

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

Voting Member Name	Jeff Bennett
Voting Member Organization	Utility Trailer Manufacturing Company, LLC
Stakeholder Representation	Motor Vehicle Engineer

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 Jeff Bennett
Jeff Bennett (Jun 26, 2024 23:05 PDT) _____ **Date: June 26, 2024**

Except as otherwise noted in the attached Letter of Concurrence and Dissent, I concur ONLY with Section II, Minority Report and certain Technical Bulletins as referred to in the Minority Report; I have not had an opportunity to review statements submitted by other individual members so I cannot say at this time whether I concur or dissent from those.

SEE ATTACHED:

JEFF BENNETT – MOTOR VEHICLE REPRESENTATIVE

—LETTER OF CONCURRENCE AND DISSSENT FROM THE BIENNIAL REPORT—

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

Voting Member Signature _____ **Date:** _____

JEFF BENNETT – MOTOR VEHICLE ENGINEER REPRESENTATIVE
– LETTER OF CONCURRENCE AND DISSENT FROM THE BIENNIAL REPORT –

I¹ generally concur with the statements contained in the Minority Report included as Section II of the Biennial Report to Congress and the Secretary of the Advisory Committee on Underride Protection [**“Biennial Report”**]. As noted in that Minority Report, other than the Minority Report, and the statements of certain ACUP members contained in this Appendix III.B., the Biennial Report reflects the work solely of the Committee Chair; I had no opportunity to provide input into the Biennial Report and its various conclusions and characterizations.

And as discussed in the Minority Report, many of the Biennial Report’s recommendations are based on a distorted definition of “consensus” and reflect only the majority vote of ACUP membership, which itself was preordained by the biases and predetermined conclusions many of the ACUP members brought to their work. In reviewing the Biennial Report’s recommendations in this Letter of Concurrence or Dissent, I will not repeat the criticisms contained and documented in the Minority Report, other than to emphasize—for certain recommendations—how narrow the majority vote was that allowed the recommendation to find its way into the Biennial Report.

For ease of reference, this Letter of Concurrence or Dissent will follow the organization the majority adopted in preparing the Biennial Report. But because the Biennial Report’s recommendations do not list which ACUP motion is the foundation for the recommendation, and the “Record of Motions” contained in Appendix III.A. prepared by the majority is neither complete nor accurate, this Letter of Concurrence or Dissent will use the Record of Motions contained in Appendix G of the Minority Report for numerical references.

Section 1 (pp. 25)

The Biennial Report’s estimates of underride fatalities and injuries² are based on a letter from Eric Hein to James Myers submitted toward the end of ACUP’s work. Mr. Hein is the father of an underride victim; he is an unabashed advocate for underride guards and is part of the group that repeatedly has criticized NHTSA’s conclusions concerning the number and extend of fatalities and injuries resulting from underride

¹ Although I am employed by trailer manufacturer Utility Trailer Manufacturing Company, LLC, I submit this Letter of Concurrence or Dissent solely in my capacity as an appointee to the ACUP as a representative of Motor Vehicle Engineers. *See* Public Law 117-58, section 23011(d)(1); ACUP Charter. The views expressed here may or may not be the views of my employer.

² Biennial Report, pp. 2-3.

crashes. He is hardly unbiased. Nor is he qualified to provide this information. According to his statements, Mr. Hein's career was spent with the US Forest Service. Although he says his responsibilities included managing large datasets, there is nothing that assures either the completeness or accuracy of his work.

Rather than relying on estimates from individuals who have an admitted agenda in finding flaws with NHTSA's conclusions concerning the extent of the underride problem, I recommend that the first priority should be to commission independent research into the extent of the underride problem, including key information concerning the nature of the injuries either themselves or that caused the fatality, and detailed information concerning the circumstances leading to the accident and the way the accident occurred. Factors to be considered are included in Section III.A. of the Minority Report, at page 17.

The Minority Report notes the importance of focusing on alternative crash-avoidance technologies, such as automatic braking. The Biennial Report dismisses these technologies by claiming that the technologies do not work because of the "gaping open space" underneath trucks.³ The Biennial Report, however, provides no support for this claim.

