



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1037 and 1068

[EPA-HQ-OAR-2014-0827; FRL-9970-61-OAR]

RIN 2060-AT79

Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to repeal the emission standards and other requirements for heavy-duty glider vehicles, glider engines, and glider kits based on a proposed interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute “new motor vehicles” within the meaning of CAA section 216(3), glider engines would be found not to constitute “new motor vehicle engines” within the meaning of CAA section 216(3), and glider kits would not be treated as “incomplete” new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1).

DATES:

Comments: Comments on all aspects of this proposal must be received on or before January 5, 2018.

Public Hearing: EPA will hold a public hearing on Monday, December 4, 2017. The hearing will be held at EPA’s Washington, DC campus located at 1201 Constitution Avenue, NW,

Washington, DC. The hearing will start at 10:00 a.m. local time and continue until everyone has had a chance to speak. More details concerning the hearing can be found at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/regulations-greenhouse-gas-emissions-commercial-trucks>.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2014-0827, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in

hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the following location:

Air and Radiation Docket and Information Center, EPA Docket Center, EPA/DC, EPA WJC West Building, 1301 Constitution Ave., N.W., Room 3334, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734-214-4131; email address: hearing_registration-asd@epa.gov.

SUPPLEMENTARY INFORMATION:

Does this Action Apply to Me?

This action relates to a previously promulgated final rule that affects companies that manufacture, sell, or import into the United States glider vehicles. Proposed categories and entities that might be affected include the following:

Category	NAICS Code ^a	Examples of Potentially Affected Entities
Industry	336110	Motor Vehicle Manufacturers, Engine Manufacturers, Engine Parts Manufacturers, Truck Manufacturers, Automotive Parts and Accessories Dealers
	336111	
	336112	
	333618	
	336120	
	441310	

Note:

^a North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely covered by these rules. This table lists the types of entities that we are aware may be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this action, you should carefully examine the applicability criteria in the referenced regulations. You may direct questions regarding the applicability of this action to the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Introduction

The basis for the proposed repeal of those provisions of the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2 (the Phase 2 rule)¹ that apply to glider vehicles, glider engines, and glider kits is EPA’s proposed interpretation of CAA section 202(a)(1) and sections 216(2) and 216(3), which is discussed below. Under this proposed interpretation: 1) glider vehicles would not be treated as “new motor vehicles,” 2) glider engines would not be treated as “new motor vehicle engines,”

¹ 81 FR 73478 (October 25, 2016).

and 3) glider kits would not be treated as “incomplete” new motor vehicles. Based on this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1).

This proposed interpretation is a departure from the position taken by EPA in the Phase 2 rule. There, EPA interpreted the statutory definitions of “new motor vehicle” and “new motor vehicle engines” in CAA section 216(3) as including glider vehicles and glider engines, respectively. The proposed interpretation also departs from EPA’s position in the Phase 2 rule that CAA section 202(a)(1) authorizes the Agency to treat glider kits as “incomplete” new motor vehicles.

It is settled law that EPA has inherent authority to reconsider, revise, or repeal past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. This authority exists in part because EPA’s interpretations of the statutes it administers “are not carved in stone.” *Chevron U.S.A. Inc. v. NRDC, Inc.* 467 U.S. 837, 863 (1984). If an agency is to “engage in informed rulemaking,” it “must consider varying interpretations and the wisdom of its policy on a continuing basis.” *Id.* at 863-64. This is true when, as is the case here, review is undertaken “in response to ... a change in administration.” *National Cable & Telecommunications Ass’n v. Brand X Internet Services*, 545 U.S. 967, 981 (2005). A “change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency’s reappraisal of the costs and benefits of its programs and regulations,” and so long as an agency “remains within the bounds established by Congress,” the agency “is entitled to assess administrative records and evaluate priorities in light of the philosophy of the

administration.” *Motor Vehicle Manufacturers Ass’n. v. State Farm Mutual Automobile Insurance Co.*, 463 U. S. 29, 59 (1983) (Rehnquist, J., concurring in part and dissenting in part).

After reconsidering the statutory language, EPA proposes to adopt a reading of the relevant provisions of the CAA under which the Agency would lack authority under CAA section 202(a)(1) to impose requirements on glider vehicles, glider engines, and glider kits and therefore proposes to remove the relevant rule provisions. At the same time, under CAA section 202(a)(3)(D), EPA is authorized to “prescribe requirements to control” the “practice of rebuilding heavy-duty engines,” including “standards applicable to emissions from any rebuilt heavy-duty engines.” 42 U.S.C. § 7521(a)(3)(D).² If the interpretation being proposed here were to be finalized, EPA’s authority to address heavy-duty engine rebuilding practices under CAA section 202(a)(3)(D) would not be affected.

