

**COMMENT OF NATURAL RESOURCES DEFENSE COUNCIL, CENTER FOR  
BIOLOGICAL DIVERSITY AND SIERRA CLUB ON LEGAL ASPECTS OF  
PROPOSED REPEAL OF EMISSION REQUIREMENTS FOR GLIDER VEHICLES,  
GLIDER ENGINES, AND GLIDER KITS, RIN 2060-AT79**

**INTRODUCTION**

Administrator Scott Pruitt’s proposed *Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits*<sup>1</sup> is unlawful and should not be finalized. The proposed repeal would reopen a loophole that allowed the sale of new trucks that do not meet up-to-date pollution standards critical to protect public health. The loophole was closed by health standards the Environmental Protection Agency promulgated in 2016 for “glider vehicles”—a type of new truck created by combining a used powertrain (engine, transmission, and rear axle) with a new “glider kit” (tractor chassis, front axle, cab, and brakes).<sup>2</sup> In the 2016 Rule, EPA also established emission standards for the engines used in glider vehicles (“glider engines”) and determined that glider kit manufacturers were “incomplete vehicle manufacturers” responsible for complying with the emission standards established for glider vehicles.

On November 17, 2017, the Administrator proposed to repeal these aspects of the 2016 standards based on a proposed legal interpretation of the Clean Air Act that would effectively rewrite the Act to deprive the Agency of authority to set standards for this class of new vehicle, or, for that matter, for any other new vehicle into which a manufacturer has installed any previously used parts. But the Administrator’s proposed legal interpretation violates the precise and unambiguous terms of the Clean Air Act. The Administrator may not lawfully finalize a repeal based on the interpretation presented in the proposal. The Clean Air Act unambiguously requires EPA to regulate glider vehicles, glider engines, and glider kit manufacturers. The Natural Resources Defense Council

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<sup>1</sup> *Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits*, 82 Fed. Reg. 53,442 (Proposed Repeal).

<sup>2</sup> *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2*, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (Final Rule).

(NRDC), the Center for Biological Diversity (the Center) and the Sierra Club (collectively, the Commenters) urge the Administrator to abandon the proposal and implement the important public health standards for glider vehicles, engines and kits.

Importantly, in the Final Rule, EPA estimated that the dirty trucks that would be allowed if the Administrator's proposed repeal were finalized emit as much as 20 to 40 times as much NO<sub>x</sub> and PM as do other new trucks.<sup>3</sup> It found that, if left unregulated, they would emit some 300,000 tons of NO<sub>x</sub> and nearly 8,000 tons of PM annually in 2025.<sup>4</sup> If manufacturers sold 10,000 of these dirty trucks every year between 2017 and 2025, they would be responsible for one third of all NO<sub>x</sub> and PM emissions from the heavy truck fleet even though they would comprise only 5% of that fleet.<sup>5</sup> The pollution emitted by those dirty trucks would result in as many as 1,600 deaths annually. The Administrator never explains why his new—and unlawful—interpretation of the relevant statutory terms could possibly promote the purposes of the Clean Air Act while causing such horrendous consequences for human health, human lives, and the environment. That is arbitrary and capricious.

The Administrator's proposal is unconscionable and should be withdrawn due to the severe risk that it would cause to public health and, specifically, the extraordinary number of deaths that would result. In these comments, Commenters address the significant legal defects in the proposal.

### **Procedural Background**

The Clean Air Act requires that EPA promulgate emission standards for “new motor vehicles” and “new motor engines.” 42 U.S.C. § 7521. Pursuant to this authority, EPA promulgated the Final Rule. Among other things, the Final Rule established emission standards for “glider vehicles”—vehicles created by combining a used

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<sup>3</sup> Final Rule, 81 Fed. Reg. at 73943.

<sup>4</sup> *Id.* at 73943.

<sup>5</sup> *Id.*.

powertrain (engine, transmission, and rear axle) with a new “glider kit” (tractor chassis, front axle, cab, and brakes). The Final Rule also established emission standards for the engines used in glider vehicles (“glider engines”). Finally, the Final Rule provided that glider kit manufacturers were “incomplete vehicle manufacturers,” and thus responsible for complying with the emission standards established for glider vehicles.

On November 16, 2017, in response to a petition for reconsideration, EPA published a proposed rule entitled *Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits*. 82 Fed. Reg. 53,442 (Proposed Repeal). EPA proposes to reinterpret the CAA to preclude regulation of glider vehicles and glider engines, on the theory that these vehicles and engines are not “new” within the meaning of the statute. The agency further proposes to exempt glider kit manufacturers from any responsibility under the statute.

