



January 27, 2021

*By regulations.gov*

National Highway Traffic Safety Administration (NHTSA)  
Docket Management Facility  
West Building, Room W12-140  
1200 New Jersey Avenue, SE  
Washington, DC 20590-0001

Re: Make Inoperative Exemptions; Vehicle Modifications to Accommodate People with Disabilities; 49 CFR Part 595; Doc. No. NHTSA-2016-0031.

Ladies and Gentlemen:

The National Automobile Dealers Association (NADA) represents more than 16,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair, and parts sales. Together they employ over 1,000,000 people nationwide, yet the majority are businesses as defined by the Small Business Administration.

Last year, NHTSA issued a supplemental notice of proposed rulemaking (SNPRM) for two “make inoperative” exemptions<sup>1</sup> designed to accommodate vehicle modifications made for people with disabilities.<sup>2</sup> The first involves the potential impact of rear-mounted transport devices on Federal Motor Vehicle Safety Standard (FMVSS) No. 111 (“rear visibility”). The second involves the potential impact of hand control related knee bolster airbag deactivations on FMVSS 208 (“occupant protection”). The SNPRM expands upon a 2016 proposal for a “make inoperative” exemption involving vehicle roof modifications and (FMVSS) No. 216 (“roof crush”).<sup>3</sup>

Motor vehicle dealerships may alter new vehicles prior to first sale, modify used vehicles, sell parts and accessories used by others to modify used vehicles, and sell vehicles to customers who have them modified by others. Modifications to motor vehicles by manufacturers, distributors, dealers, rental companies or motor vehicle repair businesses must generally be conducted in a manner that maintains compliance with applicable FMVSSs.<sup>4</sup>

Motor vehicle dealerships often sell or lease vehicles for people with disabilities. However, when adaptive modifications are necessary, they typically are made by specialized shops (usually members of the National Mobility Equipment Dealers Association (NMEDA)) working closely with certified driver rehabilitation specialists (CDRS).

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<sup>1</sup> 49 CFR Part 595.

<sup>2</sup> 85 Fed. Reg. 84281, *et seq.* (December 28, 2020).

<sup>3</sup> 81 Fed. Reg. 12852, *et seq.* (March 11, 2016).

<sup>4</sup> 49 U.S.C. §30122; 49 CFR Part 595.

## **I. Rear-Mounted Personal Mobility Device (PMD) Transport**

The SNPRM responds to a petition seeking an addition to the “make inoperative” exemption rule<sup>5</sup> to address certain motor vehicle installations of temporary devices designed to carry the PMDs often used by people with mobility disabilities. When installed on the rear of motor vehicles, these devices, together with the PMDs they are designed for, may obstruct the rearview cameras required by FMVSS No. 111. NADA concurs with the petitioner that a “make inoperative” exemption is justified but agrees with NHTSA that it (like all “make inoperative” exemptions) should be drafted narrowly. Full and permanent disablement of rearview cameras is not necessary and, given the “temporary” nature of the transport device, would undermine vehicle safety during operation with the transport device removed. Preserving to the greatest degree possible the safety benefits of FMVSS No. 111 will benefit both a vehicle’s current owners and operators and its potential future owners and operators.

## **II. Make Inoperative Exemptions for Rental Companies**

As noted above, rental car companies are subject to the “make inoperative” prohibition. Thus, to the extent that a rental car company modifies a motor vehicle by installing hand controls designed to allow certain persons with disabilities to operate that vehicle, it must do so in full compliance with applicable FMVSS. Given the complexities associated with selecting and installing adaptive equipment in motor vehicles, this highly individualized work is primarily done by the specialized shops represented by NMEDA based on the tailored recommendations of CDRS. The SNPRM addresses a request for interpretation (ROI) filed by a rental car company that, upon request, arranges for the temporary installation of hand controls for persons with disabilities. The ROI states that when hand controls are installed in a vehicle equipped with knee bolster airbags, a heightened risk of driver injury may occur if the airbag were to deploy. In other words, a system designed to enhance occupant protection could instead end up causing an increased risk of driver injury if hand controls are installed.