II. Background

A. Factual Context

A glider vehicle (sometimes referred to simply as a “glider”) is a truck that utilizes a previously owned powertrain (including the engine, the transmission, and usually the rear axle) but which has new body parts. When these new body parts (which generally include the tractor chassis with frame, front axle, brakes, and cab) are put together to form the “shell” of a truck, the assemblage of parts is referred to collectively as a “glider kit.” The final manufacturer of the glider vehicle, *i.e.*, the entity that takes the assembled glider kit and combines it with the used

² EPA has adopted regulations that address engine rebuilding practices. *See, e.g.*, 40 CFR 1068.120. EPA is not proposing in this action to adopt additional regulatory requirements pursuant to 42 U.S.C. § 7521(a)(3)(D) that would apply to rebuilt engines installed in glider vehicles.

powertrain salvaged from a “donor” truck, is typically a different manufacturer than the original manufacturer of the glider kit. *See* 81 FR 73512-13 (October 25, 2016).

B. Statutory and Regulatory Context

Section 202(a)(1) of the CAA directs that EPA “shall by regulation prescribe,” in “accordance with the provisions” of section 202, “standards applicable to the emission of any air pollutant from any . . . new motor vehicles or new motor vehicle engines.” 42 U.S.C. § 7521(a)(1). CAA section 216(2) defines “motor vehicle” to mean “any self-propelled vehicle designed for transporting persons or property on a street or highway.” 42 U.S.C. § 7550(2). A “new motor vehicle” is defined in CAA section 216(3) to mean, as is relevant here, a “motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser.” 42 U.S.C. § 7550(3) (emphasis added). A “new motor vehicle engine” is similarly defined as an “engine in a new motor vehicle” or a “motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser.” *Id.*³

Comments submitted to EPA during the Phase 2 rulemaking stated that gliders are approximately 25% less expensive than new trucks,⁴ which makes them popular with small businesses and owner-operators.⁵ In contrast to an older vehicle, a glider requires less maintenance and yields less downtime.⁶ A glider has the same braking, lane drift devices, dynamic cruise control, and

³ The definitions of both “new motor vehicle” and “new motor vehicle engine” are contained in the same paragraph (3), reflecting the fact that “[w]henver the statute refers to ‘new motor vehicle’ the phrase is followed by ‘or new motor vehicle engine.’” *See Motor and Equipment Manufacturers Ass’n v. EPA*, 627 F.2d 1095, 1102 n.5 (D.C. Cir. 1979). As Title II currently reads, the term “new motor vehicle” appears some 32 times, and in all but two instances, the term is accompanied by “new motor vehicle engine,” indicating that, at the inception of Title II, Congress understood that the regulation of *engines* was essential to control emissions from “motor vehicles.”

⁴ Response to Comments for Joint Rulemaking, EPA-426-R-16-901 (August 2016) at 1846.

⁵ EPA-HQ-OAR-2014-0827-1964.

⁶ EPA-HQ-OAR-2014-0827-1005.

blind spot detection devices that are found on current model year heavy-duty trucks, making it a safer vehicle to operate, compared to the older truck that it is replacing.⁷

Some commenters questioned EPA's authority to regulate glider vehicles as "new motor vehicles," to treat glider engines as "new motor vehicle engines," or to impose requirements on glider kits. Commenters also pointed out what they described as the overall environmental benefits of gliders. For instance, one commenter stated that "rebuilding an engine and transmission uses 85% less energy than manufacturing them new."⁸ Another commenter noted that the use of glider vehicles "improves utilization and reduces the number of trucks required to haul the same tonnage of freight."⁹ This same commenter further asserted that glider vehicles utilizing "newly rebuilt engines" produce less "particulate, NOx, and GHG emissions . . . compared to [a] worn oil burning engine which is beyond its useful life."¹⁰

In the Phase 2 rule, EPA found that it was "reasonable" to consider glider vehicles to be "new motor vehicles" under the definition in CAA section 216(3). *See* 81 FR 73514 (October 25, 2016). Likewise, EPA found that the previously owned engines utilized by glider vehicles should be considered to be "new motor vehicle engines" within the statutory definition. Based on these interpretations, EPA determined that it had authority under CAA section 202(a) to subject glider vehicles and glider engines to the requirements of the Phase 2 rule. As for glider kits, EPA found that if glider vehicles are new motor vehicles, then the Agency was authorized to regulate glider kits as "incomplete" new motor vehicles. *Id.*

⁷ *Id.*

⁸ EPA-HQ-OAR-2014-0827-1964.