The CAA unambiguously requires EPA to regulate glider vehicles, glider engines, and glider kit manufacturers. Accordingly, the Proposed Repeal is unlawful.<sup>6</sup>

## **II. BACKGROUND**

### **A. Factual Content**

In the 2016 Final Rule, EPA made certain factual findings about glider vehicles:

[A] glider kit is a tractor chassis with frame, front axle, interior and exterior cab, and breaks. It is intended for self-propelled highway use, and becomes a glider vehicle when an engine, transmission, and rear axle are added. Engines are often salvaged from earlier model year vehicles, remanufactured, and installed in the glider vehicle. The final manufacturer of the glider vehicle, *i.e.* the entity that installs an engine, is typically a different manufacturer than the original manufacturer of the glider kit.

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<sup>6</sup> EPA requests comment on whether, in the event it decides not to finalize the proposed interpretations, it should increase the small businesses exemption or extend the compliance dates. For all of the reasons stated herein, it should do neither. Instead, if EPA proceeds with any review of the Final Rule, should reverse or, at least lower these exemptions and require full compliance with current emission standards of all glider vehicles.

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Glider kits are typically marketed as “brand new” trucks. Indeed, one prominent assembler of glider kits and glider vehicles advertises that “Fitzgerald Glider Kits offer customers the option to purchase a *brand new 2016 tractor*, in any configuration offered by the manufacturer . . . Fitzgerald Glider Kits has mastered the process of taking the ‘Glider Kit’ and installing the components to work seamlessly *with the new truck*.” The purchaser of a “new truck” necessarily takes initial title to that truck.

81 Fed. Reg. at 73,512 (footnotes omitted). These factual findings remain accurate today and the Administrator is not proposing to reconsider any of these findings in the Proposed Repeal.

## **B. Governing Law**

The CAA requires EPA to promulgate “standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7521(a)(1). It requires “a manufacturer of new motor vehicles or new motor vehicle engines” to certify that these articles are in conformity with the CAA’s emission standards before introducing them into interstate commerce. § 7522(a)(1).

“Manufacturer” is defined, in pertinent part, as “any person engaged in the manufacturing or assembling of new motor vehicles.” § 7550(1). “Motor vehicle” is defined as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” § 7550(2). “New motor vehicle” is defined as “a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser.” § 7550(3). “New motor vehicle engine” is 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.* “Ultimate purchaser” is defined as “the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.” § 7550(5).

## **C. The 2016 Final Rule**

In the final rule establishing pollution standards for glider trucks, EPA correctly identified the legal basis for the standards.

1. *Glider Vehicles*

First, EPA correctly determined that glider vehicles were “new motor vehicles” because they were “typically marketed and sold as ‘brand new’ trucks” and given new title. 81 Fed. Reg. at 73,514. This determination reflects a straightforward application of the terms of the Clean Air Act. As EPA explained, it is also reasonable because “the glider kit constitutes the major parts of the vehicle,” and “nothing in the Act . . . compels the result that adding a used component to an otherwise new motor vehicle necessarily vitiates classification of the motor vehicle as ‘new.’” *Id.* EPA found further compelling support for its approach in the statutory definition of “new motor vehicle engine,” which includes “an engine in a new motor vehicle,” whether or not that engine has been previously used. *Id.* (citing 42 U.S.C. § 7550(3)). Based on these conclusions, the Final Rule’s regulatory language provides that “[v]ehicles produced from glider kits and other glider vehicles are subject to the same standards as other new vehicles . . . .” 40 C.F.R. § 1037.635(a).

2. *Glider Vehicle Engines*

Based on its conclusion that glider vehicles are “new motor vehicles” and on the statute’s broad definition of “new motor vehicle engine” (“an engine in a new motor vehicle”), EPA correctly determined that glider engines meet the definition of “new motor vehicle engines.” 81 Fed. Reg. at 73,518 (citing 42 U.S.C. § 7550(3)). EPA also found that it had authority to regulate these engines under 42 U.S.C. § 7521(a)(3)(D), which authorizes EPA to establish “standards applicable to emissions from any rebuilt heavy-duty engines.” *Id.* at 73,518. As EPA correctly determined, “all of the donor engines installed in glider vehicles are rebuilt.” 81 Fed. Reg. at 73,518 n.93. The Final Rule provides that, subject to certain exceptions, glider engines must comply with the emission standards “that apply for the engine model year corresponding to *the vehicle’s* date of manufacture.” 40 C.F.R. § 1037.635(b) (emphasis added).

