



January 27, 2021

U.S. Department of Transportation
1200 New Jersey Avenue SE
West Building, Ground Floor
Room W12-140
Washington, DC 20590-0001

**Re: Docket No. NHTSA 2016-0031
Make Inoperative Exemptions for Rental Companies**

The National Mobility Equipment Dealers Association (“NMEDA”) is a nonprofit trade association dedicated to expanding opportunities for people with disabilities to safely drive or be transported in motor vehicles. NMEDA has historically worked closely with NHTSA to address a variety of complex automotive mobility matters, including but not limited to 49 CFR Part 595 Subpart C (“Make Inoperative Exemptions, Vehicle Modifications to Accommodate People with Disabilities”). As NHTSA considers exercising its statutory authority to exempt rental companies from the make inoperative prohibition in certain circumstances, and with certain conditions, so that rental companies may rent vehicles to drivers requesting hand controls, NMEDA offers the following responses to the questions posed in the above-referenced Supplemental Notice of Proposed Rulemaking (SNPRM):

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

NMEDA is generally supportive of NHTSA adding a narrow make inoperative exemption that applies only to rental companies engaging in the temporary (non-permanent) installation of hand controls to enable service to customers with physical disabilities. Regarding the matter of temporary and permanent installations, the permanent (non-removable) installation of a hand control system by a rental company does not appear to be necessary unless the installation is occurring in a “dedicated” mobility rental vehicle. It is worth noting that in instances where a rental company is permanently installing a hand control system in a “dedicated” mobility vehicle, the rental company would be considered a modifier the same as any other post-retail sale installer of adaptive equipment.

NMEDA recommends that NHTSA consider the sheer variety of hand control systems (mechanical, electronic/mechanical hybrid, brake only), operational methods (left hand, right hand, push-pull, push-rock, push-right angle, push-twist), and installations (floor mount, column mount) that are currently available. Simply stated, the permanent installation of any one hand control system cannot reasonably be expected to meet the operational needs of all (or even most) rental company customers. Given that a variety of hand control options must be made available to safely and appropriately meet the divergent needs of drivers who cannot use the original equipment manufacturer’s (OEM) accelerator control system, it is NMEDA’s observation that a temporary hand control installation is the most appropriate installation for the scenario being discussed.

In addition to the issue of installation permanence, it is NMEDA's position that NHTSA should consider and ultimately address the following concerns if a safe and workable path forward is to be achieved:

- The automotive mobility industry relies on professionals to conduct a clinical evaluation of physical, visual, and cognitive skills to validate a driver's functional abilities and determine the safest and most appropriate automobile adaptive equipment solution. If the requested exemption is granted, how will rental companies ensure that they are furnishing customers with hand control systems that align with each customer's unique needs and abilities? Similarly, how will rental companies ensure that a customer is proficient in operating the hand control system installed in their rental vehicle?
 - NMEDA has determined that a systematic and documented approach to quality is necessary to satisfy individuals' transportation needs safely and consistently. Given the range of available hand control systems, it is essential that rental companies utilize hand control systems that are manufactured by reputable providers (*i.e.*, providers who manufacture and distribute hand control systems that meet or exceed widely accepted automotive mobility industry equipment standards and all applicable government safety requirements). If the requested exemption is granted, how will rental companies ensure that the hand control systems being furnished to customers are safe and reliable from a manufacturing standpoint?
 - NMEDA has determined that the installation of automotive mobility equipment should be performed by trained and certified professionals. If the requested exemption is granted, how will rental companies ensure that the hand control systems being furnished to customers are safe and reliable from an installation standpoint?
 - Inherent in the requested exemption is the risk that untrained rental company employees may provide information (instruction on the use of hand control systems) and/or engage in activities (hand control system installation/removal, driving a vehicle equipped with a hand control system from one rental location to another rental location) that are inadvisable from customer service, quality, and safety standpoints. If the requested exemption is granted, how will rental companies educate and train their employees with respect to drivers requesting hand control systems and vehicles equipped with hand control systems?
2. **Although Enterprise only asked NHTSA about the application of the make inoperative prohibitions to disabling knee bolster air bags to accommodate installations of hand controls, should NHTSA provide a make inoperative exemption for other installations of adaptive equipment by rental companies?**

Exemptions from the make inoperative provisions set forth in 49 CFR Part 595 Subpart C were specifically designed to permit, under limited circumstances, a "vehicle repair business" to make inoperative certain FMVSS requirements when the vehicles are modified to be used by persons with disabilities. NMEDA is generally supportive of the narrowly defined exemption proposed in this NSPRM but, given rental companies' peripheral involvement in the business of modifying motor vehicles for use by persons with disabilities, NMEDA opposes the extension of additional make inoperative exemptions to allow for the installation of other (non-hand control) adaptive

equipment by rental companies. Casually expanding 49 CFR 595 Subpart C exemptions, especially to entities that are not well-versed in the various functional considerations and technical complexities that are part and parcel of automotive mobility equipment installations, would be a significant departure from NHTSA's traditionally robust approach to ensuring the safest achievable automotive mobility solution.

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?

It is NMEDA's position that the airbag malfunction telltale should not be disabled. Disabling the telltale would deprive the rental company customer of an active telltale to warn of potential faults with non-knee bolster (e.g., frontal and side) airbags. NMEDA Quality Assurance Program (QAP) accredited dealers typically install a shunt to "trick" the airbag telltale into thinking that the knee bolster airbag is functioning properly, and it is NMEDA's position that such an installation procedure would appropriately balance safety and accessibility – without disabling the telltale for the remaining airbag systems – given the scenario being discussed.

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 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.

