

**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)

REPLY COMMENTS OF THE AMERICAN CAR RENTAL ASSOCIATION

(March 1, 2021)

The American Car Rental Association (ACRA) respectfully submits these reply 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 allow rental car companies to temporarily disable a knee bolster air bag to accommodate people with disabilities requiring hand controls.¹ Even though these comments are being submitted after the deadline, we request that NHTSA follow the long-standing Department of Transportation practice of considering late comments, so long as doing so does not delay further regulatory action.

Specifically, ACRA wishes to address several concerns raised by the National Automobile Dealers Association (NADA) and other commenters. These include (1) prohibiting the disabling of the knee bolster air bag telltale, (2) requiring notice to subsequent purchasers of a prior modification, (3) requiring notice of modification (in addition to the temporary label) to disabled renters needing hand controls, and (4) mandating certain record retention requirements. As explained below, implementation of the proposals would impose significant burdens on the rental car industry while providing few, if any, benefits for disabled drivers.

¹ Proposed Rule, Make Inoperative Exemptions; Vehicle Modifications To Accommodate People With Disabilities, 85 FR 84281, (December 28, 2020) (SNPRM).

I. Disabling the Knee Bolster Air Bag Telltale

SNPRM Question 3, regarding disabling the knee bolster air bag telltale, raised a few concerns, and we wish to clarify the function of the shunt and how disabling the telltale via the shunt improves safety.

The wording of the SNPRM, “should the rental company be allowed to disable the telltale,” may have caused some confusion, as a few commenters appear to answer “No” while simultaneously agreeing that the telltale needs to be able to function to alert renters when a malfunction, other than the fact the knee bolster air bag is disabled, occurs.²

The procedure proposed by Enterprise Rent A Car (a leading member of ACRA), and as discussed in the SNPRM, deactivates only the telltale associated with the knee bolster air bag. For all other air bags, the telltale would operate normally. By not allowing rental car companies to selectively disable the knee bolster air bag telltale, the telltale would be illuminated for the entire duration of the vehicle’s operation. As a result, it would be impossible for renters with disabilities to know if there is an actual malfunction with the vehicle’s deployable restraint system. We agree this is unacceptable.

NADA, however, comments that the knee bolster air bag telltale should remain illuminated, saying the “whole purpose of vehicle telltales or trouble lights is to inform operators of a vehicle condition they might not otherwise be aware of.” However, disabled drivers in this case would be aware that the knee bolster air bag is disabled because of the prominent temporary label required under the proposed rule. Furthermore, disabling the knee bolster air bag is critically important for the safety of disabled drivers needing hand controls. This is not a malfunction; quite the opposite, this is the intended operation of the vehicle’s safety system when hand controls are installed.

² See Comments of Paralyzed Veterans of America; Comments of National Mobility Equipment Dealers Association.

If the knee bolster air bag telltale must remain illuminated, as NADA proposes, not only do disabled drivers lose the important safety benefit of the telltale in all other cases, they now must drive with a distraction; a distraction which may cause confusion and unnecessary fear that the vehicle's deployable restraint system is malfunctioning and that the vehicle is unsafe to drive. The potential for confusion is at its highest in this context as rental car customers are likely not familiar with the vehicle being rented.

NADA's remaining concern, that illumination of the telltale serves "to remind rental companies of the need to restore airbags to their original condition" is misplaced and easily addressed. The required removal of the hand controls and temporary label serve as effective reminders for rental car companies of the need to reenable the knee bolster air bag. Requiring an illuminated knee bolster telltale as an additional reminder is redundant under these circumstances, and one that comes at great cost to disabled drivers by preventing the telltale from illuminating in the event of a malfunction with any other aspect of the vehicle's air bag safety system.

As stated in Enterprise's comments, Enterprise's proposed modification process includes safety checks during the installation and the removal of hand controls. Rental car companies are fully capable of restoring temporarily modified vehicles to their original condition.

II. Notice to Subsequent Renters/Drivers of a Prior Modification

NADA also states that rental car companies should be required to inform subsequent vehicle purchasers when a vehicle has previously had hand controls installed and the knee bolster air bag deactivated. Installation and removal of hand controls and disabling and reenabling of the knee bolster air bag, however, has no permanent effect on the vehicle. This process also does not require removal of the knee bolster air bag. Instead, the knee bolster air bag is disabled by disconnecting the activation cord from the knee bolster air bag. Reactivation is accomplished by simply

reconnecting the activation cord. This is a straight forward process and does not compromise the future safety of the vehicle or have any other effect once the vehicle is restored.

As a result, notice to subsequent renters and/or purchasers that a vehicle was once modified to install hand controls serves no justifiable purposes, and may in fact cause unnecessary confusion and hesitation among subsequent renters and purchasers who may not understand the modification process and what it means.

Furthermore, NHTSA does not require rental car companies, dealers, repair shops, or consumers to provide disclosures to subsequent renters/purchasers when an air bag, brake, battery, tire, or other vehicle component has been replaced. Even in the case of the Takata air bag recall, NHTSA did not require – nor did the Settlement Agreements between consumers and car manufacturers require – notice to be provided to subsequent purchasers of a repaired vehicle indicating that the vehicle’s faulty air bag(s) had been replaced.³

Replacement of air bags and other system components is common, and unlike replacement or repair, the temporary modification here does not involve removing an air bag. Accordingly, there is no justification for imposing a requirement to notify subsequent renters/purchasers of a prior, temporary modification when similar notice is not required for other significant vehicle equipment that is repaired or replaced.