### 3. *Glider Kits*

As EPA explained, the Clean Air Act “not only contemplates, but in some instances, directly commands that EPA establish standards for incomplete vehicles and vehicle components.” *Id.* EPA’s conclusion is based on plain and precise language in the Act that provides that emission standards are applicable to new motor vehicles and new motor vehicle engines “whether such vehicles are designed as complete systems or incorporate devices to prevent or control such pollution.” *Id.* (citing 42 U.S.C. § 7521(a)(1)). EPA also pointed to Clean Air Act provisions that require the agency to establish emission standards for particular vehicle components used to control evaporative emissions. *Id.* (citing 42 U.S.C. §§ 7521 (a)(5), (a)(6), (k)). According to EPA, these provisions show that the agency’s authority to establish standards for “new motor vehicles” includes the authority to establish standards from vehicle components that play a significant role in emissions, whether or not these components are self-propelled. *Id.*

The Final Rule states that “[a]pplication of these . . . principles indicate that a glider kit manufacturer is a manufacturer of a motor vehicle and . . . an entity responsible for assuring that glider vehicles meet the . . . vehicle emission standards.” *Id.* at 73,516; *see also* 40 C.F.R. § 1037.635(e)(3) (“introducing an uncertified glider kit into U.S. commerce may subject you to penalties under 40 CFR 1068.101 if the completed glider vehicle does not conform fully with the regulations of the part”).<sup>7</sup>

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<sup>7</sup> EPA explained that, even if glider kit manufacturers were not treated as manufacturers of incomplete new vehicles, they could be subject to liability if vehicles built from their kits failed to comply with relevant emission standards:

[S]ection 203(a)(1) of the Act not only prohibits certain acts, but also prohibits ‘the causing’ of those acts. . . . [A] glider kit supplied in a condition inconsistent with the tractor standard would cause the manufacturer of the glider vehicle to violate the GHG emission standard, so the glider kit manufacturer would be . . . liable under section 203(a)(1) for causing that prohibited act to occur.

81 Fed. Reg. at 73,517.

The statutory provisions underlying EPA’s legal interpretation are clear and unambiguous. As shown below, taken individually and together, they point in only one direction: the Clean Air Act requires EPA to regulate pollution from glider vehicles, and the use of rebuilt engines does not alter that conclusion.

EPA determined that the Final Rule would achieve significant public health benefits. For example, EPA estimated that the amount of particulate matter from 10,000 gliders sold per year could cause as much as 1,600 premature deaths annually.<sup>8</sup> This estimate was conservative because glider sales in fact exceed 10,000 per year and because EPA considered only fine particulate exposures and did not include additional cancers and mortalities resulting from exposure to diesel exhaust and ground level ozone. EPA also determined that in 2025, every year of glider sales would cause over 300,000 excess tons of NOx emission and nearly 8,000 tons of PM annually.<sup>9</sup> This enormous amount of pollution and devastating impacts on public health – including up to one thousand six hundred deaths per year – is avoided by the common sense requirement that rebuilt engines sold in new glider vehicles must meet current emission standards. But the Administrator provides no analysis of the public health consequences of repealing the 2016 Final Rule at all. That omission alone renders the rule arbitrary and capricious.

#### **D. Administrator Pruitt’s Proposed Repeal**

Administrator Pruitt proposes to repeal the 2016 Final Rule based on new legal interpretations of several Clean Air Act terms. A summary of the legal interpretations follows.

##### *1. Glider Vehicles*

The Administrator proposes to conclude that glider vehicles are not “new motor vehicles” within the meaning of the Clean Air Act. In the Proposed Repeal, the Administrator acknowledges that “[p]rior 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.’” *Id.* at 54,434. Indeed, “[f]ocusing solely on that portion of the statutory definition that provides a motor vehicle is considered ‘new’ prior to the time its

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<sup>8</sup> RTC Section 14 Appendix A.

<sup>9</sup> Final Rule at 73,943.

‘equitable or legal title’ has been ‘transferred to an ultimate purchaser,’ a glider vehicle would appear to qualify as ‘new.’” *Id.* at 53,445.

Nonetheless, Administrator Pruitt speculates that Congress likely did not envision that the CAA would apply to glider vehicles:

[A]t the time th[e] 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. But only more recently—after the enactment of Title II—have glider vehicles been produced in any great number.