⁹ EPA-HQ-OAR-2014-0827-1005.

¹⁰ *Id.*

C. Petition for Reconsideration

Following promulgation of the Phase 2 rule, EPA received from representatives of the glider industry a joint petition requesting that the Agency reconsider the application of the Phase 2 rule to glider vehicles, glider engines, and glider kits.¹¹ The petitioners made three principal arguments in support of their petition. First, they argued that EPA is not authorized by CAA section 202(a)(1) to regulate glider kits, glider vehicles, or glider engines. Petition at 3-4. Second, the petitioners contended that in the Phase 2 rule EPA “relied upon unsupported assumptions to arrive at the conclusion that immediate regulation of glider vehicles was warranted and necessary.” *Id.* at 4. Third, the petitioners asserted that reconsideration was warranted under Executive Order 13783. *Id.* at 6.

The petitioners took particular issue with what they characterized as EPA’s having “assumed that the nitrogen oxide (‘NOx’) and particulate matter (‘PM’) emissions of glider vehicles using pre-2007 engines” would be “at least ten times higher than emissions from equivalent vehicles being produced with brand new engines.” Petition at 5, *citing* 81 FR 73942. According to the petitioners, EPA had “relied on no actual data to support this conclusion,” but had “simply relied on the pre-2007 standards.” *Id.* In support, the petitioners included as an exhibit to their petition a letter from the President of the Tennessee Technological University (“Tennessee Tech”), which described a study recently conducted by Tennessee Tech. This study, according to the petitioners, had “analyz[ed] the NOx, PM, and carbon monoxide . . . emissions from both

¹¹ See Petition for Reconsideration of Application of the Final Rule Entitled “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2 Final Rule” to Gliders, from Fitzgerald Glider Kits, LLC; Harrison Truck Centers, Inc.; and Indiana Phoenix, Inc. (July 10, 2017) (Petition). Available in the rulemaking docket, EPA–HQ–OAR–2014–0827, and at <https://www.epa.gov/sites/production/files/2017-07/documents/hd-ghg-fr-fitzgerald-recons-petition-2017-07-10.pdf>.

remanufactured and OEM engines,” and “reached a contrary conclusion” regarding glider vehicle emissions. Petition at 5.

The petitioners maintained that the results of the study “showed that remanufactured engines from model years between 2002 and 2007 performed roughly on par with OEM ‘certified’ engines,” and “in some instances even out-performed the OEM engines.” *Id.* The petitioners further claimed that the Tennessee Tech research “‘showed that remanufactured and OEM engines experience parallel decline in emissions efficiency with increased mileage.’” *Id.*, quoting Tennessee Tech letter at 2. Based on the Tennessee Tech study, the petitioners asserted that “glider vehicles would emit less than 12% of the total NOx and PM emissions for all Class 8 heavy duty vehicles . . . not 33% as the Phase 2 Rule suggests.” *Id.*, citing 81 FR 73943.

Further, the petitioners complained that the Phase 2 rule had “failed to consider the significant environmental *benefits* that glider vehicles create.” Petition at 6 (emphasis in original). “Glider vehicle GHG emissions are less than those of OEM vehicles,” the petitioners contended, “due to gliders’ greater fuel efficiency,” and the “carbon footprint of gliders is further reduced by the savings created by recycling materials.” *Id.* The petitioners represented that “[g]lider assemblers reuse approximately 4,000 pounds of cast steel in the remanufacturing process,” including “3,000 pounds for the engine assembly alone.” *Id.* The petitioners pointed out that “[r]eusing these components avoids the environmental impact of casting steel, including the significant associated NOx emissions.” *Id.* This “fact,” the petitioners argued, is something that EPA should have been considered but was “not considered in the development of the Phase 2 rule.” *Id.*

EPA responded to the glider industry representatives' joint petition by separate letters on August 17, 2017, stating that the petition had "raise[d] significant questions regarding the EPA's authority under the Clean Air Act to regulate gliders."¹² EPA further indicated that it had "decided to revisit the provisions in the *Phase 2 Rule* that relate to gliders," and that the Agency "intends to develop and issue a Federal Register notice of proposed rulemaking on this matter, consistent with the requirements of the Clean Air Act."¹³

III. Basis for the Proposed Repeal

A. Statutory Analysis

EPA is proposing that the statutory interpretations on which the Phase 2 rule predicated its regulation of glider vehicles, glider engines, and glider kits were incorrect. EPA proposes an interpretation of the relevant language of the CAA under which glider vehicles are excluded from the statutory term "new motor vehicles" and glider engines are excluded from the statutory term "new motor vehicle engines," as both terms are defined in CAA section 216(3). Consistent with this interpretation of the scope of "new motor vehicle," EPA is further proposing that it has no authority to treat glider kits as "incomplete" new motor vehicles under CAA section 202(a)(1).