I strenuously dissents from the arguments contained at pages 4-5 as to why a slim majority of ACUP member were able to write out of the ACUP's Charter any obligation to obtain a consensus for its recommendations. I agree with the analysis contained in the Minority Report on this topic.

Rulemaking: Side Underride (pp. 57)

I dissent from these recommendations. These were among the most contentious issues discussed by the ACUP, and the motions on which these recommendations are based were passed by a majority, but just barely. The recommendation to withdraw the ANPRM passed 7-6-4⁴ and is offset by the defeat of Motion B4 on a 7-7-3 vote (the seven votes in favor were all part of the pro-underride-guard bloc discussed in the Minority Report): That motion B4 proposed a finding by ACUP that NHTSA had underestimated the number of preventable side-underride deaths and erroneously concluded that costs outweigh benefits. The proposed motion ended with a statement that "NHTSA should withdraw the 2023 side-impact-guard ANPRM." Of course, this last sentence is same statement that passed in Motion B2 by the narrowest of margins, even though it did not even gain a majority of total votes cast. When such a conclusion narrowly passes in one motion and then fails to gain a majority a few minutes later in the same meeting, it

³ Biennial Report, pp. 3-4.

⁴ Motion B2 (all references to motions in this Letter of Concurrence or Dissent are based on the numbers contained in Appendix G to the Minority Report – "*Corrected Record of Motions and Votes.*")

cannot be said that withdrawing the ANPRM is wholeheartedly recommended by the ACUP.

Along the same lines, I dissent from the Biennial Report's dual recommendations that NHTSA require all semitrailers and single-unit trucks manufactured after 1998 to be equipped with side guards that will prevent PCI when struck by a midsize vehicle at any angle and any location.⁵ The recommendation that all trailers manufactured in the last 26 years be retrofitted with guards passed by only a 8-6-3 vote (with six votes from the bloc predisposed to require underride guards); the recommendation regarding requiring such guards on new trailers was approved 11-6-0 (with seven or eight votes from the bloc predisposed to requiring underride guards); and the recommendation that the required side guards also prevent so-called vulnerable road users from passing underneath a guarded vehicle passed 9-8-0 (with seven votes coming from those predisposed to requiring underride guards). Such a dramatic requirement should not be based on a slim recommendation from the ACUP, particularly when those predisposed to require underride guards, regardless of costs, effectiveness and without consideration of inadvertent consequences, drove that result.

The flaws in these recommendations is that they assume as true the critical element that has not been established: that side-underride guards are effective in significantly preventing or minimizing the fatalities and injuries that actually occur from underride accidents. The Committee did not receive any unbiased, scientifically grounded evidence either that NHTSA "artificially constrained" the number of lives that would be saved, or that the fatalities and injuries that occur in these collisions occurred in such a way that available technologies could prevent them.

The motions refer to preventing PCI in collisions that occur "at any angle, at any location, and at any closing speed up to and including 40 mph." But no evidence presented to the ACUP showed that this technology exists. To the contrary, there has been limited testing of three guards: the AngelWing invented by Perry Ponder, the SafetySkirt invented by ACUP Committee Member Aaron Kiefer, and the Side-Impact Guard invented by Utility Trailer Manufacturing Company. This testing demonstrates that the guards will **not** prevent PCI in all these situations.

The Insurance Institute for Highway Safety tested the AngelWing twice: once at 35 mph and once at 40 mph.⁶ Both tests stopped the Chevy Malibu used. The ACUP also saw videos of a SafetySkirt and Utility's Side-Impact Guard stopping mid-sized

⁵ Biennial Report, p. 6; based on Motions B9 and B10.

⁶ As described in detail in the Minority Report, IIHS for some reason did not use the same criteria in testing the AngelWing as it did in all of its tests of the rear guards: It did not fully load the trailer, and it concentrated the load at the rear. The effect of this was to decrease the trailer's inertia, effectively lowering the speed of the collision. *See* Minority Report, p. 20 note 34.

automobiles at 35 mph. But these tests occurred into the center of the guard and occurred at a 90-degree angle.

