

EPA Public Hearing on the proposed Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits rule

December 4, 2017

EPA, 1201 Constitution Avenue, NW, Washington, DC.

Rachel Muncrief Oral and Written Testimony

Panel 2 (10:15-11:45am)

A. Summary of Comments

My name is Rachel Muncrief, and I direct the heavy-duty vehicles program of the International Council on Clean Transportation. I have been working on heavy-duty vehicle policy in the United States, specifically on the topic of controlling diesel engine exhaust emissions, for 15 years — 5 years at the ICCT and 10 years as a researcher at the University of Houston, concluding my time in Houston as director of the university's diesel vehicle testing and research lab.

Glider trucks consist of a new vehicle chassis into which an older re-manufactured engine has been installed. A decade ago, sales of glider trucks in the US were mostly limited to vehicles that had been in an accident that left the body unrepairable, but the powertrain still intact. Over the past 10 years, sales of glider kits have increased exponentially as a deliberate attempt by glider kit manufacturers and assemblers to circumvent emissions control regulations. In the Phase 2 Heavy Duty Vehicle Greenhouse Gas regulation, the EPA sought to cap and eventually disallow the sale of glider trucks equipped with engines that are not compliant with current emissions standards. The proposal under discussion today would remove that provision from the Phase 2 regulation.

Based on ICCT's analysis of the impacts of this regulation, the EPA reached the correct conclusion in the Heavy-Duty Vehicle Phase 2 Greenhouse Gas regulation. It is our position that the limitations on glider trucks sales set in that regulation should be kept in place unaltered.

I would like to focus my short time today on the substantial increase in air pollution and associated public health consequences that this proposal would bring about. It's important to point out here that EPA did not conduct any impact assessment or cost benefit analysis for this proposal. From ICCT's perspective this is highly unusual, and a major defect in the proposal. We are not aware of any previous EPA regulation that failed to consider air quality and health impacts as well as costs.

The ICCT did conduct our own impact analysis. Let me summarize our findings.

Emissions from glider trucks being sold today are much higher than emissions from all other new trucks because the engines in glider trucks are not equipped with any emissions controls. Modern diesel engines have the equivalent of a small chemical factory in their tailpipe, which enable them to reduce emissions of harmful pollutants such as nitrogen oxides and particulate matter by over 90%.

According to the EPA's own testing results, in operations typical of tractor-trailer driving, glider trucks emit 30 times the NOx and 60 times the PM of a modern tractor-trailer. Sales of glider trucks today are around 10,000 per year—5% of the Class 7 and 8 tractor truck market—up over an order of magnitude from 10 years ago. If these numbers continue to grow, even at a moderate pace, EPA's proposed regulation would expose US citizens to an additional 1.5 million tons of NOx and 16 thousand tons of PM emissions over the next decade, that they would not be exposed to otherwise. To put this in monetary terms, this is equivalent to more than 12 billion dollars in health damages over the next decade.

ICCT's analysis was done using EPA's own emissions testing data, EPA's MOVES model estimates of annual vehicle sales and vehicle miles traveled, and EPA's published estimates of damages per ton of direct emissions from on-road mobile sources. Therefore, we are confident that if EPA had done an impact assessment of this proposal their numbers would be close to ours.

Let me put these emissions numbers into perspective. The extra NOx emissions caused by this proposal, if it is finalized, will be 13 times what the impact of the Volkswagen defeat device scandal would have been if EPA hadn't caught VW cheating (something in which my organization played a small but important part). VW's deception has cost that company over 20 billion dollars in fines in the U.S. It would be inconsistent and destructive for the EPA, having helped to penalize one company for evading a reasonable emissions regulation, to then turn around and rescind another regulation specifically for the purpose of enabling a small number of other companies to profit by harming Americans' health and environment in the same way.

Finally, the proposal to overturn the glider truck provisions is based on one argument: that EPA has reinterpreted the Clean Air Act and determined that glider trucks are not new motor vehicles, and EPA does not have authority to regulate glider trucks and their engines. This is an unreasonable and impermissible interpretation of the Clean Air Act for a number of reasons, and the analysis supporting this conclusion is included in our written testimony.

