



January 5, 2018

*By regulations.gov*

Environmental Protection Agency (EPA)  
Air and Radiation Docket and Information Center (MC- 28221T)  
EPA/DC, EPA WJC West Building, Room 3334  
1301 Constitution Avenue, NW  
Washington, DC 20460

Re: Repeal of Emission Requirements for Glider Vehicles,  
Glider Engines, and Glider Kits; 40 CFR Parts 1037 and  
1068; Doc. No. EPA-HQ-OAR-2014-0827.

Ladies and Gentlemen:

The National Automobile Dealers Association (NADA) represents over 16,000 franchise automobile and truck dealers, including over 1,800 American Truck Dealer Division (ATD) members who sell new and used commercial trucks and tractors and engage in service, repair and parts sales. They employ upwards of 1,200,000 people, including over 100,000 by ATD members alone. Many are small businesses as defined by the Small Business Administration.

## **I. BACKGROUND: THE 2015 REGULATORY PROPOSAL**

In mid-2015, EPA and the National Highway Traffic Safety Administration (NHTSA) solicited comment on their “Phase 2” proposal for medium- and heavy-duty engine and truck fuel efficiency and greenhouse gas (GHG) emissions standards.<sup>1</sup> Included in that proposal were provisions designed to restrict the introduction into commerce of glider vehicles, glider engines, and glider kits.<sup>2</sup> EPA specifically proposed to amend its rules applicable to engines installed in glider vehicles, to clarify the application of its vehicle certification requirements to such vehicles, to revise pertinent definitions, and to establish exemptions for small business glider vehicle assemblers.<sup>3</sup> EPA stressed that it was *not* proposing to ban glider vehicles, but rather to clarify the extent to which they are “new” vehicles for purposes of CAA certification mandates.<sup>4</sup>

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<sup>1</sup> 80 Fed. Reg. 40138, *et seq.* (July 13, 2015).

<sup>2</sup> EPA characterized “glider vehicles” as “new vehicles produced to accept rebuilt engines (or other used engines) along with used axles and/or transmissions.” 80 Fed. Reg. at 40215.

<sup>3</sup> NHTSA did not propose changes to its rules but noted that it was aware of manufacturers building glider vehicles that were “new” for purposes of 49 CFR 571.7(e), but which were not complying with applicable registration, certification, and/or Vehicle Identification Number (VIN) mandates. NHTSA stated an intent to pursue enforcement actions against noncompliant manufacturers and to consider potential regulatory changes. 80 Fed. Reg. at 40329.

<sup>4</sup> 80 Fed. Reg. at 40527. EPA did note a desire to see annual pre-2007 engine equipped glider vehicle production fall to 1000 vehicles or less.

The 2015 proposal reviewed EPA's position that used or rebuilt engines must comply with the emission standards for the model year in which they were originally built, and its position that glider vehicles are "new" vehicles subject to certification mandates, notwithstanding the installation of used or rebuilt engines.<sup>5</sup> Expressing concerns regarding the volume of glider vehicles being produced with pre-2007 diesel engines and the criteria pollutant emissions associated with those engines, EPA proposed a mandate that glider vehicles generally be equipped with engines certified to the emission standards applicable to the glider vehicle's model year of assembly.<sup>6</sup> Lastly, EPA also proposed an exemption to allow for the assembly of up to 300 glider vehicles per year, per assembler, equipped with used or rebuilt engines meeting at least the emissions standards for the model year in which they were originally built.<sup>7</sup>

On October 1, 2015, ATD filed written comments on the Phase 2 proposal which, among other things, offered an alternative approach to regulating glider vehicles:

*NADA/ATD urges EPA and NHTSA to consider another alternative designed to harmonize with NHTSA's long-standing "manufacture" exemption for vehicle rebuilding. That exemption keys on there being a single "donor" vehicle from which two of three used components (engine, transmission, and drive-axle) are incorporated into the rebuilt vehicle. This exemption from the definition of "manufacturing" allows the rebuilder to avoid having to meet NHTSA manufacturer registration and other requirements. Likewise, NADA/ATD suggests that when two of these three used components are incorporated into a rebuilt vehicle, using a glider kit, the used engine would only be required to meet emission standards applicable to its year of original manufacture and, if rebuilt, any subsequent running changes. Obviously, no emissions certification would be required. Under this alternative, it would matter not if the rebuilder was a small business or how many units were rebuilt in a year.*

EPA did not take up this suggestion in its final rule.

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<sup>5</sup> EPA had long required that glider vehicles comply with at least the emissions standards in place for the model year of the original donor vehicle/engine, together with any updates, modifications, or running changes applicable to that engine. Then, in its 2011 Phase 1 fuel efficiency /greenhouse gas (GHG) rule, EPA implicitly determined that glider vehicles were "new vehicles" subject to the CAA, but indicated that current model year emission standards need not apply to MYs 2013 and prior. 76 Fed Reg. 57407 (September 15, 2011); 40 CFR 1037.150(j).

<sup>6</sup> 80 Fed. Reg. at 40528-9.