There has not been any test conducted at the end of the guard, and only one test in an overlap situation—similar to the tests IIHS performed on the rear guard (but which, for some reason, it has not yet been willing to conduct on side guards). Utility Trailer conducted the 30% overlap test on its Side-Impact Guard, and (as shown in the Minority Report⁷) it failed to prevent PCI. Also, Utility Trailer learned of tests conducted on an AngelWing using a Ford Fiesta crashing at 45 mph at 45-degree angle into the center of the guard. Although ACUP Members Karth and Kiefer were present at the test, they did not show the test results to the ACUP. But I did show the video, in which the AngelWing detached from the trailer, collapsed, and allowed significant PCI.⁸

Nor have there been any tests that will calibrate a potential side-underride guard's performance with the requirements currently stated as minimums for rear-impact guards. As noted in the Biennial Report, the Department has significantly upgraded the FMVSS 223 strength requirements for rear-impact guards to match the Canadian standards. But there has not been any testing to the specific requirements of these new standards, which require the guard to resist at least 78,683 pounds of force applied across the horizontal guard without deflecting more than 125 mm, and require that the guard must absorb at least 14,751 ft lbs. of energy within the first 125 mm of deflection through plastic deformation. And the FMVSS 223 requirement that, after load application, ground clearance not exceed 560 mm creating high-centering situations that in tests of the AngelWing will significantly damage the guard and the trailer.⁹ This damage will not occur absent the side-underride guard.

The bottom line: Significant additional work, work supported and augmented with unbiased testing, to determine the extent to which technologies can mitigate or prevent fatalities and injuries attributable to underride.

But before this testing and development is performed, the independent, science-based research on the nature, scope, and exact cause of the crashes and associated injuries as detailed earlier in this Dissenting Letter needs to be completed. Only by knowing the scope of the problem, and exactly what causes it, can suitable technological response be developed. Hanging an additional 800-1,000 pounds of iron on the side of a trailer¹⁰ may seem like the panacea, but that conclusion does not have any scientific basis to back it.

⁷ Minority Report, pp. 2122.

⁸ Minority Report, pp. 2223.

⁹ See FMVSS 223.

¹⁰ Utility's Side-Impact Guard weights 962 lbs. Minority Report, p. 27 note 44.

Finally, additional research into unintended consequences of adding side guards to trailers needs to be comprehensively studied. The ACUP received evidence that existing side-guard technology damages the trailer and is subject to failure in high-centering situations. There are also concerns of high centering causing trailers to be stuck on railroad tracks: Fortunately, the ACUP unanimously approved a recommendation that NHTSA should work with the Federal Railroad Administration to conduct research on potential impacts of side-underride guards during highway rail-grade crossings.¹¹ Additional factors to be considered in evaluating unintended consequences include the effect of adding 800-1,000 lbs. to the trailer weight (in terms of added fuel costs, damage to infrastructure, and additional fatalities due to the need for additional loads), compliance with safety standards (such as air-hose regulations) and bridge laws, and interaction with equipment that traditionally sits under the trailer, such as spare-tire carriers, equipment boxes, lift-gates and their controls, aerodynamic devices, and the like.

In terms of added fuel costs, the Biennial Report argues that the costs can be offset by attaching aerodynamic devices to the side-underride guard.¹² The flaws in that reasoning include the following:

- Many of the trailers involved either are required to have (due to various state regulations) or already have aerodynamic devices; for those trailers, there is no added fuel savings available. And any operator who wishes to achieve the fuel-savings benefits from a side aerodynamic device is already able to achieve these results without a side-underride guard and its associated fuel penalties.
- Tests demonstrate that aerodynamic devices only provide significant fuel benefits when the trailer is operated at above roughly 30 mph. Many semitrailers are not run on the open road but instead are used for short haul or local delivery; these include, for example, many grocery trailers. Adding a side aerodynamic device in these instances will do very little, if anything, to achieve added fuel savings. If anything, the added weight of the device will further decrease fuel economy.
- As noted in the Minority Report, there are significant compatibility problems between the rigid side-underride guard and the flexible aerodynamic device. As the trailer encounters changes in grade, the inability of the aerodynamic device to flex (because it is rigidly held in place by the side-underride guard) causes damage to the aerodynamic device, often causing it to tear, pieces of the guard (or the entire guard) to break off, or to being removed by the operator due to its

¹¹ Biennial Report, p. 8 (last bullet point); “*Corrected Record of Motions and Votes*,” Minority Report Appendix H, Motion B18.

