



U.S. Department  
of Transportation  
**National Highway  
Traffic Safety  
Administration**

Deputy Administrator

1200 New Jersey Avenue SE.  
Washington, DC 20590

November 5, 2014

The Honorable Claire McCaskill  
United States Senate  
Washington, D.C. 20510

Dear Senator McCaskill:

This responds to your October 8, 2014 letter requesting the National Highway Traffic Safety Administration's (NHTSA) position on the Alliance of Automobile Manufacturers' Rental Car Legislative Proposal ("Alliance Proposal") for the record of the September 16, 2014 hearing on "Oversight of and Policy Considerations for the National Highway Traffic Safety Administration." Specifically, you asked that the agency provide its views and analysis of the Alliance Proposal, particularly in comparison to your legislation (S. 2819) and the Administration's proposal (GROW AMERICA Act) regarding the grounding of rental car vehicles subject to a safety recall.

**Summary of Relevant Limitation on Rental Provisions (Alliance Proposal, S. 2819 and GROW AMERICA Act)**

The Alliance Proposal provides that a rental car company may not rent a motor vehicle subject to a recall until the company notifies the renter of the recall and the renter provides acknowledgement in writing ("informed consent"). The Proposal permits exceptions from these requirements if the defect or noncompliance which is the subject of a recall is remedied or enforcement of the order regarding the recall is set aside by a civil action. Finally, the Alliance Proposal states that notwithstanding the informed consent provisions, a motor vehicle subject to a recall may not be rented if the defect notice from a manufacturer contains precautionary advice to refrain from driving the vehicle until the specified remedy is completed.

In contrast to the Alliance Proposal, both S. 2819 (Section 3) and the GROW AMERICA Act (Section 4109) prohibit rental companies that receive a defect notification from a manufacturer from renting vehicles subject to a recall unless the defect or noncompliance is remedied. Both bills provide limited exceptions from these requirements, but neither bill permits the rental company to rent the motor vehicle even after obtaining consent from the consumer. In addition, neither bill makes the prohibition on rental dependent upon the defect notification containing precautionary advice to refrain from driving. Further, the GROW AMERICA Act also prohibits used car dealers from selling a vehicle with a defect or noncompliance that has not been fixed.



**Agency Views and Analysis**

The agency opposes the Alliance Proposal because it would not adequately protect rental consumers and the driving public in the event of a recall. The Proposal allows vehicles subject to recall to be rented if consumers acknowledge and consent to the risks and dangers of the defect. A consumer who is renting a short term vehicle usually is not in an informed position to understand the nature and extent of a defect or noncompliance. The consumer is therefore put in a position of quickly choosing between risking their safety and their ability to fulfill the purpose of their trip as planned. The agency believes it is unreasonable to place the burden on the consumer in this context or to expect that rental car companies and their employees could adequately educate a consumer on the risks and dangers of the defective vehicle.

In addition, the Alliance Proposal prohibiting the rental of vehicles subject to a recall only when the defect notice from manufacturers contains precautionary advice to refrain from driving would apply to very few recalls and thus, would be wholly ineffective in protecting the American public. The agency issued an information request (IR) on October 14, 2014 to the nine motor vehicle manufacturers who support the Alliance proposal directing them to report the number of instances since January 1, 2000 that they have issued a notice in the circumstance suggested in the Alliance Proposal – a defect or noncompliance notice with precautionary advice to refrain from driving a vehicle.

In response to our request, the Alliance provided information for their members for the years 2010-2013. The Alliance reported only six (6) recalls where unconditional “do not drive” instructions were issued by manufacturers, covering only 53,300 vehicles. This represents 0.24% of the total vehicle recalls (2,459) for the time period of 2010-2013, and a mere 0.07% of the total number of vehicles recalled during this period (73,910,203). The Alliance also reported 45 instances where conditional “do not drive” recall notices were issued – recalls that instructed the owner not to drive the vehicle under certain circumstances. Because these recalls include instructions that indicate the driver can keep driving the car if the conditions are first satisfied (e.g., the vehicle owner should examine the vehicle to determine if the defect is apparent) the Alliance’s proposed language would not appear to prohibit rental companies from renting vehicles in these recalls. However, the Alliance’s analysis shows that even including conditional “do not drive” recalls in the calculation, the 45 recalls still make up only 10% of the recalls during the period 2010-2013 that were examined by the Alliance. By NHTSA’s calculation, these recalls represent only 1.8% of the total recalls, and only 4.9% (3,646,904) of the total number of vehicles recalled, during the period 2010-2013.

In addition, NHTSA received responses from the nine manufacturers who received the information request from NHTSA. The manufacturers confirmed NHTSA’s initial assessment that the manufacturers very rarely issue “do not drive” recalls. Specifically, these manufacturers reported only 29 vehicle recalls since 2000 in which they have issued “do not drive” instructions (BMW (10), Jaguar Land Rover (5), Chrysler (1), Ford (6), VW (6), Mazda (0), Volvo (0), Toyota (1), and Mercedes (0)).


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These results show that the Alliance Proposal is not a serious, comprehensive approach to redress the problem of defective rental vehicles on our nation's roads and highways. The agency is also concerned that this approach is counterproductive, making consumers believe that defects and noncompliance in motor vehicles are only serious and dangerous if the defect notice tells consumer not to drive the vehicle.

The agency submits to the record its opposition to the Alliance Proposal. The informed consent provisions and the requirement to ground rental vehicles only in the limited circumstance when the defect or noncompliance notice contains advice not to drive does not adequately protect consumers and the driving public. The agency supports S. 2819 to the extent that it is consistent with our GROW AMERICA proposal – to protect consumers from renting vehicles subject to a recall unless the defect or noncompliance is remedied. The agency further supports Section 4109 of the GROW AMERICA Act, that would extend these requirements to used car dealers. All defects and noncompliance should be addressed and remedied prior to selling or renting a motor vehicle to the public.

I have sent a similar response to Senator Barbara Boxer. If I can provide additional information or assistance, please feel free to call me. If members of your staff have questions, they may contact Alison Pascale, Director, Office of Governmental Affairs, Policy and Strategic Planning at (202) 366-2386.

Sincerely yours,



David J. Friedman  
Deputy Administrator