Thank you for the opportunity to testify today.

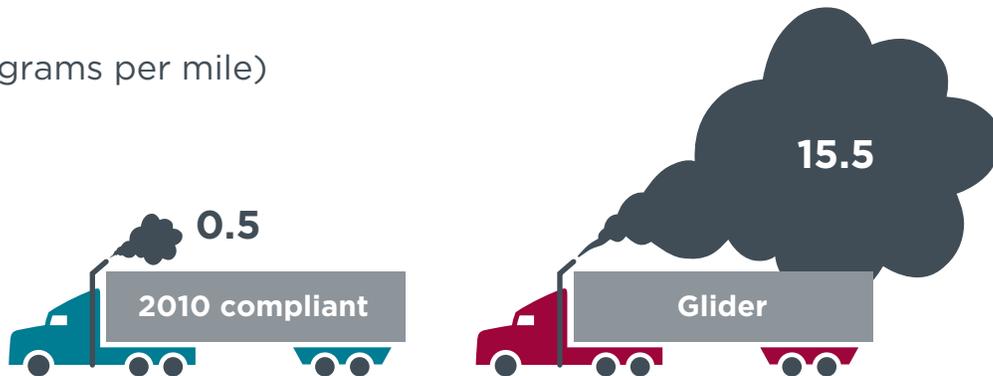
B. Supporting Figures

Per-mile emissions of glider vehicles versus 2010 compliant vehicles

PM_{2.5} (milligrams per mile)



NO_x (grams per mile)



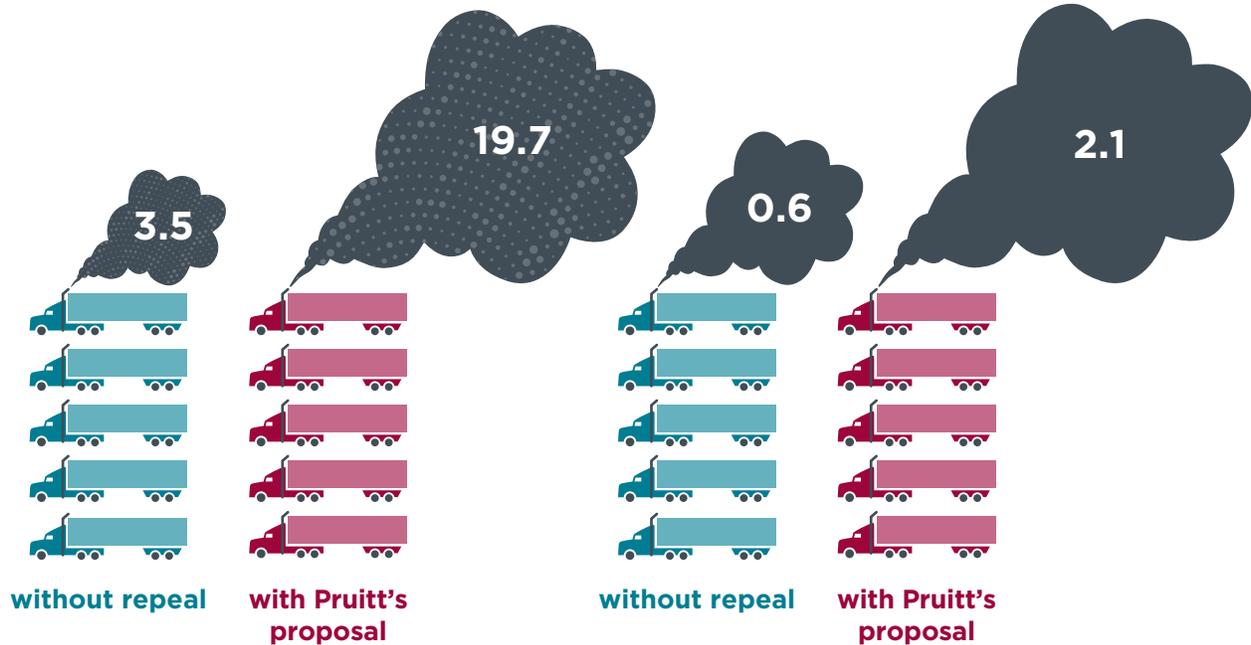
Results are derived from chassis dynamometer testing¹ conducted by US EPA's National Vehicle & Fuel Emissions Laboratory (November 20, 2017). Results reflect a 95% weighting of highway activity (55 and 65 mph cycles) and 5% weighting of transient activity (ARB transient) for a test vehicle with a combined weight of 60,000 pounds (including the tractor, trailer, and payload).