¹² Biennial Report, p. 19

damaged condition. As pieces of the guard, or the guard itself, breaks off, other users of the highways are exposed to a dangerous condition.

- Additionally, when the aerodynamic skirt is removed from the guard, either by the operator because of damage, or due to the damage, the trailer is significantly less aerodynamic than without the side-underride guard in place. This further decreases fuel economy.

Were the Secretary and Congress inclined to require side-underride guards on trailers, it also would be appropriate to conduct studies to determine the extent to which those guards would prevent vulnerable road users [“**VRU**”] from passing under the required guard. But it is essential to recognize that the guard design that will help mitigate VRU injuries and fatalities is not necessarily the same guard design that would stop an automobile. Because guards designed for VRUs are lightweight and flexible, they do not suffer from all the same flaws as do side-underride guards as traditionally understood. But being lightweight and flexible means that that they are subject to the same damage and risks as face aerodynamic side skirts. Utility Trailer offers a pedestrian guard that is a modified Utility side skirt. The ACUP received evidence that such skirts suffer severe damage in change-of-grade situations, at times causing pieces of the guard to detach during operation. This, of course, is a potential hazard to the motoring public. These additional risks must be fully understood and weighed as decisions are made concerning how to address issues surrounding VRUs.

Rulemaking: Rear Underride (pp. 6-7)

I reaffirm my belief that unless a recommendation is based upon a true consensus of opinion of ACUP members, the Biennial Report should not contain that recommendation. The Minority Report already discussed in detail how a small majority of the ACUP distorted and redefined the word “consensus” to advance their predetermined agenda. I nonetheless provide my views concerning the following motions in the Biennial Reports’ Rulemaking—Rear Underride section, as I may have supported a motion that did not obtain consensus approval, and I may not approve of a motion that did obtain such consensus approval.

I **support** the following Biennial Report’s recommendations contained in the Rear-Underride section, with qualifications noted *in italic*:

- Motion A12 (Recommendation #3, Biennial Report p. 6): Retrofit trailers manufactured since 1998 with rear guards consistent with TOUGHGUARD standards. **But** *using a TOUGHGUARD standard, which requires passing a series of crash tests at 100%, 50%, and 30% overlap, is impractical; rather, the standard should be based on the force requirements currently contained in FMV 223 and 224.* (Motion carried 8-1-6 with 53% of the vote.)

- Motion A13 (Recommendation #4, Biennial Report p. 7): apply rear-impact-guard regulations to single unit trucks. ***But using a TOUGHGUARD standard, which requires passing a series of crash tests at 100%, 50%, and 30% overlap, is impractical; rather, the standard should be based on the force requirements currently contained in FMV 223 and 224.*** (Motion carried 9-2-4 with 60% of the vote.)
- Motion A16 (Recommendation #5, Biennial Report p. 7): complete Heavy Vehicle Automatic Emergency Brake Rulemaking. (Motion carried 15-0-0 with 100% of the vote.)

I **dissent** from the following Biennial Report’s recommendations contained in the Rear-impact Guards section, with additional reasons noted *in italic*:

- Motion A6 (Recommendation #1, Biennial Report p. 6): Amend 2022 Rear-Impact-Guard Rule to require all new trailers to meet the IIHS TOUGHGUARD test. (Motion carried 10-1-6 with 58% of the vote.)
- Motion A18 (Recommendation #6, Biennial Report p. 7): Require replacement of conspicuity tape every five years. *There was no evidence presented to the ACUP that lack of conspicuity tape was a significant issue, or that replacement every five years was necessary.* (Motion carried 11-4-1 with 68.75% of the vote.)

