

**BEFORE THE  
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION  
U.S. DEPARTMENT OF TRANSPORTATION**

Make Inoperative Exemptions; Vehicle )  
Modifications To Accommodate People ) **Docket No. NHTSA-2016-0031**  
With Disabilities )

**COMMENTS OF ENTERPRISE HOLDINGS INC.**

(January 25, 2021)

The National Highway Traffic Safety Administration’s (NHTSA) supplemental notice of proposed rulemaking (SNPRM) to amend 49 C.F.R. part 595 to allow rental car companies to temporarily disable a knee bolster air bag to accommodate people with disabilities requiring hand controls is a significant step forward for the safety and accessibility of disabled drivers.<sup>1</sup> Enterprise Holdings, Inc. (EHI) takes this opportunity to voice its support for the rulemaking and offer comments in response to specific questions asked by NHTSA. We hope NHTSA finds these comments helpful and informative as the agency contemplates the nuances of the proposed rule.

As NHTSA is aware, vehicle manufacturers, distributors, dealers, repair businesses, and rental companies “may not knowingly make inoperative any part of a device or element of design installed in or on a motor vehicle that is in compliance with an applicable standard.”<sup>2</sup> NHTSA regulations currently exempt dealers and repair businesses from this prohibition in certain circumstances.<sup>3</sup> Rental car companies, however, are not yet exempt from this statutory prohibition. As NHTSA recognizes in its SNPRM, this places rental car companies in an untenable position.<sup>4</sup> The SNPRM seeks to remedy this by proposing to allow rental car companies to make inoperative a knee bolster air bag, on a temporary basis, to permit the temporary installation of hand controls to accommodate persons with physical disabilities seeking to rent the vehicle.

EHI supports adopting a rental car company exemption. EHI also agrees that an exemption warrants a new section to 49 CFR part 595 specifically for rental car companies. While this would be largely similar to 49 CFR 595.7, EHI agrees that that rental car companies cannot easily be

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<sup>1</sup> Make Inoperative Exemptions; Vehicle Modifications To Accommodate People With Disabilities, 85 FR 84281, Docket No. NHTSA-2016-0031 (December 28, 2020) (“SNPRM”). 49 C.F.R. part 595, subpart C, sets forth exemptions from the make inoperative provision to permit, under limited circumstances, vehicle modifications that take the vehicles out of compliance with certain FMVSSs when the vehicles are modified to be used by persons with disabilities after the first retail sale of the vehicle for purposes other than resale.

<sup>2</sup> 49 U.S.C. § 30122.

<sup>3</sup> 49 C.F.R. 595.

<sup>4</sup> SNPRM at 84285.

added to section 595.7, given the unique circumstances applicable to rental car transactions. However, some of the details of the proposed rule are problematic, and EHI believes that NHTSA's concerns could be remedied in better ways. We address these issues in more detail below in response to the Administration's list of questions posed in the SNPRM.

## Questions

### **1. Should rental companies be provided exemptions from the make inoperative prohibitions to make temporary vehicle modifications, permanent vehicle modifications, or both?**

At this time, EHI anticipates making only temporary modifications to its vehicles. Customers requesting accommodations within rental car fleets require flexibility, including geographic- and vehicle-types, and it would very difficult to quickly and efficiently provide disabled drivers a permanently modified vehicle when and where it is needed. While it is unlikely that a vehicle would be rented to two people requiring the same modification consecutively, EHI supports the proposed rule's allowance that if the vehicle would be rented to a second person requiring the same modification immediately after the first rental agreement, that a rental car company would not be required to reverse the modification and then immediately modify the vehicle again.

EHI also requests that NHTSA clarify the operation of the rules when a rental car company must use a third-party repair company to install hand controls and disable a knee bolster air bag. For example, in EHI's case, use of third-party repair company may be required in remote areas lacking access to an Enterprise Service Center. EHI requests that the final rule make clear that rental car companies may have a third-party repair company disable a knee bolster airbag to install hand controls. In these cases, EHI requests that the repair company be given the option to affix – or have the rental car company affix – a temporary label in satisfaction of the repair company's label requirement.

### **2. Although Enterprise only asked NHTSA about the application of the make inoperative prohibition to disabling knee bolster air bags to accommodate installation of hand controls, should NHTSA provide a make inoperative exemption for other installations of adaptive equipment by rental companies?**

EHI is unaware of any other adaptive equipment that would require it to make inoperative a system installed in compliance with an FMVSS. It is difficult to predict future developments in adaptive equipment or future safety systems that may be incorporated into vehicles. While EHI is unaware of the need for any other exemption at this time, EHI requests that NHTSA monitor developments to ensure NHTSA can quickly provide exemptions and flexibility necessary to allow rental car companies to provide adaptive equipment to disabled drivers in the future.