In response to the ROI, the SNPRM proposes to allow rental car companies to deactivate (“make inoperative”) knee bolster air bags in motor vehicles so equipped where arrangements have been made to modify such vehicles by temporarily installing hand controls. To date, vehicle manufacturers have yet to clarify for NHTSA whether for any given vehicle the knee bolster air bag is integral to that vehicle’s compliance with FMVSS No. 208.<sup>6</sup> If vehicle manufacturers were able to provide a list of vehicles where knee bolster airbags were not integral to their compliance with FMVSS No. 208, then entities subject to the statutory “make inoperative” prohibition could deactivate those airbags without violating the prohibition.

NADA generally supports a narrowly tailored knee bolster deactivation “make inoperative” exemption for rental car companies. Found below are NADA’s responses to the questions posed in the SNPRM.

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<sup>5</sup> 49 CFR §595.7.

<sup>6</sup> Presumably NHTSA has the authority to obtain such information.

**1. Should rental companies be provided exemptions from the make inoperative prohibitions to make temporary vehicle modifications, permanent vehicle modifications, or both?** The exemption for rental car companies should only be for temporary hand control modifications. As noted above, permanent modifications to a motor vehicle to adapt it for use by a person with disabilities necessarily requires the expertise of a specialized shop and requires that such modifications be tailored to that specific individual in consultation with a CDRS. Moreover, motor vehicles in rental use typically are held for relatively short periods of time before they are sold at wholesale or retail. Under no circumstances should they be sold with hand controls installed or airbags disabled.

**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?** No. To maintain the safety efficacy of the FMVSS, NHTSA's "make inoperative" exemptions have traditionally been narrowly tailored to address a limited set of circumstances.

**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?** No. The whole purpose of vehicle telltales or trouble lights is to inform operators of a vehicle condition they might not otherwise be aware of. As proposed, renters with disabilities operating hand-controlled rental vehicles will be told prior to rental when knee bolster airbags are disabled. An active telltale will serve to remind them, and to remind rental companies of the need to restore airbags to their original condition prior to subsequent rental or sale.

**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?** No. NADA does not support the broadly drafted exemption set out in proposed 49 CFR §595.8. and instead urges that it be limited to temporary hand control installations and knee bolster airbag deactivations.

**5. Should rental companies need to request an exemption from NHTSA or should the exemption be provided automatically within the regulation?** Each rental car company seeking to avail itself of the "make inoperative" exemption should have to inform NHTSA that it intends to do so but should not have to request and be approved for specific case-by-case exemptions.

**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?** Rental car companies should be required to keep detailed records for each vehicle modified under the exemption. Such records should include sufficient vehicle identification information, dates when exempt modifications were made, dates when deactivated airbags were restored, and how and when each vehicle was disposed of.

**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?** Yes. NHTSA's should require rental car companies to notify rental customers at the time of rental regarding any modifications that may have caused safety systems to become inoperable, including but not limited to knee bag deactivations covered by a make inoperative exemption. In addition, NHTSA should require a temporary label to inform/remind vehicle operators and passengers of the vehicle's condition. The label will also serve as a reminder to the rental car company that the knee bolster airbags must be restored when the hand controls are removed.

**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 be required to retain records for five years, in a manner similar to the recordkeeping requirements for motor vehicle repair businesses.

**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 be required to inform vehicle purchasers of the fact that the vehicle previously had hand controls installed and knee bolster airbags deactivated.

**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?** NHTSA should require that, after the rental agreement is completed and the vehicle is intended to be rented without hand controls, the knee bolster airbags are returned to full functionality. As the make inoperative exemption only applies to the duration of the rental contract, the vehicle's safety systems should be returned to their full functionality after the contract is completed, unless the vehicle is intended to only be rented with hand controls.

On behalf of NADA, I thank NHTSA for the opportunity to comment on this matter.

Respectfully submitted,



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