Research (pp. 7-9)

I reaffirm my belief that unless a recommendation is based upon a true consensus of opinion of ACUP members, the Biennial Report should not contain that recommendation. The Minority Report already discussed in detail how a small majority of the ACUP distorted and redefined the word “consensus” to advance their predetermined agenda. I nonetheless provide my views concerning the following motions in the Biennial Report’s Research section, as I may have supported a motion that did not obtain consensus approval, and I may not approve of a motion that did obtain such consensus approval.

I **support** the following Biennial Report’s recommendations contained in the Research section:

- Motion A17 (Recommendation #3, Biennial Report p. 8): NHTSA to research how survivability of rear-underride crashes changes with increased adoption of Automatic Emergency Braking at speeds from 35 mph to 65 mph. (Motion carried 15-0-0 with 100% of the vote.)

- Motion A3 (Recommendation #4, Biennial Report p. 8): NHTSA to comprehensively research underride crash characteristics, including frequency of 30% overlap crashes. (Motion carried 13-4-0 with 76% of the vote.)
- Motion A20 (Recommendation #5, Biennial Report p. 8): DOT to continue research into Enhanced Rear Signaling Systems to help prevent rear-underride crashes. (Motion carried 16-0-0 with 100% of the vote.)
- Motion A21 (Recommendation #6, Biennial Report p. 8): DOT to research efficacy of high-visibility Clearance Lamps to assist with a potential rulemaking for all commercial motor vehicles. Motion carried 14-1-1 with 87.5% of the vote.)
- Motion A22 (Recommendation #7, Biennial Report p. 8): DOT to research efficacious manner of reducing distracted driving, such as flashing lamps. (Motion carried 16-0-0 with 100% of the vote.)
- Motion B13 (Recommendation #8, Biennial Report p. 8): DOT to study conspicuity tape in service, including rates of compliance with reflectivity requirements and ability of law enforcement to enforce the requirements, including recommendations how to reduce most common forms of non-compliance. (Motion carried 16-1-0 with 94% of the vote.)
- Motion B21 (Recommendation #9, Biennial Report p. 8): NHTSA to assess risks of deflection into associated traffic lanes resulting from offset rear crashes and side-underride crashes, making the results public. (Motion carried 9-6-0 with 60% of the vote.)
- Motion B18 (Recommendation #11, Biennial Report p. 8): NHTSA to work with Federal Railroad Administration to research potential impact of side-underride guards during highway-rail-grade crossings, making the results public. (Motion carried 15-0-0 with 100% of the vote.)
- Motion B20 (Recommendation #13, Biennial Report p. 9): NHTSA to investigate potential for collision-mitigation technologies for light- and heavy-duty vehicles to reduce the risk associated with side-underride crashes. (Motion carried 15-0-0 with 100% of the vote.)

I **dissent** from the following Biennial Report's recommendations contained in the Research section, with additional reasons noted *in italic*:

- Motion B26 (Recommendation #10, Biennial Report p. 8): NHTSA to request Volpe Center to determine whether a side-underride guard effectiveness is similar or greater than Lateral Protective Devices in mitigating severity of

pedestrian, cyclist, and motorcyclist fatalities. (Motion carried 13-1-1 with 86.6% of the vote.)

- Motion B25 (Recommendation #13, Biennial Report p. 9): DOT to explore weight-limit exemption for side-underride guards. *Such an exemption is likely to have a negative effect on bridges and other infrastructure, and added weight could increase the severity of crashes of a semitrailer.* (Motion carried 7-6-2 with 46.6% of the vote.)

Miscellaneous (pp. 9-10)

I reaffirm my belief that unless a recommendation is based upon a true consensus of opinion of ACUP members, the Biennial Report should not contain that recommendation. The Minority Report already discussed in detail how a small majority of the ACUP distorted and redefined the word “consensus” to advance their predetermined agenda. I nonetheless provide my views concerning the following motions in the Biennial Report’s Miscellaneous section, as I may have supported a motion that did not obtain consensus approval, and I may not approve of a motion that did obtain such consensus approval.