¹ <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2417>

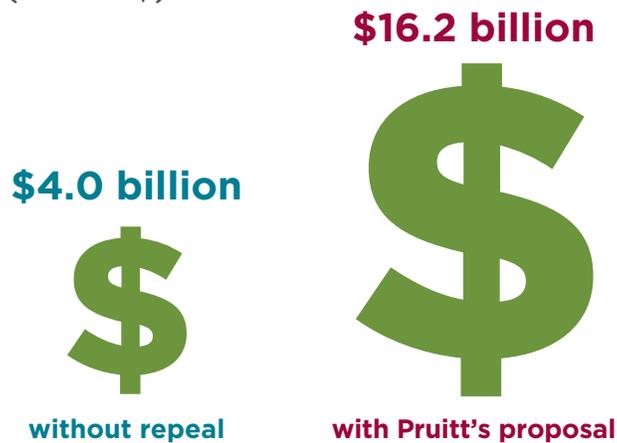
Cumulative emissions and health damages of Class 7 and 8 tractor truck sales over the next decade (2018-2027)

PM_{2.5} (thousand tons)

NO_x (million tons)



Health damages (billion \$)



Estimates without repeal assume glider vehicle sales without 2010 emissions compliant engines drop to 1,000 units per year from 2018 to 2020 and to zero starting in 2021.

Estimates with Pruitt's proposal assume sales of glider vehicles with pre-2002 engines are permitted to grow from approximately 10,000 units per year in 2015 to 17,400 units

per year in 2027 (10.4% of total sales). Annual total sales and vehicle-miles traveled by tractor-trailers are sourced from US EPA's Motor Vehicle Emission Simulator (MOVES2014²). Monetized health damages (in billion 2017 \$) are equal to ICCT estimates of direct PM_{2.5} and NOX emissions from Class 7 and 8 tractor trucks sold in 2018 and later, multiplied by US EPA estimates of damages per ton³ of direct emissions from on-road mobile sources in 2016. Damages in future years are converted to present value terms using a discount rate of 5% per year.

² <https://www.epa.gov/moves>

³ <https://www.epa.gov/benmap/sector-based-pm25-benefit-ton-estimates>

C. Legal Memo in Support of EPA's authority to regulate glider vehicles

EPA proposes to reject its prior interpretation that glider vehicles are “new motor vehicles,” and adopt a much narrower interpretation - glider vehicles cannot be new motor vehicles because their engines and other parts of the powertrain are used, and not “showroom new.” This would be an unreasonable and impermissible interpretation of the Clean Air Act (CAA).

EPA's prior interpretation is clearly reasonable, if not compelled by the Act. The current proposal recognizes this, stating that “[f]ocusing 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.””⁴ EPA justifies rejecting this straightforward approach by arguing that the structure and history of the Act indicate that “it seems likely that Congress understood a “new motor vehicle,” ... to be a vehicle comprised entirely of new parts and certainly not a vehicle with a used engine.”⁵

EPA's arguments are faulty and unsound and do not support its conclusion. EPA provides no legislative history or any other evidence to support its conclusion, which flies in the face of Congressional intent as expressed in the plain language of the definition. EPA's arguments amount to unsupported and improper guesses or speculation as to Congressional intent.

⁴ 83 FR 53442, 53445 (November 16, 2017).

⁵ *Id.* at 53446.