*Id.*

The Administrator cites no legislative history, but seeks to support this conjecture by pointing to the entirely unrelated Automobile Information Disclosure Act of 1958 (“Disclosure Act”). *Id.* Among other things, the Disclosure Act required automobile manufacturers to affix an informational label to the windshield of new automobiles. *Id.* The term “new automobile” was defined as “an automobile the equitable or legal title to which has never been transferred . . . to an ultimate purchaser.” 15 U.S.C. § 1231(d). The Administrator speculates that the Clean Air Act’s definition of “new motor vehicle” was likely derived from the Disclosure Act’s definition and that this supports his new legal theory. The Administrator further suggests that in both the Disclosure Act and the Clean Air Act, Congress sought a “bright line” between new and used vehicles and that this shows that Congress intended, in the Clean Air Act, to capture only “true ‘showroom new’ vehicle[s].” *Id.* at 53,446.

Based on this speculation, the Administrator claims that “ambiguity exists,” and it is reasonable to conclude that the term “new motor vehicle” excludes glider vehicles, given “the reality that significant elements of a glider vehicle (*i.e.*, the powertrain elements, including the engine and the transmission) are previously owned components.” *Id.*

## 2. *Glider Engines and Glider Kits*

The Administrator next claims that from this newly proposed interpretation that would exclude new glider vehicles from the definition of “new motor vehicle”, “it necessarily follows that a glider engine is not a ‘new motor vehicle engine.’” *Id.* Administrator Pruitt further argues that, if one concludes that a glider vehicle is not a “new motor vehicle,” it follows that the agency “lacks authority to regulate glider kits as ‘incomplete’ new motor vehicles.” *Id.* According to the Administrator, regulation of glider kits is also unlawful because “a glider kit does not explicitly meet the definition of ‘motor vehicle,’ which, in relevant part, is defined to mean ‘any self-propelled vehicle.’” *Id.* (citing 42 U.S.C. § 7550(2)). The Administrator does not address at all the Final Rule’s finding that glider kit manufacturers could be liable to the extent they cause a violation of the Act, even if they are not themselves manufacturers. As shown below, these findings and conclusions are directly contrary to the precise and unambiguous terms of the statutes and therefore unlawful.

### **III. THE PROPOSED REPEAL IS UNLAWFUL AND MUST BE WITHDRAWN**

#### **A. The Clean Air Act Requires EPA To Regulate Glider Vehicles As “New Motor Vehicles”**

The Clean Air Act requires EPA to regulate any motor vehicle “the equitable or legal title to which has never been transferred to an ultimate purchaser.” 42 U.S.C. §§ 7521, 7550(3). In the Final Rule, EPA correctly found that glider vehicles are typically given new title. The Administrator does not propose to revisit that finding; to the contrary, the Proposed Repeal reaffirms that “[p]rior 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.’” 82 Fed. Reg. at 53,444. The application of the statute is straightforward and plain: because glider vehicles are vehicles “the equitable or legal title to which has never been transferred to an ultimate purchaser,” EPA must regulate them as “new motor vehicles.”

Administrator Pruitt’s attempt to avoid this plain statutory mandate is misguided and unlawful. The Administrator’s proposal is based on no more than speculation that,

notwithstanding the precise language used in the statute, Congress likely did not envision that the Act would apply to glider vehicles. *Id.* at 53,445. But the Act’s definition of new motor vehicle is precise and unambiguous, and it clearly requires EPA to regulate glider vehicles. It is a “core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.” *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2446 (2014).

Nothing in the history, context, or purpose of the statute suggests that Congress intended to exempt glider vehicles from regulation. The best the Administrator can offer is *speculation* that Congress could not have envisioned the statute applying to these vehicles. Even if well founded, such speculation about Congress’s intent would not justify a departure from the clear statutory text.

The Administrator’s speculation has no basis. The statutory scheme demonstrates that Congress *did* envision the possibility that manufacturers might install used engines into new vehicles. “New motor vehicle engine” is defined to include *either* “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.” 42 U.S.C. § 7550(3). The first part of this definition would be redundant unless Congress contemplated that an engine, the title to which *had* previously been transferred, might be present “in a new motor vehicle.” It cannot be presumed that Congress legislated in superfluous terms. *See, e.g., Duncan v. Walker*, 533 U.S. 167, 174 (2001). Accordingly, the first part of this definition must be read as referring to used engines installed in otherwise new vehicles.