I **support** the following Biennial Report’s recommendations contained in the Miscellaneous section:

- Motion B28 (Recommendation #1, Biennial Report p. 9): DOT to disseminate educational material to help law enforcement identify and record side-underride crashes. (Motion carried 15-0-0 with 100% of the vote.)
- Motion A23 (Recommendation #12, Biennial Report p. 9): FMCSA should work with state law enforcement and other stakeholders to emphasize education and the need to issue rear-impact guard violation citations and encourage maximum fines for violations affecting safety. (Motion carried 14-1-0 with 93% of the vote.)
- Motion B29 (Recommendation #7, Biennial Report p. 10): ACUP Report to reflect whether each Committee member concurs or does not concur with the report by allowing a statement of concurrence or nonconcurrence. (Motion carried 15-0-0 with 100% of the vote.)

I **dissent** from the following Biennial Report’s recommendations contained in the Miscellaneous section, with additional reasons noted *in italic*:

- Motion A9 (Recommendation #3, Biennial Report p. 9): NHTSA / DOT to provide ACUP with scoping documents, directions, and discussions between NHTSA / DOT and Elemance regarding rear-guard analytical work between 2018

and 2024. *This Motion was not voted on separately; rather, it was combined with Motion A10. As noted in the Biennial Report at p. 13 (“ACUP’s Assessment”), NHTSA already considered this and similar requests and—after comprehensive review—determined that these are “deliberative materials” that ACUP was not entitled to access. The pro-underride-guard group appealed his decision; the appeal was rejected.* (Motion A9 was combined with A10. A10 motion carried 12-3-1 with 75% of the vote.)

- Motion A10 (Recommendation #4, Biennial Report p. 9): NHTSA / DOT to provide ACUP with scoping documents, directions, discussions, test results, data, memoranda, reports and/or notes generated before, during, and following quasi static testing of trailer rear-underride guards conducted by Karco or other contractors on behalf of NHTSA/DOT between 2016 and 2024. *As noted in the Biennial Report at p. 13 (“ACUP’s Assessment”), NHTSA already considered this and similar requests and—after comprehensive review—determined that these are “deliberative materials” that ACUP was not entitled to access. The pro-underride-guard group appealed his decision; the appeal was rejected.* (Motion carried 12-3-1 with 75% of the vote.)
- Motion A11 (Recommendation #5, Biennial Report p. 9): NHTSA / DOT to 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. *As noted in the Biennial Report at p. 13 (“ACUP’s Assessment”), NHTSA already considered this and similar requests and—after comprehensive review—determined that these are “deliberative materials” that ACUP was not entitled to access. The pro-underride-guard group appealed his decision; the appeal was rejected.* (Motion carried 10-6-0 with 62.5% of the vote.)
- Motion B3 (Recommendation #6, Biennial Report p. 9): NHTSA, per the Modernizing Regulatory Review Executive Memo and corresponding guidance, must fully account for regulatory benefits that are difficult or impossible to quantify when conducting rulemaking analysis. *This recommendation presents NHTSA with an impossible task: accounting for items that are “impossible” to quantify and to include them in a cost-benefit analysis.* (Motion carried 9-2-6 with 52.9% of the vote.)

Assessment of DOT’s Progress in Advancing Safety Regulations Relating to Underride Crashes (pp. 1119)

This section of the Biennial Report contains the criticisms often repeated by those who are unhappy with NHTSA’s conclusions concerning the lack of cost-benefit for a side-underride requirement, including Mr. Brumbelow who sent NHTSA a letter in connection with the ANPRM that forms the basis for these criticisms (and which is cited in the Biennial Report). The Minority Report already addresses many of these issues, noting the lack of objective information.

Also, there is no basis—again other than recalculations prepared by Mr. Brumbelow—as to what the actual cost-benefit of a side-underride-guard requirement would be. The ACUP’s directive was to provide “written consensus advice” on safety regulations to reduce underride crashes and fatalities. Congress did not establish the ACUP to perform cost-benefit analyses, and there is nothing to suggest that the Committee members, individually or collectively, are qualified to perform this analysis, let alone more qualified than NHTSA, which performs this analysis routinely. Accordingly, all conclusions in the Biennial Report concerning the results of Mr. Brumbelow’s revised cost-benefit calculation should be disregarded.¹³

As further noted in the Minority Report, and earlier in this Letter of Concurrence and Dissent, the proper approach is for DOT and Congress to authorize unbiased, scientific-based research into the scope of the underride problem, and the ability of technologies to solve it while avoiding or minimizing unavoidable consequences. Only with this information will NHTSA be able to make appropriate policy recommendations concerning what “safety regulations to reduce underride crashes and fatalities relating to underride crashes”¹⁴ are cost justified.