EPA first argues that glider vehicles have only recently been produced in great numbers, therefore “it is likely that [at the time of enactment] 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.”⁶ EPA provides no legislative history or any other evidence to support this conclusion, which flies in the face of Congressional intent as expressed in the plain language of the definition.

EPA’s argument is inconsistent with the public understanding of glider vehicles at the time of the enactment of the CAA. Prior to enactment, the Internal Revenue Service imposed an excise tax on manufacturers of new trucks using glider kits. This tax applied when a “taxpayer purchased ... in packaged or "glider kit" form, all the necessary new elements, including frame, cab, brake system, etc. ... and then had the structuring and assembling processes done by a third party.”⁷ The glider kit process resulted in a “new truck entity having been produced, and not a repairing or reconditioning of the old truck,” and the manufacturer of the new truck entity was subject to the excise tax. To the extent the public view of glider kits at the time of enactment is even relevant, given the absence of any legislative history, at that time vehicles produced using glider kits were considered new vehicles, subject to proper regulation by the government as new vehicles. If anything, this shows Congress would likely have considered glider vehicles to be new vehicles when it enacted the CAA’s definitions.

⁶ Id. at 53445.

⁷ *Boise National Leasing, Inc. v. United States*, 389 F.2d 634, 636-37 (9th Cir. 1968).

EPA next argues that similarity in the definitions used in the CAA and the Automobile Information Disclosure Act of 1958 (AIDA) shows that “Congress intended ... that a “new motor vehicle” would be understood to mean something equivalent to a “new automobile” — i.e., a true “showroom new” vehicle.”⁸ EPA’s argument relies on flawed logic:

(1) AIDA and the CAA have a similar definition of “new” vehicle, as both use a line drawn at the transfer of title to the ultimate purchaser.

(2) AIDA focuses on showroom new vehicles.

(3) Given the similarity in definitions, Congress also intended to limit the CAA to showroom new vehicles.

EPA’s analysis is superficial and incomplete. It does not consider the other textual provisions of AIDA and how they interact, and does not consider the critical differences between the CAA and AIDA in text and Congressional purpose. Even assuming Congress was aware of and relied on AIDA, and EPA presents no evidence of this, these differences indicate that Congress rejected AIDA’s narrow and limited approach, and instead opted for a broader more expansive legislative solution in Title II of the CAA.

First, EPA’s reference to “showroom new” clearly refers to the showroom of a new car dealer. AIDA’s legislative history indicates that this is the focus of AIDA. See *Baltimore Luggage*

⁸ 83 FR at 53446.

Company v. FTC, 296 F. 2d 608 (4th Cir. 1961), decided several years before adoption of the CAA. The problem Congress addressed in AIDA was fraud and deception occurring in the showroom of new car dealers, and it crafted a narrow solution to address it. The result was a requirement for a window label for new cars shown by new car dealers in their showrooms. However this focus on dealers and their showrooms was not driven by AIDA’s definition of “new automobile,” but by other provisions of that law.

AIDA’s definition of a new automobile, by itself, does not limit AIDA to new automobiles that end up in the showroom of a new car dealer. That focus derives from a separate section, the requirement that manufacturers affix the window label to a new car prior to delivery of the vehicle to a dealer.⁹ This manufacturer requirement is what ties the window label to the automobiles shown in new car dealers’ showrooms, not the definition of new automobile. In effect Congress defined new automobile somewhat broadly in AIDA, but then narrowed the labeling requirement by limiting it to only those new automobiles delivered to new car dealers. For example, a new car sold directly by a manufacturer would not be subject to the labeling requirement. While that kind of distribution would not typically occur, this example makes clear that the definition of new automobile is not what ties AIDA to “showroom new” cars, a different section of the law achieves this result. EPA’s reasoning and conclusion, which relies on the AIDA definition by itself, is not supported by the text of AIDA.

⁹ “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 on which such manufacturer shall endorse clearly, distinctly and legibly true and correct entries disclosing the following information concerning such automobile” (emphasis supplied) 15 U.S.C. 1232. The enforcement for this labeling requirement is addressed in 15 U.S.C. 1233.