Two other provisions reinforce this understanding. First, Section 7521(a)(1) provides that emission standards shall apply to new motor vehicles and new motor vehicle engines “whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.” This shows that Congress clearly understood that vehicles and engines would not necessarily be designed as “complete systems”—i.e., that the vehicle and the engine might be manufactured by different companies at different times. Congress specified that emission standards would apply even if the vehicle and the engine were not designed as a complete system.

Second, Section 7521(a)(3)(D) requires EPA to “study the practice of rebuilding heavy-duty engines,” and authorizes the agency to establish “standards applicable to emissions from any rebuilt heavy-duty engines[.]” This provision demonstrates that Congress was aware of the practice of rebuilding heavy-duty engines, and did not want this practice to be used to evade emission standards for new engines. It is entirely implausible that Congress would authorize EPA to regulate rebuilt engines, only to bar EPA from regulating otherwise-new vehicles based on their use of rebuilt engines.

None of the Administrator’s arguments concerning the Automobile Information Disclosure Act of 1958 (“AIDA”) bear any significant weight or can overcome the plain language of the Clean Air Act statute. Indeed, even assuming *arguendo* the correctness of the Administrator’s principal notion that the definition in the AIDA was designed to provide a “bright line” between new and used vehicles and that this alleged intent carries over to the Clean Air Act,<sup>10</sup> it would not provide any basis for failing to apply the same “bright line” in the Clean Air Act. It makes perfect sense that Congress would have intended to require that any vehicle sold as a “new vehicle” – i.e., a vehicle with a new legal title – should meet up-to-date pollution controls. In contrast, the Administrator’s proposed interpretation would, in addition to cutting back EPA’s authority, open up substantial and dangerous regulatory ambiguity by inviting manufacturers to seek to avoid pollution standards by the simple mechanism of incorporating used equipment in vehicles that are otherwise new and are sold as new vehicles. In short, to the extent it is relevant at all, nothing about the AIDA supports the Administrator’s new legal theory or justifies deviating from the plain language of the Clean Air Act.

In sum, the Clean Air Act’s definition of new motor vehicle is precise and plainly covers glider vehicles. The Administrator’s proposal fails to offer any basis to avoid these plain terms and should be abandoned.

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<sup>10</sup> The AIDA did not, as the Administrator suggests, define “new vehicles” as a “true ‘showroom new’ vehicle,” 82 Fed. Reg. 53,446, and legitimate statutory construction does not permit the Administrator to ignore the clear language of the Clean Air Act based on a superficial and fanciful reading of statutory language in a separate Act enacted with a purpose and intent that is entirely different and distinct.

**B. The CAA Requires EPA To Regulate Glider Vehicle Engines As “New Motor Vehicle Engines”**

The Clean Air Act requires EPA to regulate any “new motor vehicle engine,” defined to include any “engine in a new motor vehicle or a motor vehicle.” 42 U.S.C. § 7550(3). For the reasons described above, glider vehicles are “new motor vehicles” and any engine installed in such a vehicle is an “engine in a new motor vehicle.” It follows that EPA must establish emission standards for these engines.

**C. The CAA Requires EPA To Regulate Glider Kit Manufacturers As “Incomplete Vehicle” Manufacturers**

Any “manufacturer” of new motor vehicles must certify that its vehicles conform to applicable emission standards. 42 U.S.C. § 7522(a)(1). The term “manufacturer” includes any person “engaged in the manufacturing or assembling of new motor vehicles.” 42 U.S.C. § 7550(1). A person may be “engaged” in the manufacturing of a new motor vehicle even if she does not manufacture the entire vehicle himself, and even if she sells the vehicle to a secondary manufacturer before it is complete. It follows that EPA is required to regulate manufacturers of an incomplete vehicle.

That conclusion is supported by case law under analogous statutes. The definition of “manufacturer” in the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act) was virtually identical to the definition of that term in the CAA.<sup>11</sup> The National Highway Traffic Safety Administration (NHTSA) promulgated regulations distinguishing between “final-stage manufacturers”—those who produced “completed vehicles” that required “no further manufacturing operations to perform [their] intended function”—and “incomplete vehicle manufacturers”—those who produced vehicles that required further manufacturing. NHTSA’s regulations provided that only final-stage manufacturers would be required to certify that the vehicle was in compliance with applicable safety standards. The Seventh Circuit held that this regulatory scheme was unlawful because it “clearly contravene[d] the language of the Act.” *Rex Chainbelt, Inc. v. Volpe*, 486 F.2d 757, 762

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<sup>11</sup> Section 102(5) of the Safety Act defined “manufacturer” as “any person engaged in the manufacturing or assembling of motor vehicles or motor vehicle equipment . . . .” 80 Stat. 718.