As was noted, a "new motor vehicle" is defined by CAA section 216(3) to mean, in relevant part, a "motor vehicle the equitable or legal title to which has never been transferred to an ultimate

¹² See, e.g., Letter from E. Scott Pruitt, EPA Administrator, to Tommy C. Fitzgerald, President, Fitzgerald Glider Kits (Aug. 17, 2017). Available in the rulemaking docket, EPA-HQ-OAR-2014-0827, and at <https://www.epa.gov/sites/production/files/2017-08/documents/hd-ghg-phase2-ttma-ltr-2017-08-17.pdf>.

¹³ *Id.*

purchaser.” 42 U.S.C. § 7550(3). In basic terms, a glider vehicle consists of the new components that make up a glider kit, into which a previously owned powertrain has been installed. Prior to the time a completed glider vehicle is sold, it can be said that the vehicle’s “equitable or legal title” has yet to be “transferred to an ultimate purchaser.” It is on this basis that the Phase 2 rule found that a glider vehicle fits within the definition of “new motor vehicle.” 81 FR 73514 (October 25, 2016).

EPA’s rationale for applying this reading of the statutory language was that “[g]lider vehicles are typically marketed and sold as ‘brand new’ trucks.” 81 FR 73514 (October 25, 2016). EPA took note of one glider kit manufacturer’s own advertising materials that represented that the company had “mastered the process of taking the ‘Glider Kit’ and installing the components to work seamlessly *with the new truck.*” *Id.* (emphasis added in original). EPA stated that the “purchaser of a ‘new truck’ necessarily takes initial title to that truck.” *Id.* (citing statements on the glider kit manufacturer’s website). EPA rejected arguments raised in comments that “this ‘new truck’ terminology is a mere marketing ploy.” *Id.* Rather, EPA stated, “it obviously reflects reality.” *Id.*

In proposing a new interpretation of the relevant statutory language, EPA now believes that its prior reading was not the best reading, and that the Agency failed to consider adequately the most important threshold consideration: *i.e.*, whether or not Congress, in defining “new motor vehicle” for purposes of Title II, had a specific intent to include within the statutory definition such a thing as a glider vehicle – a vehicle comprised both of new *and* previously owned components. *See Chevron*, 467 U.S. at 843 n.9 (Where the “traditional tools of statutory

construction” allow one to “ascertain[] that Congress had an intention on the precise question at issue,” that “intention is the law and must be given effect.”). Where “Congress has not directly addressed the precise question at issue,” and the “statute is silent or ambiguous with respect to the specific issue,” it is left to the agency charged with implementing the statute to provide an “answer based on a permissible construction of the statute.” *Id.* at 843.

Focusing solely on that portion of the statutory definition that provides that a motor vehicle is considered “new” prior to the time its “equitable or legal title” has been “transferred to an ultimate purchaser,” a glider vehicle would appear to qualify as “new.” As the Supreme Court has repeatedly counseled, however, that is just the beginning of a proper interpretive analysis. The “definition of words in isolation,” the Court has noted, “is not necessarily controlling in statutory construction.” *See Dolan v. United States Postal Service*, 546 U.S. 481, 486 (2006). Rather, the “interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute,” and “consulting any precedents or authorities that inform the analysis.” *Id.* Similarly, in seeking to “determine congressional intent, using traditional tools of statutory construction,” the “*starting point* is the language of the statute.” *See Dole v. United Steelworkers of America*, 494 U.S. 26, 35 (1990) (emphasis added) (internal citation omitted). At the same time, “in expounding a statute,” one is not to be “guided by a single sentence or member of a sentence,” but is to “look to the provisions of the whole law, and to its object and policy.” *Id.* (internal citations omitted).

Assessed in light of these principles, it is clear that EPA’s reading of the statutory definition of “new motor vehicle” in the Phase 2 rule fell short. First, that reading failed to account for the

fact that, at the time this definition of “new motor vehicle” was enacted, it is likely that Congress did not have in mind that the definition would be construed as applying to a vehicle comprised of new body parts and a previously owned powertrain. The manufacture of glider vehicles to salvage the usable powertrains of trucks wrecked in accidents goes back a number of years.¹⁴ But only more recently – after the enactment of Title II – have glider vehicles been produced in any great number.

