Consumers Union

NONPROFIT PUBLISHER OF CONSUMER REPORTS

Comments of

Of

CONSUMERS UNION

to the

Senate Commerce Subcommittee on Competition, Foreign Commerce, and Infrastructure

on

"The TREAD Act Revisited"

June 3, 2004

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Consumers Union[1] appreciates this opportunity to share our views on the landmark auto safety legislation which is the subject of this hearing, the "TREAD Act." (Transportation Recall Enhancement, Accountability, and Documentation Act of 2000).

Consumer Reports has been testing and rating motor vehicles and automotive products since 1936, the year our magazine was first published. We have always made safety a top priority in our product ratings, and the safety of automobiles is no exception. CU has a long history of working with the National Highway Traffic Safety Administration (NHTSA) and Congress to press for improvements in automobile safety to identify safety priorities and insure that NHTSA is fulfilling its mandate to protect consumers.

Each year, CU conducts comprehensive tests of some 40 to 50 new vehicles that we buy anonymously at retail, and we provide consumers with ratings about performance, routine handling, fuel efficiency, reliability, comfort, braking, emergency handling, and safety features of these vehicles. CU also tests tires each year for their performance in braking, handling, cornering, and traction characteristics on dry, wet, snow-covered, and ice-covered surfaces. Each month, an estimated 17 million consumers read and consider our published test reports, product ratings, and buying advice as they ponder their choices.

[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications, and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports,* with more than 4 million paid circulation, regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

TREAD's Rollover Consumer Information Program

The TREAD Act included a number of important safety measures that have benefited consumers, but we want to focus here on a vitally important provision in TREAD requiring NHTSA—after years of failing to address the rollover problem—to develop and conduct dynamic driving tests it had developed to measure vehicle rollover resistance and report those findings to consumers.

CU's History in Rollover Prevention Efforts

Consumers Union has spent years working to get NHTSA to address the problem of vehicle instability; during that period, the rollover problem has grown steadily worse each year. NHTSA's preliminary data for 2003 showed that while passenger car fatalities declined by 778, SUV fatalities increased by 456. SUV fatalities in rollover crashes increased 10 percent in a single year from 2,448 to 2,701. As NHTSA's press release noted, "This increase was partially accounted for by increases in SUV sales." However, notwithstanding sales volume, SUVs and pickup trucks as classes of vehicles have unusually high rollover rates due to their high centers of gravity.

CU's history in working on rollover issues dates back to 1988, when we asked NHTSA to set a stability standard to reduce rollover using dynamic testing. NHTSA granted that petition but ceased work on the standard in 1994. Finding resistance within the agency to setting such a standard, in 1996 Consumers Union asked NHTSA to at least develop a dynamic test for rollover resistance, conduct tests of SUVs using that test, and make the information available to consumers.[2] NHTSA granted CU's petition for such a

[2] In 1973, NHTSA announced its intention to consider a standard "that would specify minimum performance requirements for the resistance of vehicles to roll over in simulations of extreme driving conditions encountered in attempting to avoid accidents." But NHTSA backed away from setting a standard. In fact, in 1994 NHTSA halted rulemaking on a universal minimum-stability standard, concluding that a standard applicable to all vehicles would require the redesign of nearly all SUVs, vans and pick-up trucks—at an unacceptably high cost.

The agency never set such a standard, despite considering the rollover issue for the next 31 years.

consumer information program, calling CU a "welcome partner" in the quest for improved rollover safety.

The end of this long saga is that not until Congress mandated in TREAD that NHTSA develop and implement a dynamic test for a rollover consumer information rating program did NHTSA follow through. Today NHTSA uses a "fishhook" maneuver to evaluate vehicle rollover resistance. Our auto engineers support the use of the fishhook test because they believe it is rigorous enough to do a good job of assessing the rollover resistance of a range of vehicle designs—provided that the test is used to its fullest potential.

NHTSA's perplexing system of the rollover consumer information ratings

However, we remain greatly disappointed and utterly perplexed at the way NHTSA has implemented its use of the test and formation program. When NHTSA released its first ratings on rollover in February of this year, using the new test on 2004 models, two of the 14 vehicles tested had tipped up.

NHTSA's head of public affairs said this about the scores: "If there's no tip-up, you get a benefit, but if there is a tip-up, there's no penalty. The rule of thumb is that not tipping is worth half a star." We were concerned about that result, and addressed the issue in the April 2004 *Consumer Reports* in an article entitled, "Where the rollover scores go wrong."