In addition, as NHTSA indicated in the SNPRM, “it does not have authority over used vehicle sales transactions, and that State laws may be better equipped to handle any general or specific retail disclosure obligations.” Used car sales are subject to the Federal Trade Commission's (FTC’s) Used Car Rule and applicable state law.⁴ The Used Car Rule requires specific retail

³ See e.g., Takata Airbag Products Liability Litigation, Toyota Settlement Agreement, 1:15-md-02599-FAM.

⁴ Car dealers who sell, or offer for sale, more than five used vehicles in a 12-month period must comply with the Rule. 16 C.F.R. § 455.

disclosures such as vehicle information (make, model, model year, and VIN) and warranty details, among other general consumer disclosures.⁵ Absent additional congressional authority, NHTSA would not be able to implement regulation of used car sales, such as a requirement to provide notice of temporary modifications, and it is further unclear how such disclosures would fit within existing regulatory schemes.

Finally, it is unclear how such a notification would apply past the initial sale of the rental vehicle. Would consumers or dealers who purchased the previously modified vehicle be required to provide the same notice if the vehicle is later resold? What if the vehicle is sold again? Without clear justification, congressional authority, and a plan for how such notice would fit within existing regulation of used car transactions, NHTSA should not deviate from its initial, correct conclusion that notice of a prior modification to subsequent renters/purchasers is unnecessary.

III. Notice of Modification to Disabled Renters Needing Hand Controls

Some commenters, including NADA, support a requirement to notify customers, in addition to a temporary label, when a knee bolster air bag has been disabled. The temporary label proposed under the SNPRM, however, is a superior and more effective notice than a disclosure appended to a rental agreement.

As proposed in the SNPRM, the temporary label must be placed within the passenger compartment and affixed in a location visible to the driver. Unlike the permanent label required under existing exemptions, the temporary label proposed here is specific, stating “WARNING—To

⁵ This information must be made available to consumers within a standardized “Buyer’s Guide” for each vehicle.

accommodate installation of hand controls, this rental vehicle has had its knee bolster air bags temporarily disabled.”⁶

This language and placement provide clear and conspicuous notice to the driver that the knee bolster air bag has been disabled. This label is superior to, and more likely to be read and understood, than requiring similar language in a disclosure appended to a long rental agreement that a consumer may pass over or miss amongst the various other pieces of information provided to the renter.

While some commentators favor additional notice, the practical problems and costs far outweigh any benefit. Hand controls are needed in only a small subset of rental vehicles, yet entire system changes would be needed to systematically identify all rental vehicles by make, model, rental type, and other identifying information, and be able to select and identify those in which a knee bolster air bag had been temporarily deactivated at some point in its history. Implementing a new system and conducting appropriate training to provide such notice would incur great expense and serve no public interest.

Some commenters also fail to consider alternative customer relationship models, such as club memberships, where the customer does not execute a rental agreement at the time of the rental. For example, renters may sign a master rental agreement upon initial enrollment and then be able to place future reservations to pick up any vehicle in a certain aisle without a separate agreement. It is unclear how rental car companies would be able to comply with the proposed notice documentation in connection with these customer relationship models.

⁶ Compare with the permanent label disclosure required under existing exemptions, “This vehicle has been modified in accordance with 49 CFR 595.6 and may no longer comply with all Federal Motor Vehicle Safety Standards in effect at the time of its original manufacture.”

In summary, the temporary label already provides clear and practical notice to disabled consumers renting modified vehicles with hand controls installed, and the additional documentation proposed in the SNPRM fails to justify the additional costs or consider the practical burdens that would be imposed on rental car companies.

IV. Record Retention

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. NADA supports this proposal. Both, however, fail to consider the costs. For example, NHTSA states in the SNPRM that it “believes the costs associated with this record retention would be minimal since the record could be the rental agreement or invoice itself, which can be stored as part of their general record retention process, electronically or in paper format at their discretion.”⁷ However, this ignores the costs associated with tracking this information for each vehicle in a rental car company’s fleet.

NHTSA recognizes it fails to estimate this cost, but states it does not believe it to be significant, saying “[t]he cost of preparing the invoice is not a portion of our burden calculation, as that preparation would be done in the normal course of business.”⁸ To track this information, however, rental car companies would need to implement entirely new systems at substantial costs. Despite only a small subset of vehicles ever needing to be modified, rental car companies would need a system to record and track the modification history, including the fact of no modification, for every vehicle in a rental company’s fleet.

Rental car companies would need to develop frontend, backend, and database layers to collect and track this information. Rental car companies would also need to develop an interface for service

⁷ SNPRM at 84287.

⁸ SNPRM at 84290.

desk workers, technicians, and other employees to enter and review this information, as well as train each employee on how to use the system. Overall, this development process would require planning, design, code development, testing and debugging, deployment and integration, employee training, and system maintenance. Because rental car companies would be required to reactivate the knee bolster air bag at the conclusion of a modified vehicle's rental, and both the temporary label and removal of the hand controls themselves (as well as internal safety checks and procedures implemented by the rental car company) serve to remind rental car companies to reenable the knee bolster air bag, there is an extremely low risk of noncompliance. Accordingly, the proposed record retention requirement would be of marginal value and would fail to justify the significant additional costs imposed on rental car companies providing accessibility to disabled drivers.

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In conclusion, ACRA takes the safety of its disabled customers seriously, and supports the adoption of a rule that provides these important customers with access to safe vehicles. ACRA encourages NHTSA to adopt a rule as noted herein.

If NHTSA staff have questions regarding ACRA's supplemental comments, please contact Gregory M. Scott, ACRA's Government Relations Representative, at 202-297-5123 or gcsott@merevir.com.