Furthermore, the concept of deeming a motor vehicle to be “new” based on its “equitable or legal title” not having been transferred to an “ultimate purchaser” appears to have originated with an otherwise unrelated federal statute that predated Title II by a few years – *i.e.*, the Automobile Information Disclosure Act of 1958, Pub. L. No. 85-506 (Disclosure Act).¹⁵ The history of Title II’s initial enactment and subsequent development indicates that, in adopting a definition of “new motor vehicle” for purposes of the Clean Air Act, Congress drew on the approach it had taken originally with the Disclosure Act.

Among other things, the Disclosure Act requires that a label be affixed to the windshield or side window of new automobiles, with the label providing such information as the Manufacturer’s Suggested Retail Price. *See* 15 U.S.C. § 1232 (“Every manufacturer of *new automobiles* distributed in commerce shall, prior to the delivery of any *new automobile* to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date, securely affix to the windshield, or side window of *such automobile* a label”) (emphases added). The Disclosure Act defines the term “automobile” to “include[] any passenger car or

¹⁴ EPA-HQ-OAR-2014-0827-1964.

¹⁵ The provisions of the Disclosure Act are set forth at 15 U.S.C. §§ 1231-1233.

station wagon,” and defines the term “new automobile” to mean “an automobile the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.” *See* 15 U.S.C. § 1231(c), (d).

In 1965, Congress amended the then-existing Clean Air Act, and for the first time enacted provisions directed at the control of air pollution from motor vehicles. *See* Clean Air Act Amendments of 1965, Pub. L. 89-272 (1965 CAA). Included in the 1965 CAA was a brand new Title II, the “Motor Vehicle Air Pollution Control Act,” the structure and language of which largely mirrored key provisions of Title II as it exists today. Section 202(a) of the 1965 CAA provided that the “Secretary [of what was then the Department of Health, Education and Welfare] shall by regulation, giving appropriate consideration to technological feasibility and economic costs, prescribe . . . standards applicable to the emission of any kind of substance, from any class or classes of *new motor vehicles or new motor vehicle engines*, which in his judgment cause or contribute to, or are likely to cause or to contribute to, air pollution which endangers the health or welfare of any persons” Pub. L. 89-272, 79 Stat. 992 (emphasis added).

Section 208 of the 1965 CAA defined “motor vehicle” in terms identical to those in the CAA today: “any self-propelled vehicle designed for transporting persons or property on a street or highway.” Pub. L. 89-272, 79 Stat. 995. The 1965 CAA defined “new motor vehicle” and “new motor vehicle engine” to mean, as relevant here, “a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term ‘new motor vehicle engine’” to mean “an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser.” *Id.* Again, in relevant

part, the 1965 CAA definitions of these terms were identical to those that currently appear in CAA section 216(3).

While the legislative history of the 1965 CAA does not expressly indicate that Congress based its definition of “new motor vehicle” on the definition of “new automobile” first adopted by the Automobile Information Disclosure Act of 1958, it seems clear that such was the case. The statutory language of the two provisions is identical in all pertinent respects,¹⁶ and there appears to be no other federal statute, in existence prior to enactment of the 1965 CAA, from which Congress could have derived that terminology.

Subsequently, the statutory language from the 1965 CAA, defining the terms “motor vehicle,” “new motor vehicle,” “new motor vehicle engine,” “ultimate purchaser,” and “manufacturer” was incorporated verbatim in the Air Quality Act of 1967 (1967 AQA). *See* Pub. L. No. 148, 81 Stat. 503. The Clean Air Act Amendments of 1970 (1970 CAAA) did not change those definitions, except to add the language regarding “vehicles or engines imported or offered for importation” that currently appears in CAA section 216(3). *See* Pub. L. No. 91-604, 84 Stat. 1694, 1703.¹⁷

¹⁶ Further, the 1965 CAA’s definition of “ultimate purchaser,” as set forth in section 208(5), for the most part tracks the Disclosure Act’s earlier-enacted definition: “The term ‘ultimate purchaser’ means, with respect to any new automobile, the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale.” *Compare* 1965 CAA section 208(5), Pub. L. 89-272, 79 Stat. 995 *with* 15 U.S.C. § 1231(g). Such is the case, too, with respect to the 1965 CAA’s definition of “manufacturer.” *Compare* 1965 CAA section 208(1), Pub. L. 89-272, 79 Stat. 994-995 *with* 15 U.S.C. § 1231(a).

¹⁷ The legislative history of both the 1967 AQA and 1977 CAAA is silent with respect to the origin of Title II’s definitions of “new motor vehicle,” “new motor vehicle engine,” “ultimate purchaser,” and “manufacturer,” which further underscores that Congress had originally derived those definitions from the Disclosure Act.