### **3. If a temporary modification to install adaptive equipment causes a malfunction telltale to illuminate, should the rental company be allowed to disable the telltale?**

The typical industry-anticipated hand control installation process currently includes the installation of a shunt within the electrical circuitry of the air bag system. The only function of the shunt is to prevent the air bag malfunction telltale from illuminating as a result of disabling the knee bolster air bag. The shunt allows the telltale to illuminate if the air bag system detects a malfunction with the enabled air bags, retaining the functionality and safety interests of the telltale. EHI does not believe installation of a shunt that only prevents the telltale from illuminating as a result of disabling the knee bolster air bag, while retaining its ability to illuminate if it detects a malfunction

with all other air bags, is correctly characterized as “disabling the telltale.” However, to the extent NHTSA characterizes this limited process as “disabling the telltale,” EHI strongly believes that NHTSA should allow rental car companies to disable the telltale in this fashion.

The safety interests weigh heavily in favor of allowing rental car companies to disable the air bag malfunction telltale in connection with disabling a knee bolster air bag, provided the telltale continues to function as designed in connection with other air bags installed in the vehicle. If a shunt were not installed, the air bag malfunction telltale would illuminate after the diagnostic check and for the duration of the rental to a driver with a disability. This means that the driver would not have the benefit of the telltale illuminating in the event of any other malfunction within the air bag system, including malfunctions affecting air bags that are installed in compliance with FMVSS No. 208. Disabled drivers should not be made to forgo this safety benefit on speculative and unwarranted concerns that rental car companies may fail to remove the shunt at the conclusion of the rental.

In addition, illumination of the telltale is not needed when a knee bolster air bag is disabled to install hand controls. Disabled drivers would already be aware that the knee bolster air bag is disabled because of the temporary label required under the proposed rules. Further, the operation of the vehicle without an active knee bolster air bag is exactly as intended for the safe operation of the vehicle with hand controls – not a malfunction. Illumination of the telltale would serve only to confuse disabled drivers about the safety of the vehicle.

Finally, NHTSA’s concerns that the telltale may be necessary to remind rental car companies to remove the shunt when the hand controls are removed is unwarranted and mitigated by the safety checks in place for this process. A description of EHI’s proposed hand control installation and removal process, and controls for ensuring the telltale is re-enabled, is provided in Appendix A.

**4. Would NHTSA need to provide a make inoperative exemption for installation of hand controls? Alternatively stated, would the mere installation of hand controls by a rental company potentially make inoperative systems installed in compliance with an FMVSS, even if no other modifications to the vehicle are made? For example, would a hand control (or any other adaptive equipment typically installed by rental companies) interfere with devices or elements of designs installed in compliance with any FMVSS? If the mere installation of adaptive equipment potentially violates the “make inoperative” prohibition, NHTSA would consider broadening the scope of the exemption granted in a final rule issued following this proposal.**

No. The mere installation of hand controls in a vehicle without a knee bolster air bag by a rental car company does not make systems installed in compliance with an FMVSS inoperative. EHI is also unaware of any case where NHTSA has determined that the installation of hand controls in a vehicle without a knee bolster air bag renders a system installed in compliance with an FMVSS inoperative. If NHTSA reverses its position in this regard, however, then the proposed rental car company exemption would need to be broadened to the extent necessary to allow rental car companies to install hand controls for disabled drivers.

**5. Should rental companies need to request an exemption from NHTSA, or should the exemption be provided automatically within the regulation?**

EHI agrees with the SNPRM that the exemption should be provided automatically. Seeking permission to obtain an exemption would not be beneficial to safety or to disabled drivers requesting specific accommodations or modifications, or practical to execute in actual situations. EHI also notes that motor vehicle repair businesses are not required to seek an exemption from NHTSA in order to disable knee bolster air bags to install hand controls, and there is no reason to treat rental car companies differently in this respect. In addition, it is unclear how NHTSA would evaluate the merits of a request for an exemption, and so obtaining NHTSA approval would not appear to serve a useful purpose.