4. Automatic Emergency Braking (pp. 20-21)

As noted earlier, the ACUP unanimously recommended that NHTSA research how survivability of rear-underride crashes changes with increased adoption of Automatic Emergency Braking at speeds from 35 mph to 65 mph.¹⁵ Similarly, the ACUP voted unanimously that NHTSA investigate potential for collision-mitigation technologies to reduce the risk associated with side-underride crashes.¹⁶ These motions were unanimously adopted because they make real-world sense: it is far better to take steps to

¹³ Biennial Report, p. 17.

¹⁴ Public Law 117-58, section 23011(d)(1).

¹⁵ Motion A17.

¹⁶ Motion B20.

avoid any collision entirely, or at least to lessen the force involved in a collision, rather than attempt to dissipate the energy from and unpredictable forces involved in myriad crash scenarios.

The Biennial Report makes a number of assertions about limitations on these technologies based either on no research, or on research from those who have a bias toward requiring underride guards. As noted earlier, additional unbiased research is needed to fully understand the scope of the underride problem, including the various crash scenarios that lead to the fatalities and injuries. With this information, the ability of alternative technologies to solve the problem—both immediately and as technologies become more widespread—can be fully understood. These conclusions are essential to determining whether a requirement to install guards, whether just on new trailers or on all trailers manufactured in the last 24 years, is cost justified.

5. Allegations of Suppression of Underride Research Received by the ACUP (pp. 22-23)

I wholeheartedly agree with the Minority Report’s recommendation that Congress and the DOT should completely disregard this section of the Biennial Report. As admitted in the Biennial Report, the materials giving rise to this section and which are included as Appendixes D through F to the Biennial Report, are based on an unsolicited letter ACUP received from Quon Kwan and are said to be bolstered “by an anonymous source within the DOT” (citing statements made in a Frontline video presentation).¹⁷

Mr. Kwan appears to be a disgruntled former employee who is upset because, he says, a report ultimately published concerning lateral protection devices or pedestrian guards differed from the version on which he worked while employed at the FMCSA. In his letter, Mr. Kwan suggests—without any evidence—that individuals at NHTSA may have been unduly influenced into changing the conclusions of the report as Mr. Kwan worked on it. As the Biennial Report notes, after receiving the unsolicited letter, NHTSA “did not allow the ACUP to discuss or hear his statement and referred the matter to the Department’s Office of Inspector General.”¹⁸ I submit this was the appropriate action and should have been the end of the discussion.

But unhappy with this result, the Committee Chair, Lee Jackson, unilaterally decided to include Mr. Kwan’s letter, along with versions of the Volpe Center reports, in the Biennial Report. He did this even though, admittedly, none of these materials was even reviewed by or considered by the ACUP, let alone decided on as being a consensus view (or even a majority view) of the Committee. Faced with this plain abuse of discretion by Chair Jackson, I sent Mr. Jackson an email requesting that the material be removed

¹⁷ Biennial Report, p. 22.

¹⁸ Biennial Report, p. 23.

from the Biennial Report because it was never considered. Mr. Jackson refused, noting that, “***I believe*** that Congress should be made aware of it, and that it is relevant to the report” (emphasis supplied). In other words, Mr. Jackson substituted his personal views for the views of the ACUP. This, unfortunately, is consistent with the general approach taken in the Biennial Report: either a subset of ACUP members predisposed to requiring override guards, or Mr. Jackson by himself, sees fit to make sweeping recommendations based on personal beliefs, regardless of input from other ACUP members. In any case, the letter from Mr. Kwan and the related Volpe reports should be disregarded entirely.

—Submitted by Jeff Bennett, Motor Vehicle Engineer Representative