The CAA and AIDA differ in many important ways, and it is clear that in the CAA Congress did not take the narrow approach used in AIDA and did not focus on the subset of vehicles presented for show in new car dealer's showrooms.

(1) The CAA's Title II provisions address a much broader societal problem – air pollution problems, reaching broadly across the country - while AIDA addresses a specific consumer information problem involving just new car dealers.

(2) Unlike AIDA, the CAA's definition of new motor vehicle covers many more kinds of vehicles than passenger cars. The CAA covers all kinds of cars and trucks, from the smallest passenger car to the largest commercial tractor trailer. It covers many more kinds of manufacturers and their distribution networks, the ways in which new cars or trucks are sold to their buyers. The vehicles and their manufacturing and distribution networks are more varied than the limited world of manufacturer deliveries of passenger cars to new car dealers.

(3) Unlike AIDA, the definition of new motor vehicle is not limited to a line drawn based on the transfer of title to an ultimate purchaser. The definition of new motor vehicle is broader in scope, and it is clear that a new motor vehicle may include an engine whose title has already passed to an ultimate purchaser, that is, a new motor vehicle may include a used engine.¹⁰ The definition also covers all imported vehicles, clearly

¹⁰ EPA appears to argue this cannot be the case, because Congress routinely used the term new motor vehicle and new motor vehicle engine together. See 83 FR at 53446. However the definition of new motor vehicle engine is clear - a new motor vehicle can include an engine whose title has already been transferred to the ultimate purchaser. See CAA section 216 (3) and

including used vehicles. Thus on its face the definition of new motor vehicle is not limited to the kind of “showroom new” vehicles shown by new passenger car dealers.

(4) It is the manufacturer requirement that focuses AIDA on new car dealers’ showrooms, not the definition of new automobile. The parallel manufacturer provision in the CAA is section 203(a), which requires that a manufacturer obtain an EPA certificate of conformity before selling, offering for sale, introducing into commerce or delivering a new motor vehicle for introduction into commerce. Nothing narrows this prohibition or somehow limits Title II to vehicles delivered to a dealer for presentation in “showroom new” condition in their showroom. The CAA prohibition is much broader in scope than the labeling requirement in AIDA, properly reflecting the broader scope of the air pollution problem Congress was trying to solve.

A comprehensive comparison of the text, structure, and legislative purpose of AIDA and the CAA shows that Congress adopted a narrowly tailored solution in AIDA, using narrowing text to address a specific, limited consumer information problem, but rejected this approach for the CAA. Congress instead chose broader and more expansive text, to better meet the larger and more complex societal problem posed by air pollution. Congress did not intend to limit the CAA to “showroom new” vehicles, as it did in AIDA, and even assuming Congress was informed by AIDA, it is clear that Congress rejected the narrow AIDA approach and instead chose a broader and more expansive approach for the CAA.

81 FR at 73518. EPA’s approach is inconsistent with the definition of new motor vehicle engine, and would make the first part of that definition meaningless.

EPA ignores the straightforward meaning of the text adopted by Congress in favor of inferences or guesses as to what Congress must have “really meant” when it adopted the CAA. This approach was rejected by the Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), which found that “the broad language of [CAA] § 202(a)(1) reflects an intentional effort to confer the flexibility necessary to [address changing circumstances and scientific developments] ... [T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.”¹¹ The definition of new motor vehicle reflects this same flexibility and breadth.

Finally, EPA provides no justification or argument that its proposed interpretation would in any way further the purposes of the CAA. It cannot, as EPA’s proposal does the opposite. This proposal would lead to a dramatic rise in harmful air pollution, with no explanation as to why this interpretation, which removes EPA’s ability to reasonably address this vehicle based air pollution, promotes the purposes of Title II of the Act, which are designed to address just this kind of problem.

EPA’s proposed interpretation of the CAA is unreasonable and unjustified, and is not a permissible interpretation of the Act. It must be rejected, and the current interpretation retained.

¹¹ *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007).