The fact that Congress, in first devising the CAA’s definition of “new motor vehicle” for purposes of Title II, drew on the pre-existing definition of “new automobile” in the Automobile Information Disclosure Act of 1958 serves to illuminate congressional intent. As with the Disclosure Act, Congress in the 1965 CAA selected the point of first transfer of “equitable or legal title” to serve as a bright line – *i.e.*, to distinguish between those “new” vehicles (and engines) that would be subject to emission standards adopted pursuant to CAA section 202(a)(1) and those existing vehicles that would not be subject. Insofar as the 1965 CAA definition of “new motor vehicle” was based on the Disclosure Act definition of “new automobile,” it would seem clear that Congress intended, for purposes of Title II, that a “new motor vehicle” would be understood to mean something equivalent to a “new automobile” – *i.e.*, a true “showroom new” vehicle. It is implausible that Congress would have had in mind that a “new motor vehicle” might also include a vehicle comprised of new body parts and a previously owned powertrain.

Given this, EPA does not believe that congressional intent as to the meaning of the term “new motor vehicle” can be clearly ascertained on the basis of an isolated reading of a few words in the statutory definition, where that reading is divorced from the structure and history of the CAA as a whole. Based on that structure and history, it seems likely that Congress understood a “new motor vehicle,” as defined in CAA § 216(3), to be a vehicle comprised entirely of new parts and certainly not a vehicle with a used engine. At a minimum, ambiguity exists. This leaves EPA with the task of providing an “answer based on a permissible construction of the statute.”

Chevron, 467 U.S. at 843.

1. *Glider vehicles*

EPA is proposing to interpret “new motor vehicle,” as defined in CAA § 216(3), as not including glider vehicles. This is a reasonable interpretation – and commonsense would agree – insofar as it takes account of the reality that significant elements of a glider vehicle (*i.e.*, the powertrain elements, including the engine and the transmission) are previously owned components. Under the Phase 2 rule’s interpretation, in contrast, the act of installing a previously owned powertrain into a glider kit – *i.e.*, something that, as is explained further below, is not a “motor vehicle” as defined by the CAA – results in the creation of a *new* “motor vehicle.” EPA believes that Congress, in adopting a definition of “new motor vehicle” for purposes of Title II, never had in mind that the statutory language would admit of such a counterintuitive result.

In other words, EPA now believes that, in defining “new motor vehicle,” Congress did not intend that a vehicle comprised of a new outer shell conjoined to a previously owned powertrain should be treated as a “new” vehicle, based solely on the fact that the vehicle may have been assigned a new title following assembly. In this regard, insofar as Title II’s regulatory regime was at its inception directed at the emissions produced by new vehicle *engines*,¹⁸ it is not at all clear that Congress intended that Title II’s reach should extend to a vehicle whose outer parts may be “new” but whose engine was previously owned.

2. *Glider engines*

EPA proposes to find that, since a glider vehicle does not meet the statutory definition of a “new motor vehicle,” it necessarily follows that a glider engine is not a “new motor vehicle engine” within the meaning of CAA section 216(3). Under that provision, a motor vehicle engine is deemed to be “new” in either of two circumstances: 1) the engine is “in a new motor vehicle,” or

¹⁸ See footnote 3, *supra*.

2) the “equitable or legal title” to the engine has “never been transferred to the ultimate purchaser.” The second of these circumstances can never apply to a glider engine, which is invariably an engine that has been previously owned.

As to the first circumstance, a glider engine is installed in a glider kit, which in itself is not a “motor vehicle.” A glider kit becomes a “motor vehicle” only after an engine (and the balance of the powertrain) has been installed. But while adding a previously owned engine to a glider kit may result in the creation of a “motor vehicle,” the assertion that the previously owned engine thereby becomes a “*new* motor vehicle engine” within the meaning of CAA section 216(3), due to the engine’s now being in a “new motor vehicle,” reflects circular thinking. It presupposes that the installation of a (previously owned) engine in a glider kit creates not just a “motor vehicle” but a “new motor vehicle.” EPA is proposing to interpret the relevant statutory language in a manner that rejects the Agency’s prior reliance on the view that 1) installing a previously owned engine in a glider kit transforms the glider kit into a “new motor vehicle,” and 2) that, thereafter, the subsequent presence of that previously owned engine in the supposed “new motor vehicle” transforms that engine into a “new motor vehicle engine” within the meaning of CAA section 216(3).