<sup>7</sup> EPA interpreted and described its statutory authority to regulate used and rebuilt engines, to characterize glider vehicles as "new motor vehicles," and to characterize glider vehicle assemblers as regulated "manufacturers."

## II. THE FINAL 2016 RULE

The final Phase 2 rule<sup>8</sup> included extensive language addressing glider vehicles, including:

1. Mandates that glider vehicles generally be equipped with new, used, or rebuilt engines compliant with the emission standards applicable to the year of glider vehicle assembly, and that glider vehicle assemblers generally meet applicable manufacturer certification requirements.<sup>9</sup>
2. A reiteration of NHTSA's concerns regarding the lack of donor vehicles.<sup>10</sup>
3. A vocational vehicle exemption for low mileage used engines.<sup>11</sup>
4. A restatement of EPA's intent not to ban glider vehicle production.<sup>12</sup>
5. A small assembler certification exemption.<sup>13</sup>
6. A reiteration of EPA's concern for the volume of glider vehicles equipped with "higher polluting" pre-2007 and pre-2002 used and rebuilt engines.<sup>14</sup>
7. A mandate that new glider vehicles meet GHG vehicle standards by January 1, 2021.<sup>15</sup>

EPA again gave a detailed interpretation of its authority to regulate used and rebuilt engines, to characterize glider vehicles as "new motor vehicles" and glider kits as "new incomplete motor vehicles," and to treat glider vehicle assemblers as regulated "manufacturers".<sup>16</sup>

## III. THE 2017 PROPOSAL

On July 10, 2017, a petition was filed with EPA asking it to reconsider its 2016 glider vehicle restrictions.<sup>17</sup> In an August 17, 2017 letter, EPA responded to the petition by stating that issues raised regarding the agency's legal authority and technical analysis warranted reconsideration of its 2016 glider vehicle restrictions. In November 2017, EPA formally proposed to repeal the glider restrictions imposed by its 2016 rule,<sup>18</sup> taking the position that glider vehicles are "used vehicles" beyond the reach of the CAA, notwithstanding how they are marketed or titled. If the

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<sup>8</sup> 81 Fed. Reg. 73478, *et seq.* (October 25, 2016).

<sup>9</sup> 81 Fed. Reg. at 73943-5.

<sup>10</sup> 81 Fed. Reg. at 73584.

<sup>11</sup> 81 Fed. Reg. at 73726, 73944; 49 CFR 1037.150(t)(3). The exemption applies to engines within their useful life *or* with less than 100,000 miles *or* less than three-years-old. Thus, until 2020, this exemption allows glider vehicle assemblers may install MY 2008 and 2009 compliant engines, in addition to MY 2010 and later compliant engines.

<sup>12</sup> 81 Fed. Reg. at 73942.

<sup>13</sup> 81 Fed. Reg. at 73942. The exemption is capped at the lesser of the highest annual volume of glider vehicles produced between 2010 and 2014 or 300 vehicles.

<sup>14</sup> 81 Fed. Reg. at 73942-3. EPA provided an extensive emissions analysis focused on a comparison of glider vehicles equipped with older used and rebuilt engines vs. new vehicles equipped with new engines.

<sup>15</sup> 81 Fed. Reg. at 73946.

<sup>16</sup> 81 Fed. Reg. at 73945-6. See, 40 CFR §1037.801

<sup>17</sup> That petition was filed by Fitzgerald Glider Kits, LLC, Harrison Truck Centers, Inc. and Indiana Phoenix, Inc.

<sup>18</sup> 82 Fed. Reg. 53442, *et seq.* (November 16, 2017).

proposal is finalized, EPA will no longer treat glider vehicles as “new motor vehicles,” glider engines as “new motor vehicle engines,” or glider kits as “incomplete” new motor vehicles.<sup>19</sup>

At a December 4, 2017 hearing held on the proposed repeal, all but two persons testified in opposition. Notably, several Volvo and Mack dealers argued that the sale and use of glider kits to manufacture glider vehicles presents unfair competition versus the sale of new trucks and tractors. In addition, while testimony in opposition to the repeal was presented by the Engine and Truck Manufacturers Association, there was no testimony presented in support (or otherwise) by any of the manufacturers of Class 8 glider kits.<sup>20</sup>

#### **IV. NADA/ATD RESPONSE TO THE 2017 PROPOSAL**

Glider vehicles typically consist of new frames, cabs, and front axles, and other (optional) new parts. Glider kits and vehicles have been sold and used for many years, all the while regulated by various government agencies including the EPA, NHTSA, the IRS and state motor vehicle departments.<sup>21</sup> Truck manufacturers traditionally offered glider kit “parts” to meet a market demand where, due to accidents or for other reasons, operators sought to rebuild vehicles using used powertrain and suspension components sourced (mostly) from “donor” vehicles.

