results should be made public.

Recommendations that would prevent passenger vehicles from interacting with trucks in the first place are noticeably absent from the majority report. There are mentions of automatic emergency braking systems, distracted driving, and driver education, but the onus always falls on commercial drivers. Potential factors that would help mitigate instances of side underride crashes would be general driver education and outreach about how to operate around CMVs, additional measures to prevent distracted driving, as well as improving driver retention within the trucking industry through a variety of measures.

Conspicuity tape maintenance was proposed as another potential avenue to help mitigate underride crashes. However, I must raise opposition to the following motion:

- Motion: The ACUP should include in its Report to Congress a recommendation that FMCSA should issue stronger conspicuity requirements, at minimum, a requirement to maintain and replace conspicuity tape every 5 years.
 - Response: The effectiveness of conspicuity tape should be measured the same way that tail/marker lighting is currently measured. NHTSA states, “On the rear, at each side, red reflectors or reflectorized material visible from all distances within 500 to 50 feet to the rear when directly in front of lawful upper beams of headlamps.” Citations are currently issued for damaged or missing conspicuity tape. Tape is an annual and pre-trip inspection item. A time stamped conspicuity tape product would have a distribution pipeline period that the five-year clock would be running on. The requirement approved in the motion also encourages downgrading of tape to only last the required duty cycle. The tape is extremely difficult to remove because it’s designed that way. Paint is easier to remove. Scarce maintenance personnel are allocated working on systems that have a greater yield of lives saved, such as brakes and tires.

Public Law 117-58, Section 23011

Section 23011(d)(1) tasked ACUP, “to provide advice and recommendations to the Secretary on safety regulations to reduce underride crashes and fatalities relating to underride crashes.”¹ The legislation also specifically defines “underride crash” as, “a crash in which a trailer or semitrailer intrudes into the passenger compartment of a passenger motor vehicle.”² A number of pages included the majority report directly address lateral protection devices (LPUs) and vulnerable road users (VRUS) such as pedestrians and bicyclists, separate from underride crashes in which a trailer or semitrailer intrudes into the passenger compartment of a passenger motor vehicle. While USDOT and industry stakeholders must be vigilant in reducing fatalities and injuries involving CMVs and VRUs, there are various operational, design, and practical differences between LPUs and other underride equipment that does comply with the task required in Section 23011. These differences were acknowledged and discussed during ACUP meetings, but nonetheless discarded in the majority report.

The legislation also tasks NHTSA with conducting additional research, undergoing rulemaking processes, and *if warranted*, develop performance standards for side underride guards. I believe ACUP missed an opportunity to achieve consensus on recommendations that would have assisted the agency in fulfilling the intent of Section 23011. However, I urge NHTSA to continue further research and gathering stakeholder input as required by Congress.

In closing, ACUP advanced numerous policies that were merely supported by a slim margin of Committee members rather than a consensus. The move that transformed “consensus” into a simple majority produced a splintered final report that minimizes professional driver and industry perspectives. As such, USDOT should not promulgate new or amend existing underride standards until fully considering the practicability and feasibility the equipment has on trailer and semitrailer operations. This includes conducting additional comprehensive research, analysis, and testing as directed by Public Law 117-58, Section 23011. I do not concur with the final

¹ Public Law 117-58, section 23011(d)(1).

² Public Law 117-58, section 23011(a)(4).

report as submitted with particular objections to the majority report that have been outlined in the minority report and in this letter of dissent.

Thank you,

Doug Smith
Ralph Smith Co./Owner-Operator Independent Drivers Association