

December 30, 2023

James Myers, Designated Federal Officer
U.S. Department of Transportation
National Highway Traffic Safety Administration
Special Vehicles and Systems Division
1200 New Jersey Avenue SE
Washington, DC 20590

Dear Mr. Myers:

On November 15, 2023, National Highway Traffic Safety Administration hosted the second virtual Advisory Committee on Underride Protection public meeting (ACUP meeting; [88 FR 73940](#); [Docket No. NHTSA-2023-0045](#)). I appreciate the opportunity to watch the ACUP meeting. Following the ACUP meeting, I found that numerous advisory committee records from the ACUP meeting are not posted on the [ACUP Federal Advisory Committee Act Database](#), nor are the records available online elsewhere.

As background, I note that Federal Advisory Committee Act (GSA Federal Advisory Committee Management; Final Rule; 66 FR 37728) provides that:

- "...the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying";
- "...the minutes [of advisory committee meetings] must include: copies of each report or other document received, issued, or approved by the advisory committee at the meeting";
- "...for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend advisory committee meetings, ensures that interested parties have a meaningful opportunity to comprehend fully the work undertaken by the advisory committee";
- "...timely access to advisory committee records is an important element of the public access provisions of the Act"; and
- "...agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records".

Moreover, the U.S. Department of Transportation's policy and procedures ([2022](#)) indicate that, "in addition to the committee webpages listed at <https://facadatabase.gov>, each FACA committee will have a public website where committee documents, meeting announcements, membership rosters, and meeting minutes are available". Indeed, OMB Circular A-130 ([2016](#)) indicates that when Federal agencies provide information to the public, they are required to do so by publishing the information online in a publicly accessible, complete, and timely manner. As such, I request that NHTSA post all advisory committee records, including but not limited to the following, on both <https://facadatabase.gov> and an additional public website:

1. PowerPoint presentations: All of the PowerPoint presentations should be available to the public on the [ACUP Federal Advisory Committee Act Database](#); yet, the presentations from Aaron Kiefer, Jeff Bennett, and Doug Smith are not posted. Please post these presentations.
2. AngelWing Test Report: Mr. Jeff Bennett indicated that he provided a copy of 'Utility Trailer's Side Underride Guard Crash Test Report' to the ACUP with his PowerPoint presentation ([see recording](#) at 01:56:36); however, the Test Report is not publicly available. Please post this document.
3. Word Documents: Adrienne Gildea produced or reviewed at least four Word documents during the ACUP meeting entitled 'Next Steps'; 'Committee Requests of NHTSA'; 'Recommended ACUP Questions to NHTSA'; and 'Marianne Karth suggestions for agenda items for the second meeting of the ACUP'. Please post these documents.
4. Written Materials: I submitted written materials, questions, and comments to you in advance of the ACUP meeting, which you shared with committee members (Eric Hein ACUP submission for 11-15-23 ACUP meeting; Enclosure for Eric Hein ACUP Submission for 11-15-23 ACUP meeting). Please post these documents.

Sincerely,

Eric Hein

Enclosures:

Eric Hein ACUP submission for 11-15-23 ACUP meeting

Enclosure for Eric Hein ACUP Submission for 11-15-23 ACUP meeting

Cc:

Ms. Sophie Shulman, Acting Administrator, NHTSA

Ms. Ann Carlson, General Counsel, NHTSA

Mr. Ryan Posten, Associate Administrator Rulemaking, NHTSA

Mr. Van Nguyen, FACA Committee Management Officer, USDOT

Literature Cited

Government Services Administration. July 19, 2001 (2001). [Final Rule; Federal Advisory Committee Management](#). 66 FR 37728.

National Highway Traffic Safety Administration. October 27, 2023 (2023). [Advisory Committee on Underride Protection](#). [Docket No. NHTSA-2023-0045]; 88 FR 73940.

National Highway Traffic Safety Administration. November 15, 2023 (2023a). [Public Meeting: Advisory Committee on Underride Protection](#). Zoom recording.

Office of Management and Budget. 2016. [Circular Number: A-130; Managing Information as a Strategic Resource](#). 85 pp.

U.S. Department of Transportation. July 6, 2022 (2022). [Committee management policy and procedures](#). DOT 1120.3D, 33 pp.