(7th Cir. 1973). Specifically, the court found it “plain[]” that the Safety Act’s definition of “manufacturer” applied to incomplete vehicle manufacturers. *Id.*<sup>12</sup>

Consistent with this case law, EPA has long construed the CAA’s definition of “manufacturer” to require regulation of incomplete vehicle manufacturers. *See, e.g.*, 48 Fed. Reg. 1,430 (Jan. 12, 1983). Notably, Congress chose not to disturb this interpretation when it amended the CAA in 1990. This indicates that EPA’s interpretation is consistent with congressional intent. *See Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833, 846 (1986) (“it is well established that when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the congressional failure to revise or repeal the agency’s interpretation is persuasive evidence that the interpretation is the one intended by Congress”) (citation and quotation marks omitted).

EPA argues that glider kit manufacturers cannot be regulated as incomplete vehicle manufacturers because glider kits are not self-propelled, and thus, do not fall under the CAA’s definition of “motor vehicle.”<sup>13</sup> That is not a reasonable reading of the statute. A glider kit manufacturer is “engaged” in the manufacturing of a motor vehicle, because the kit is designed to become a motor vehicle. It matters not whether the incomplete vehicle is self-propelled; EPA has, for decades, regulated incomplete motor vehicles that were not self-propelled. *See* 40 C.F.R. § 86.085-2(a) (1983 provision regulating manufacturers of “[i]ncomplete gasoline-fueled heavy-duty vehicle,” defined to include any such vehicle “which does not have the primary load-carrying device, or passenger compartment, *or engine compartment or fuel system attached*”) (emphasis added). Congress has acquiesced in that construction. EPA cannot revisit it now.

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<sup>12</sup> *See also Chrysler Corp. v. EPA*, 600 F.2d 904, 915 (D.C. Cir. 1979) (Noise Control Act of 1972’s definition of “manufacturer” encompassed incomplete vehicle manufacturers) (citing *Rex Chainbelt*, 486 F.2d at 762).

<sup>13</sup> That definition includes “any self-propelled vehicle designed for transporting persons or property on a street or highway.” 42 U.S.C. § 7550(2).

**D. The Proposal is Arbitrary and Capricious Because It Fails to Evaluate the Severe Public Health Consequences of the Repeal**

Even if there were any ambiguity in the relevant Clean Air Act terms, the Administrator's proposal is arbitrary and capricious because it fails to evaluate the severe and deadly public health consequences of the proposal. Any interpretation of ambiguous statutory language must consider, among other factors, how the proposed interpretation would meet the purpose of the statute in question. Administrator Pruitt has completely failed to undertake such an evaluation.

The Clean Air Act was passed "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401. The Proposed Repeal would result in sales of new trucks that emit more than forty times the limit otherwise allowed and cause, through the emission of that pollution, up to 1,600 deaths per year. But the proposal includes no information on the health effects of the proposed action. It is arbitrary and capricious for the Administrator to fail to consider such significant public health effects and how the Administrator's proposed interpretation would further the purpose of the Clean Air Act.

In addition to the general public health and pollution abatement goals of the Act, Congress has expressed a particular concern with "the prevention and control of air pollution resulting from the combustion of fuels." 42 U.S.C. § 7404. EPA's proposed interpretation directly undermines these purposes by attempting to rewrite clear language in order to reward the efforts of a few manufacturers to circumvent the Act's emission standards at the cost of significant degradation of the Nation's air quality.

Because it fails to consider the statutory purpose or evaluate the health impacts of the proposal, the Administrator's proposed action is arbitrary and capricious and must be rejected.

**IV. CONCLUSION**

The Proposed Repeal is unlawful and must be withdrawn. The Administrator seeks to create a huge pollution loophole by baldly rewriting the plain language of the Clean Air Act, which requires that the glider trucks in question adhere to pollution

control standards. The Administrator may not rewrite clear statutory text. Further, the Administrator may not undertake such an action without evaluating the effects on public health and the degree to which the proposed interpretation meets the statute's purposes. For these reasons, the proposal is unlawful must be withdrawn.

Sincerely,

Benjamin Longstreth, Senior Attorney, Natural Resources Defense Council

Alejandra Nunez, Senior Attorney, Sierra Club

Vera Pardee, Senior Counsel, Center for Biological Diversity