3. *Glider kits*

Under EPA’s proposed interpretation, EPA would have no authority to regulate glider kits under CAA section 202(a)(1). If glider vehicles are not “new motor vehicles,” which is the interpretation of CAA section 216(3) that EPA is proposing here, then the Agency lacks authority to regulate glider kits as “incomplete” new motor vehicles. Further, given that a glider kit lacks a powertrain, a glider kit does not explicitly meet the definition of “motor vehicle,”

which, in relevant part, is defined to mean “any *self-propelled* vehicle.” 42 U.S.C § 7550(2) (emphasis added). It is not obvious that a vehicle without a motor could constitute a “motor vehicle.”

4. *Issues for which EPA seeks comment*

EPA believes that its proposed interpretation is the most reasonable reading of the relevant statutory language, and that its proposed determination, based on this interpretation, that regulation of glider vehicles, glider engines, and glider kits is not authorized by CAA section 202(a)(1) is also reasonable. EPA seeks comment on this interpretation.

Comments submitted in the Phase 2 rulemaking docket lead EPA to believe that a glider vehicle is often a suitable option for those small businesses and independent operators who cannot afford to purchase a new vehicle, but who wish to replace an older vehicle with a vehicle that is equipped with up-to-date safety features. EPA solicits comment and further information as to this issue. EPA also solicits comment and information on whether limiting the availability of glider vehicles could result in older, less safe, more-polluting trucks remaining on the road that much longer. EPA particularly seeks information and analysis addressing the question whether glider vehicles produce significantly fewer emissions overall compared to the older trucks they would replace.

EPA also seeks comment on the matter of the anticipated purchasing behavior on the part of the smaller trucking operations and independent drivers if the regulatory provisions at issue were to

repealed. Further, EPA seeks comment on the relative expected emissions impacts if the regulatory requirements at issue here were to be repealed or were to be left in place.

Finally, EPA seeks comment on whether, if the Agency were to determine not to adopt the interpretation of CAA sections 202(a)(1) and 216(3) being proposed here, EPA should nevertheless revise the “interim provisions” of Phase 2 rule, 40 CFR 1037.150(t)(1)(ii), to increase the exemption available for small manufacturers above the current limit of 300 glider vehicles per year. EPA seeks input on how large an increase would be reasonable, were the Agency to increase the limit in taking final action. Further, EPA seeks comment on whether, if the Agency were to determine not to adopt the statutory interpretation being proposed here, EPA should nevertheless extend by some period of time the date for compliance for glider vehicles, glider engines, and glider kits set forth in 40 CFR 1037.635. EPA seeks comment on what would be a reasonable extension of the compliance date.

B. Conclusion

EPA has a fundamental obligation to ensure that the regulatory actions it takes are authorized by Congress, and that the standards and requirements that it would impose on the regulatory community have a sound and reasonable basis in law. EPA is now proposing to find that the most reasonable reading of the relevant provisions of the CAA, including CAA sections 202(a)(1), 216(2), and 216(3) is that glider vehicles should not be regulated as “new motor vehicles,” that glider engines should not be regulated as “new motor vehicle engines,” and that glider kits should not be regulated as “incomplete” new motor vehicles. Based on this proposed interpretation, EPA is proposing to repeal those provisions of the Phase 2 rule applicable to glider vehicles, glider engines, and glider kits.

IV. Public Participation

We request comment by January 5, 2018 on all aspects of this proposal. This section describes how you can participate in this process.

Materials related to the Heavy-Duty Phase 2 rulemaking are available in the public docket noted above and at: <https://www.epa.gov/regulations-emissions-vehicles-and-engines/regulations-greenhouse-gas-emissions-commercial-trucks>.

1. How Do I Prepare and Submit Information?

Direct your submittals to Docket ID No. EPA–HQ–OAR–2014-0827. EPA’s policy is that all submittals received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the submittal includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information to the docket that you consider to be CBI or otherwise protected through www.regulations.gov. The www.regulations.gov web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your submittal. If you submit an electronic submittal, EPA recommends that you include your name and other contact information in the body of your submittal and with any disk or CD–ROM you submit. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

EPA will hold a public hearing on the date and at the location stated in the DATES Section. To attend the hearing, individuals will need to show appropriate ID to enter the building. The hearing will start at 10:00 a.m. local time and continue until everyone has had a chance to speak. More details concerning the hearing can be found at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/regulations-greenhouse-gas-emissions-commercial-trucks>.

2. Submitting CBI

Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

3. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the action by docket number and other identifying information (subject heading, Federal Register date and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient

detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified in the DATES section above.

V. Statutory and Executive Order Reviews

(1) Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

(2) Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 deregulatory action. This proposed rule is expected to provide meaningful burden reduction by eliminating regulatory requirements for glider manufacturers.