**6. If rental companies are granted exemption by the regulation alone rather than on request to NHTSA, should rental companies be required to notify NHTSA of modifications to vehicles? If so, how often and what information should rental companies be required to provide?**

EHI agrees with NHTSA's conclusion that it is not necessary for rental car companies to identify themselves to NHTSA prior to modifying vehicles pursuant to a "make inoperative" exemption. A list of rental car companies able to modify vehicles pursuant to 49 CFR part 595 would likely be a list of all rental car companies and be of limited utility to the public, but would impose a paperwork burden on all rental car companies.

**7. Should rental companies be required to notify customers that a vehicle modified to accommodate the installation of adaptive equipment may have had devices or designs installed in compliance with an applicable FMVSS made inoperative?**

EHI agrees that rental car companies should affix a temporary label notifying renters when a knee bolster air bag has been disabled to install hand controls. EHI also agrees that it would be impractical to affix a permanent label given the temporary nature of the modification and practical realities of the rental car industry.

However, EHI does not believe it is necessary or practical to additionally provide a separate notification that the vehicle may have had devices or designs installed in compliance with an applicable FMVSS made inoperative. EHI currently does not have a system in place to append such a notification with the required information to the rental agreement or otherwise provide such a notification at the time of execution of the rental agreement. While hand controls are needed in only a small subset of rental vehicles, entire system changes would be needed to systemically identify all rental vehicles by make, model, rental type, and other identifying information, and be able to select and identify if a knee bolster air bag was ever deactivated in the vehicle. Implementing a new system and conducting appropriate training to provide such notice would incur great expense, limits, rather than expands accessibility, and serves no public interest.

In addition, in some cases, the customer does not execute a rental agreement at the time of rental. For example, with the National Car Rental Emerald Club, renters sign a master rental agreement upon sign-up and then, after placing an advance reservation, the renter can pick up an eligible vehicle and go. EHI is aware that other rental car companies have similar programs. It is unclear how rental car companies would be able to comply with the proposed notice documentation in connection with these customer relationship models.

A temporary label or hangtag provides sufficient and practical notice to disabled consumers renting vehicles with hand controls installed. Therefore, the additional documentation proposed in the SNPRM is unnecessary and fails to justify the additional costs that would be imposed on rental car companies.

**8. Should rental companies be required to retain records of vehicles modified pursuant to this “make inoperative” exemption. If so, what information and for how long?**

The SNPRM proposes to require rental car companies to keep, for five years, a copy of the proposed notice that would be provided to renters when a vehicle has been modified to disable a knee bolster air bag. As EHI stated above in response to Question 7, EHI does not have a system in place to provide this documentation. Implementing a compliant system would incur substantial costs and be of limited value because the temporary label, affixed in a location visible to the driver, would provide sufficient notice to renters requiring hand controls when a knee bolster air bag is disabled. As a result, it is unnecessary to impose a further requirement to keep and maintain records of this documentation.

**9. Should rental companies be required to notify subsequent renters and/or purchasers of rental vehicles that have been modified pursuant to this proposed “make inoperative” exemption that the vehicle was previously modified?**

EHI agrees with the SNPRM’s tentative conclusion that notification to subsequent renters and/or purchasers that a vehicle was previously modified is unnecessary. Installation and removal of hand controls and disabling and reenabling of a knee bolster air bag has no permanent effect on the vehicle. As noted in the NRPM, NHTSA does not have authority over used vehicle sales transactions, and state laws are better equipped to handle any general or specific retail disclosure obligations.

**10. What procedures could or should NHTSA require of rental companies to ensure the knee bolster air bag will be reenabled when the rental vehicle is returned, and the hand controls are disabled?**

Rental car companies should be required, as the SNPRM proposes, to reactivate the knee bolster air bag at the conclusion of the rental. However, the individual and specific procedures and processes a rental car company undertakes to reactivate the knee bolster air bag should be left to the rental car company. Each rental car company is in the best position to understand and effectuate this requirement, and no single one-size-fits-all approach is likely to be effective. Rental car companies should therefore retain flexibility in how it ensures reactivation of the knee bolster air bag at the conclusion of applicable rentals.

**11. To the extent car sharing companies (e.g., Zipcar) qualify as a “rental company” under 49 U.S.C. 30102, would all aspects of this proposal be reasonably applied to ride sharing companies, or would procedural requirements need to be different for them?**

To the extent car sharing companies qualify as a “rental company” under 49 U.S.C. 30102, EHI believes they should be subject to the same exemptions and requirements as other rental car companies. Car sharing companies are subject to Americans with Disabilities Act (ADA) to the same extent as traditional rental car companies, and disabled drivers deserve the same accessibility accommodations regardless of the service they choose.

Sincerely,

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