NMEDA is aware of some hand control designs that could potentially interfere with other FMVSS compliant systems, specifically accelerator control systems (FMVSS No. 124). NMEDA is also aware of some hand control designs that do not interfere with either FMVSS No. 124 or knee bolster airbags, but such hand control designs may require the removal and replacement of the OEM throttle position sensor or a direct electronic interface with the engine control unit.

In short, a hand control system's interference with devices or elements of designs installed in compliance with any FMVSS depends entirely upon the specific hand control system and the specific make/model of vehicle in which the hand control system is being installed. Ultimately, this question highlights the complexities associated with – and underscores the highly particular nature of – even "simple" (i.e., hand control) automobile adaptive equipment installations.

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

NMEDA concurs with NHTSA's tentative conclusion that rental companies need not seek an exemption from NHTSA to temporarily disable knee bolster airbags to accommodate the temporary installation of hand controls to enable service to customers with physical disabilities. In the interest of providing expedient accommodation for rental company customers requesting vehicles with hand controls, it seems appropriate for NHTSA to grant the exemption to rental

companies conditionally on their compliance with the proposed amendments to 49 CFR Part 595 Subpart C.

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?

NMEDA concurs with NHTSA's tentative conclusion that rental companies need not identify themselves to NHTSA in the same manner that motor vehicle repair businesses identify themselves to NHTSA. In fact, the inclusion of rental companies in NHTSA's publicly available Adapted Vehicle Modifier Identification Database may give the public the incorrect impression that rental companies are equipped and/or permitted to modify motor vehicles in a manner that extends beyond the narrow scope of this SNPRM's proposal.

That being said, NMEDA recommends that NHTSA consider establishing an annual reporting requirement for rental companies that have availed themselves of the proposed exemption in any calendar year. The collection of such information (rental company name, rental company location, number of temporary hand control "cycles" [installations/removals], style of hand control, hand control serial number, make/model of vehicle, incident reports, etc.) could provide valuable insight into the utility and safety of extending certain make inoperative exemptions to rental 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 applicable FMVSS made inoperative?

Yes, rental companies should be required to notify customers that the vehicle's safety device or element of design was made inoperative. Specifically, any such notification should identify that the knee bolster airbag has been disabled to accommodate the temporary installation of a hand control system. NMEDA concurs with NHTSA's "dual notification" approach, which can be accomplished by (a) annotating the invoice or rental agreement and (b) affixing a temporary label to a highly visible location inside the vehicle (*e.g.*, driver's side windshield, driver's side window, center console) for the duration of the rental period.

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?

Yes, rental companies should be required to retain records of vehicles modified pursuant to this "make inoperative" exemption. NMEDA recommends that detailed records of all hand control installations/removals/reinstallations be maintained for at least five years (electronic storage would be acceptable) and capture customer, equipment, vehicle, technician, installation, and inspection information.

Specifically, records retained pursuant to this "make inoperative" exemption should include (but need not be limited to) the following:

- Initial customer hand control request log and any subsequent correspondence regarding hand control systems;
- Evidence that the customer was provided (or declined) instruction on the use of the hand control system;
- Make/model and serial number of the hand control system;
- Number of “cycles” (installation/removal) the hand control system has experienced;
- Log of any defects or repairs made to the hand control system during its useable life including parts replaced;
- Log of any customer experience issues while using the hand controls including if any corrective action was taken as the result of a customer complaint;
- Log of any routine or required maintenance performed on the hand control system;
- Make/model/VIN of the rental vehicle;
- Name of the technician(s) who performed the hand control system’s installation and/or removal;
- Relevant and current (non-expired) technician certifications/credentials; and
- Completed inspection checklists for the hand control system installation and removal.

The required retention of such records will facilitate enforcement by NHTSA in the event of potential violations of the terms of the proposed make inoperative exemption as well as traceability if a safety issue arises with a hand control system and/or a rental vehicle in which a hand control system was temporarily installed.

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?

Such a notification requirement would be ethical, reasonable, and not overly burdensome.

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?

NMEDA recommends the following procedures that could or should be required of rental companies when disabling a hand control installation and reenabling the knee bolster airbag:

- Require that the hand control system be removed by a trained and certified professional.
- Complete an inspection checklist when the hand control system is removed and the knee bolster airbag is reenabled.
- Ensure that the shunt is removed along with the hand controls by incorporating a visual (*e.g.*, a temporary label affixed to a highly visible location inside the vehicle) and/or physical (*e.g.*, a keychain token) prompt into the hand control system’s installation/removal process. Such items will not only indicate that a temporary hand control system has been installed and that the vehicle’s knee bolster airbag has been disabled, but they will also serve as a reminder that the hand control system still needs to be removed and the knee bolster airbag still needs to be reenabled before the vehicle is “rental ready” for subsequent rental company customers. Removal of the temporary label and/or keychain token would signal that the hand control system has been removed and the knee bolster airbag has been reenabled.

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In conclusion, NMEDA generally supports the addition of a narrow make inoperative exemption that applies only to rental companies engaging in the temporary (non-permanent) installation of hand controls to enable service to customers with physical disabilities.

Considering our shared and persistent endeavor to balance safety and accessibility, it is also worth reiterating the vital importance of meaningful, specific, and enforceable equipment and installation standards for entities or individuals providing automotive mobility solutions – whether temporary or permanent – for persons with disabilities. The absence of such standards will inevitably create injury potential or actual injury, which is an outcome that rental companies would presumably prefer to avoid.

If NHTSA has questions regarding this comment or would like to discuss any element of this comment in greater detail, please contact NMEDA's Director of Government Relations (Amy.Schoppman@nmeda.org).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'D. Langfield', written in a cursive style.

Danny Langfield
Chief Executive Officer