(3) Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because it does not contain any information collection activities. It would only eliminate regulatory requirements for glider manufacturers.

(4) Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any

significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. Small glider manufacturers would be allowed to produce glider vehicles without meeting new motor vehicle emission standards. We have therefore concluded that this action will have no adverse regulatory impact for any directly regulated small entities.

(5) Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments.

(6) Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

(7) Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This proposed rule will be implemented at the Federal level and affects glider manufacturers. Thus, Executive Order 13175 does not apply to this action.

(8) Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. However, the Emission Requirements

for Glider Vehicles, Glider Engines, and Glider Kits was anticipated to lower ambient concentrations of PM_{2.5} and some of the benefits of reducing these pollutants may have accrued to children. Our evaluation of the environmental health or safety effects of these risks on children is presented in Section XIV.H. of the HD Phase 2 Rule.¹⁹ Some of the benefits for children's health as described in that analysis would be lost as a result of this action.

In general, current expectations about future emissions of pollution from these trucks is difficult to forecast given uncertainties in future technologies, fuel prices, and the demand for trucking. Furthermore, the proposed action does not affect the level of public health and environmental protection already being provided by existing NAAQS and other mechanisms in the CAA. This proposed action does not affect applicable local, state, or federal permitting or air quality management programs that will continue to address areas with degraded air quality and maintain the air quality in areas meeting current standards. Areas that need to reduce criteria air pollution to meet the NAAQS will still need to rely on control strategies to reduce emissions. To the extent that states use other mechanisms in order to comply with the NAAQS, and still achieve the criteria pollution reductions that would have occurred under the CPP, this proposed rescission will not have a disproportionate adverse effect on children's health.

(9) Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

¹⁹ 81 FR 73478 (October 25, 2016).

(10) National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

(11) Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations, and Low-Income Populations

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), EPA considered environmental justice concerns of the final HD Phase 2 rule. EPA's evaluation of human health and environmental effects on minority, low-income or indigenous populations for the final HD Phase 2 rule is presented in the Preamble, Section VIII.A.8 and 9 (81 FR 73844-7, October 25, 2016). We have not evaluated the impacts on minority, low-income or indigenous populations that may occur as a result of the proposed action to rescind emissions requirements for heavy-duty glider vehicles and engines. EPA likewise has not considered the economic and employment impacts of this rule specifically as they relate to or might impact minority, low-income and indigenous populations.

List of Subjects in 40 CFR Parts 1037 and 1068

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Warranties.

Dated: November 9, 2017.

E. Scott Pruitt,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 1037—CONTROL OF EMISSIONS FROM NEW HEAVY-DUTY MOTOR VEHICLES

1. The authority for part 1037 continues to read as follows:

Authority: 42 U.S.C. 7401—7671q.

Subpart B – [Amended]

2. Section 1037.150 is amended by removing and reserving paragraph (t) as follows:

§1037.150 Interim provisions.

* * * * *

(t) [Reserved]

* * * * *

Subpart G – [Amended]

§1037.635 [Removed]

3. Section 1037.635 is removed.

Subpart I – [Amended]

4. Section 1037.801 is amended by removing the definitions “glider kit” and “glider vehicle” and revising the definitions of “manufacturer” and “new motor vehicle” to read as follows:

§ 1037.801 Definitions.

* * * * *

Manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures or assembles a vehicle (including a trailer or another incomplete vehicle) for sale in the United States or otherwise introduces a new motor vehicle into commerce in the United States. This includes importers who import vehicles for resale.

* * * * *

New motor vehicle has the meaning given in the Act. It generally means a motor vehicle meeting the criteria of either paragraph (1) or (2) of this definition. New motor vehicles may be complete or incomplete.

(1) A motor vehicle for which the ultimate purchaser has never received the equitable or legal title is a new motor vehicle. This kind of vehicle might commonly be thought of as “brand new” although a new motor vehicle may include previously used parts. Under this definition, the vehicle is new from the time it is produced until the ultimate purchaser receives the title or places it into service, whichever comes first.

(2) An imported heavy-duty motor vehicle originally produced after the 1969 model year is a new motor vehicle.

* * * * *

5. The authority for part 1068 continues to read as follows:

Authority: 42 U.S.C. 7401—7671q.

Subpart B – [Amended]

6. Section 1068.120 is amended by revising paragraph (f)(5) to read as follows:

§1068.120 Requirements for rebuilding engines.

* * * * *

(f) * * *

(5) The standard-setting part may apply further restrictions to situations involving installation of used engines to repower equipment.

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