Importantly, EPA’s NOx reduction mandates for MYs 2002-2007 directly resulted in new engines and emission control technologies which dramatically increased the up front and operational cost of new trucks offering significantly reduced reliability and fuel economy performance.<sup>22</sup> In turn, this resulted in a dramatic growth in the market for glider vehicles equipped with pre-2007/2002 used and rebuilt engines. Specifically, an increasing number of operators began to purchase glider kits to extend the life of their pre-2010 equipment using used parts from that equipment, and/or began to purchase complete glider vehicles built with used or rebuilt parts primarily sourced from other than the vehicles they owned.

The desire to avoid the real or perceived higher equipment costs, higher maintenance and repair costs, reduced vehicle reliability, and/or lower fuel economy performance associated with new equipment continues to drive the market for glider vehicles.<sup>23</sup> In fact, glider kit sales have grown from less than 1,000 per year in 2007 to more than 10,000 per year today, often for incorporation into glider vehicles made with used or rebuilt parts from multiple sources.

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<sup>19</sup> 82 Fed. Reg. at 5443.

<sup>20</sup> Freightliner, Western Star, Peterbilt, and Kenworth.

<sup>21</sup> In 2012, NADA/ATD presented a webinar for its members entitled *Glider Kits: Federal and State Regulatory Concerns* addressing a wide-array of these various regulatory mandates.

<sup>22</sup> See attached, NADA/ATD, *A Look Back at EPA’s Cost and Other Impact Projections for My 2004-2010 Heavy-Duty Truck Emissions Standards*, (February 2012).

<sup>23</sup> In fact, NADA/ATD has become aware of many instances where customers have paid *more* for “new” glider vehicles equipped with a pre-2007 engine and little or no emission controls to avoid the real and perceived reliability and cost-of-ownership benefits involved.

Notwithstanding the fact that certain members of NADA/ATD represent the four Class 8 glider kit manufacturers, and thus may themselves build glider vehicles or sell glider kits to others who do, NADA/ATD must object to EPA's proposal to repeal its October 2016 restrictions.

To be clear, NADA/ATD agrees that, as a general matter, EPA has the inherent authority to reconsider, revise, or repeal past decisions, *to the extent permitted by law*, so long as it *can provide a reasoned explanation for doing so*.<sup>24</sup> But, by establishing appropriate flexibilities and accommodations, the 2016 rule largely preserves the traditional, time-honored option for truck owners and operators to rebuild wrecked or worn-out donor vehicles using new glider kits, together with used or rebuilt engines and other used drivetrain (e.g., drive axle, transmission) components sourced from donor vehicles (or otherwise). Essentially, the 2016 rules target the imposition of "new motor vehicle" regulations on the largest volume production of assembled glider vehicles, very few of which directly involve donor vehicles. And even those vehicles may be equipped with MY 2008 and later engines under certain conditions. As a practical matter, EPA's 2016 rules also work to harmonize with how NHTSA defines glider vehicles to be "newly manufactured", and when glider assemblers must meet NHTSA's "manufacturer" mandates to register with the agency, to properly assign VINs to the vehicles they manufacture, and to assure compliance with all applicable safety standards. They also effectively serve to harmonize with the IRS' current position that many completed glider vehicles are newly manufactured taxable articles subject to Federal Excise Tax, as well as with how many state motor vehicle departments define "new vehicles" for titling and registration purposes.

The November 2017 proposal cites the Automobile Information Disclosure Act of 1958 (Monroney Act) in support of EPA's latest interpretation of how the CAA should apply to glider vehicles. Since the Monroney Act, in part, directly regulates automobile dealers, NADA/ATD is intimately familiar with it. The Monroney Act's prohibition against the removal of pricing labels from new automobiles on dealer lots prior to their transfer to ultimate purchasers does not depend on whether the manufacturer of those vehicles may have assembled them with rebuilt engines (or other used parts). In other words, the statutory language of the Monroney Act does not on its face indicate whether the presence of used parts in vehicles (automobiles) that have not yet been transferred to ultimate purchasers renders them "used."

Moreover, NADA/ATD agrees with the conclusion in the 2017 proposal that used or rebuilt engines are not "new motor vehicle engines." This does not mean, however, that it is an unreasonable interpretation of the CAA that EPA has the authority to specify when new glider vehicles should be assembled with engines (new, used, or rebuilt) that meet the emissions standards applicable to the year of vehicle assembly. NADA/ATD also suggests that a reasonable interpretation of the CAA would define glider kits to be "parts", not incomplete self-propelled new motor vehicles, at least until they are incorporated into new glider kit vehicles.

Given the issues and arguments detailed above, NADA/ATD urges EPA to let its October 2016 rule stand as written, with one exception. EPA should clearly indicate how dealerships that

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<sup>24</sup> 82 Fed. Reg. at 53443. *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016)

neither sold glider kits nor built or sold completed glider vehicles in 2010 through 2014 may nonetheless still be eligible for the low volume exemptions set out in the 2016 rule.

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

Respectfully submitted,

A handwritten signature in black ink that reads "Douglas I. Greenhaus". The signature is written in a cursive style with a large initial 'D'.

Douglas I. Greenhaus  
Chief Regulatory Counsel,  
Environment, Health and Safety