We believe that when a vehicle tips up on two wheels in NHTSA's rollover testing program, that should drop its rollover resistance score below that of vehicles that did not tip up. Not so, according to NHTSA. But tipping up in this test is a serious performance consideration.

Much of the disconnect between the dynamic test and the new overall star ratings lies in how the ratings attempt to estimate a vehicle's overall rollover risk. NHTSA has

changed the statistical methodology it uses to estimate that risk. It also weighs a vehicle's static stability factor (SSF) much more heavily than the dynamic test, which we think is a mistake. The SSF relates primarily to field data on "tripped" rollovers, which typically occur when a vehicle's wheels slide sideways against a curb, for example. The dynamic test probes a vehicle's ability to stay upright when making emergency maneuvers. The former is based on the history of all rollover accidents, the latter on how the test vehicle performs in an emergency maneuver. They give important but separate information.

NHTSA's static measurement may be a helpful predictor of tripped rollovers, but the overall result as currently provided is not helpful to consumers—it virtually masks the dynamic behavior of the vehicle.

Getting Information On Vehicles That Tipped Up From NHTSA's Website is Difficult and Confusing

NHTSA's Website—where this information is stored but not easily found—shows the overall rollover scores for the two test vehicles that tipped up, the Ford Explorer Sport Trac and the four-wheel drive Toyota Tacoma extended-cab pickup, with vehicle ratings of two stars and three stars respectively out of a possible five stars. Compared with other vehicles, two and three stars sound pretty good to most consumers. However, even more frustrating is the difficulty in finding which vehicles failed the test. In order to learn whether the vehicle tipped up, the consumer has to click on the vehicle's name, and from there scroll down to the very bottom of the page and look for the word "tip" in a small box under the heading "rollover." This new and vital information is virtually buried, out of sight, away from consumers seeking safety information.

Further, an enterprising consumer seeking more information on NHTSA's Website would be surprised to learn that if he or she went back to the press release the agency sent out in February with rollover rating data, the press release *says nothing about the*

tip ups at all. Instead, the two vehicles that are designated "tip" in NHTSA's Website, are described as "under review and [information about them] will be released at a later date." This befuddling conflict of information is at best, not helpful to consumers.

Meanwhile, the rating section of the Website includes no discussion of what "tip" means, whether the vehicles tested had electronic stability control (a relatively new technology that our engineers have found to be quite effective in reducing rollover), or at what test speed the vehicles tipped up.

The net effect of the new ratings program is to bury the new dynamic test information and prevent consumers from obtaining any really useful information regarding which vehicles are the more stable and forgiving in an emergency situation. NHTSA's consumer-unfriendly treatment of rollover ratings information also means that most vehicles will look alike when it comes to rollover propensity, including SUVs, which we know have a far greater propensity to roll over than passenger cars. The information program has great potential, but needs to be redesigned to make dynamic rollover test information more accessible, more accurate, and more useful.

Additional Concerns About Rollover Testing and Rating Program

We raise for your consideration two additional concerns regarding rollover. The first is that when NHTSA first released these ratings in February, it promised more test results in the "spring." To date, the test results of only 14 vehicles have been released. Second, NHTSA's current dynamic rollover test remains only part of the picture. Consumers Union has consistently recommended that a viable rollover testing program must include handling tests in order to prevent automakers from passing the fishhook test while degrading handling elsewhere, say by using tires that allow a vehicle to slide too easily. NHTSA officials appear to agree, saying they intend to add handling tests to complete the rollover testing protocol. However, we have seen no indication that they are developing these handling tests and without them, holding all the other problems aside, the rollover testing program is simply incomplete.

CU has struggled to determine how best to advise our readers on what we regard overall as confusing and even misleading information about a vehicle's tendency to roll over. Currently we tell our readers that any vehicle that tips up in NHTSA's fishhook maneuver testing should be regarded as falling below the minimum performance in NHTSA's test for rollover resistance. *Consumer Reports* will not recommend any vehicle that tips up in NHTSA's fishhook test.

In light of the problems with NHTSA's rollover rating system, we urge this Subcommittee to insist that NHTSA overhaul its rollover ratings system and delivery of consumer information to reflect completely, accurately, and in a consumer-friendly manner the relative stability of the vehicles tested and rated.

NHTSA's Work on TREAD and Beyond: Overall Observations and Recommendations

The Administrator of the National Highway Transportation Administration (NHTSA), Dr. Jeffrey Runge, has rightly proclaimed as a proud accomplishment the agency's completion of final rules in over a dozen different rulemakings since the passage of the TREAD Act in 2000. While each of these final rules was developed as a result of a Congressional mandate under TREAD, we agree with Dr. Runge that there is much take pride in. NHTSA's ability to put in place in a short time period a number of new regulatory standards is admirable.

