

January 27, 2021

National Highway Traffic Safety
Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
West Building Ground Floor
Room W12-140
Washington, D.C. 20590

**Re: Comments on the American Car Rental Association with respect to
Docket No. NHTSA-2016-0031**

Dear Sir or Madam:

The American Car Rental Association (ACRA) respectfully submits these comments in response to the National Highway Traffic Safety Administration's (NHTSA) supplemental notice of proposed rulemaking (SNPRM) to amend 49 C.F.R. part 595 to permit car rental companies to disable temporarily a knee bolster air bag to accommodate renters with disabilities who require hand controls (85 Fed. Reg. 84,281 (December 28, 2020)).

ACRA supports NHTSA's SNPRM as an important step for the safety and accessibility of rental vehicles for disabled individuals. Given the increasing prevalence of knee-bolster air bags that are incongruous with temporary hand control devices, NHTSA's proposed "make inoperative exemption" is necessary to permit ACRA's members to serve our customers in need of hand controls in compliance with the Americans with Disabilities Act, while at the same time permitting rental car companies to comply with the Federal Highway Safety Act's limits on disabling temporarily knee bolster air bags on a vehicle's driver's side. NHTSA's SNPRM also poses a number of important questions to fine tune the proposed exemption. ACRA takes this opportunity to provide its own insights to these questions below.

ACRA is the national representative for over 98% of our nation's car rental industry. ACRA's membership is comprised of over 200 companies, including all of the brands you would recognize such as Alamo, Avis, Budget, Dollar, Enterprise, Fox, Hertz, National, Payless, Sixt and Thrifty. ACRA members also include many system licensees and franchisees, mid-size, regional and independent car rental companies as well as smaller, "mom & pop" operators. As of January 1, 2020, ACRA members had almost 2.2 million registered vehicles in service in the United States, employed over 160,000 workers across the country, and had fleets ranging in size from one million cars to ten cars.

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

ACRA fully supports NHTSA's issuance of a rule allowing for temporarily making inoperative the driver's side knee bolster air bags during rentals in which a hand control device is installed to enable operation by their customers with the need for these devices. Such action is consistent with earlier exemptions provided to automobile dealers and motor vehicle repair businesses in particular circumstances. Moreover, without the ability to make these devices temporarily inoperative, the types of vehicles available for rental will continue to diminish.

Rental car fleets must be flexible to meet the needs of its customers, including disabled customers. It would be very difficult to quickly and efficiently provide a disabled driver a permanently modified vehicle when and where it is needed. Accordingly, an exemption to permanently modify vehicles is unnecessary at this time.

ACRA requests that the final rule make clear that rental car companies may have a third-party repair company disable a knee bolster air bag to install hand controls. In these cases, the repair company should 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?

At this time, ACRA is unaware of any other adaptive equipment that would require rental car companies to make inoperative a system installed in compliance with an FMVSS. However, ACRA asks that NHTSA monitor such developments to ensure NHTSA can quickly act 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?

Rental car companies should be allowed to selectively disable the air bag malfunction telltale, so that the telltale does not illuminate as a result of disabling a knee bolster air bag, provided that the telltale remains functional for detecting other system malfunctions. If rental car companies cannot selectively disable this telltale, the telltale would be illuminated for the entire duration of the rental, negating the benefit and purpose of the telltale.

Further, renters would already be aware when a knee bolster air bag has been disabled as a result of the temporary label requirement. Thus, illumination of the telltale resulting from disabling the knee bolster air bag serves no useful purpose. Selective disabling allows the telltale to continue to function as intended and serves the best safety interest of disabled drivers.

- 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.**

The mere installation of hand controls, in a vehicle without a knee bolster air bag, renders safety features installed in compliance with an FMVSS inoperative. However, if NHTSA at some point in the future determines otherwise, a reasonable exemption would likely be 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?**

The rental car exemption should be provided automatically. Requiring rental car companies to obtain permission would cause unnecessary delay and would not enhance safety or benefit drivers.

- 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?**

It is not necessary for rental car companies to identify themselves to NHTSA prior to modifying vehicles pursuant to the “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?

The proposed temporary label requirement would be reasonable for rental car companies to implement and beneficial to drivers requiring hand controls. However, ACRA does not believe it is necessary or practical to additionally require rental car companies to provide a separate notification. Rental car companies may not have systems in place to append such a notification to rental agreements.

In addition, rental car companies may not execute a rental agreement at the time of rental. Some rental models allow renters sign a rental agreement upon initial enrollment in a rental program, allowing renters to simply place an advanced reservation, select an eligible vehicle, and go. It is unclear how rental car companies would be able to comply with the additional notification requirement in these circumstances.

Since the temporary label provides sufficient and practical notice to disabled consumers renting vehicles with hand controls, additional notice is unnecessary and fails to justify the 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?

Rental car companies should not be required to retain records for every vehicle modified pursuant to the “make inoperative” exemption. 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. Rental car companies, however, may not have systems in place to provide this documentation, and the costs to implement such systems are substantial while providing limited value.

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?

Rental car companies should not be required to notify subsequent renters/purchasers that a vehicle was previously modified to disable a knee bolster air bag. Under the proposed rule, car rental companies must return the vehicle to its pre-modified state at the conclusion of the rental. Installation and removal of hand controls and disabling and reenabling of a knee bolster air bag has no permanent effect on the vehicle. Thus, a requirement to notify subsequent renters that a vehicle was previously modified would serve no useful purpose and may cause unnecessary confusion.

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 have the ability to implement their own procedures and processes to ensure a disabled knee bolster air bag is reenabled at the conclusion of a rental. Each rental car company is in the best position to effectuate the reenabling of a knee bolster air bag, and no single one-size-fits-all approach is likely to be effective. Rental car companies should therefore have flexibility in how they meet this requirement.

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, they should be subject to the same exemptions and requirements as other rental car companies. Car sharing companies are subject to the 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.

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Thank you for considering ACRA's position. If you have questions or if you or your staff need further information, please contact Greg Scott, ACRA's Government Relations Representative, at 202-297-5123 or gscott@merevir.com.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Sharky Laguana', with a long horizontal flourish extending to the right.

Sharky Laguana
President