We wish to make some observations and raise several other areas of concern in our comments.

A. The first observation is that auto safety gets faster, more comprehensive regulatory action from NHTSA when Congress gives the agency a broad roadmap for addressing longstanding safety problems and for developing new regulations, including mandates with specific dates. We are not suggesting that Congress engage in micromanagement of this federal agency, but history has made clear that

the public benefits when Congress gives the agency general directives for reducing risks and improving safety, like calling on NHTSA to update a 30-year-old tire testing standard or developing a dynamic test for rollover resistance. The safety organization Advocates for Highway and Auto Safety has documented NHTSA's history of action—or inaction—when a Congressional mandate is in place. With four different laws, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA); the Transportation Efficiency Act for the 21st Century (TEA-21); the Transportation Recall Enhancement, Accountability, and Documentation Act of 2000 (TREAD); and Anton's Law (2002), there is a clear pattern of NHTSA adopting a rule when there is a Congressional mandate to do so, and failing to solve problems on their own when Congress does not require action.

B. The second observation is that NHTSA has the ability to act expeditiously to put in place competent and well-developed mandatory regulations when given the road map and sufficient directive by Congress to do so. TREAD is the most recent and best example. On the other hand, the auto industry and even Dr. Runge argue that voluntary standards developed by industry, in contrast to mandatory ones, are often preferable because they can be adopted in a shorter timeframe. This argument is belied by recent events. In February 2003, Dr. Runge asked the auto industry to engage in a voluntary process, whereby they would commit as an industry to reducing the special hazards posed by larger vehicles—SUVs, pickup trucks, and other large vehicles—crashing into smaller ones. The auto industry, working with the Insurance Institute for Highway Safety and with a NHTSA representative participating, adopted voluntary requirements to address occupant head protection in front-to-side crash protections. The date this voluntary standard is to go into effect, however, is September 2009. Consider this: NHTSA developed over 12 mandatory regulations in four years, several with immediate implementation dates, while the industry developed a single voluntary standard that from the time of its inception to expected full compliance will take over six years.

Voluntary standards can be slow to take effect, and they also exclude the public from the vital process of reviewing proposed actions and having meaningful input into their development. Industry members too often develop voluntary standards behind closed doors. Voluntary standards also leave consumers unsure whether the vehicles they are buying comply with a voluntary standard - they need not comply, since the standard is voluntary. Moreover, consumers can't know whether an automaker might decide to stop complying if the cost of doing so becomes too great, as has happened in the past.

C. While the rulemakings accomplished under TREAD were unprecedented and NHTSA accomplished a great deal in a short amount of time, much of the rulemaking under TREAD dealt with long overdue updates of regulations. Prominent among them was getting the agency to focus on detecting warning signals of product hazards and defects sooner rather than later, updating a three-decade old tire testing program, and requiring the agency to include dynamic testing for rollovers into the consumer information program discussed above. With all of TREAD's important provisions, it wasn't the final word on auto safety. There is much still to be done to make vehicles safer, particularly in light of the changing nature of the automobile fleet over the past fifteen years.

Americans drive many more SUVs and pickups trucks than in the past—over 50% of vehicles sold fall into the category of light truck, and their size and weight present new hazards to smaller vehicles in a crash.

We know that we may be preaching to the choir here—after all, the full Commerce, Science and Transportation Committee passed TREAD and Title IV of S. 1072, the NHTSA reauthorization bill. But we need the strong support of members of this Subcommittee and the full Committee in the coming weeks, as the House has chosen not to adopt the Senate provisions. Consumers Union reiterates our support for the motor vehicle safety provisions contained in Title IV of S. 1072, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFE-TEA).

As many of you know, Title IV calls for the establishment of safety standards for a number of long-overdue National Highway Traffic Safety Administration (NHTSA) safety initiatives, including vehicle rollover crash prevention, side impact crash protection, occupant ejection prevention, vehicle-to-vehicle crash compatibility, 15-passenger van safety, child safety measures, and improved consumer access to safety information. Each of these individual provisions is designed to set goals for action while giving NHTSA flexibility in setting effective dates for the safety measures to be implemented, and to give motor vehicle manufacturers the freedom to choose the design or technology that best meets the performance standards that are adopted.

For years, and in some cases decades, these safety measures have been under consideration by NHTSA, but have not been implemented. Title IV of S. 1072 provides an effective roadmap to complete action on these important life-saving measures, and will offer much needed protection for the driving public, in much the same manner as TREAD.

Thank you for taking the time to consider our views.

Respectfully Submitted,

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