Legal Memorandum Discussing Issues Pertaining to Trailers, Glider Vehicles, and Glider Kits under the Clean Air Act

The following is a discussion of EPA's understanding of issues regarding trailers, glider vehicles, and glider kits under the Clean Air Act ("CAA" or "the Act"). This document is specific to the EPA and its legal authorities. For a discussion of the National Highway Traffic Safety Administration's (NHTSA) legal authority regarding trailers, please see Section I. E. (2)(a) of the NPRM (80 FR 40137). For NHTSA's proposal regarding gliders and glider kits, please see Section XIV. B. of the NPRM. *Id*.

The EPA proposed to establish emission standards applicable to trailers hauled by tractors. 80 FR 40170. Certain commenters, notably the Truck Trailer Manufacturers Association (TTMA), maintained that EPA lacks authority to adopt requirements for trailer manufacturers, and that emission standards for trailers could only be implemented, if at all, by requirements applicable to the entity assembling a tractor-trailer combination. The argument is that trailers by themselves are not "motor vehicles" as defined in section 216 (2) of the Act, that trailer manufacturers therefore do not manufacture motor vehicles, and that standards for trailers can be imposed, if at all, only on "the party that joined the trailer to the tractor". Comments of TTMA, p. 4.

EPA also proposed a number of changes and clarifications for rules respecting glider kits and glider vehicles. 80 FR 40527-530. A glider kit is a tractor chassis with axles, rear end, interior cab, and brakes. It is intended for self-propelled highway use, and becomes a glider vehicle when an engine and transmission are added. Engines are often salvaged from earlier model year vehicles and installed in the glider kit. The final manufacturer of the glider vehicle, i.e. the entity that reinstalls an engine, is typically a different manufacturer than the original manufacturer of the glider kit. A glider kit manufacturer typically knows what the final configuration of the vehicle will be, since all wiring of modern heavy duty vehicles is predicated on a particular engine/transmission configuration. A number of commenters, including Daimler, argued that glider kits are not motor vehicles and so EPA lacks the authority to impose any rules respecting their sale or configuration.

Under the Act, "motor vehicle" is defined as "any self-propelled vehicle designed for transporting persons or property on a street or highway." CAA section 216 (2). At proposal, EPA maintained that tractor-trailers are motor vehicles and that EPA therefore has the authority to promulgate emission standards for each of the chief components – both the tractor and the trailer. 80 FR 40170. The same proposition holds for glider kits. The argument that a trailer, or a glider kit, standing alone, is not self-propelled, and therefore is not a motor vehicle, appears to miss the key issues of authority under the Clean Air Act to promulgate emission standards for motor vehicles produced in discrete segments, and the further issue of the entities – namely "manufacturers" – to which standards and certification requirements apply. This memorandum addresses those issues (while soliciting further comment), and also discusses and solicits comments on certain alternative authorities and approaches for requiring manufacturers of trailers and glider kits to meet standards are conduct needed testing of emission control systems.

a. Standards for Complete Vehicles – Tractor-Trailers and Glider Vehicles

Section 202 (a)(1) authorizes EPA to set standards "applicable to the emission of any air pollutant from any … new motor vehicles". There is no question that EPA is authorized to establish emission standards under this provision for complete new motor vehicles, and thus can promulgate emission standards for air pollutants emitted by tractor-trailers and by glider vehicles.

Issues raised in the comments with respect to authority to promulgate emission standards for glider vehicles questioned whether glider vehicles are "new" as well as the emission standards applicable to engines reinstalled into glider vehicles. At proposal, EPA indicated that engines used in glider vehicles are to be certified to standards for the model year in which these vehicles are assembled. 80 FR 40528. This proposal appears to be well within the agency's legal authority. The Act contains no specific guidance regarding whether the model year of the engine or of the assembly of the vehicle is controlling, either in provisions on rebuilt engines or otherwise. Given the Act's purpose of controlling emissions of air pollutants from motor vehicle engines, with special concern for emissions from heavy-duty engines, it appears reasonable to require engines placed in newly-assembled vehicles to meet the same standards as all other engines in new motor vehicles. Indeed, one prominent assembler of glider kits and glider vehicles advertises that "Fitzgerald Glider Kits offers 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*." [1] It seems both reasonable and equitable for the engines in "new trucks" to meet the emission standards for all other engines installed in new trucks.

Daimler maintained in its comments that although a glider vehicle is a motor vehicle, it may not be a "new" motor vehicle because "glider vehicles, when constructed retain the identity of the donor vehicle, such that the title has already been exchanged, making the vehicles not 'new' under the CAA." Daimler Comments p. 121. The Act defines "new motor vehicle" as "a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser" (section 216(3)). As just quoted, glider vehicles are typically marketed and sold as "brand new" trucks. The purchaser of a "new truck" necessarily takes initial title to that truck. It is possible Daimler is referring to a practice whereby the glider vehicle retains the vehicle identification number (VIN) of the vehicle from which the engine is taken. See 80 FR 40529. As EPA observed at proposal, the Act does not compel exaltation of form over substance, such that a truck marketed and sold as new with title to that new vehicle conveyed to the purchaser must be considered to be a remnant of the vehicle from which the engine was taken. Id.[2] Nor does the Act make Vehicle Identification Numbers determinative of new motor vehicle status.

b. Standards for Incomplete Vehicles

Section 202 (a)(1) not only authorizes EPA to set standards "applicable to the emission of any air pollutant from any … new motor vehicles", but states further that these standards are applicable "whether such vehicles … are designed as complete systems or incorporate devices to prevent or control

[1] Advertisement for Fitzgerald Glider kits in Overrdrive magazine (December 2015)(emphasis added).

[2] Even in the very rare instance where the same entity builds the glider kit, installs an old engine from its own vehicle into a glider vehicle for its own use and somehow does so without new title passing, EPA would have authority over the practice under the engine rebuilding authority of section 202 (a)(3)(D), which authority includes removal of an engine from the donor vehicle. See 40 CFR section 86.004-40 and 62 FR 54701 (Oct. 21, 1997).

such pollution." The Act in fact not only contemplates, but in some instances, directly commands that EPA establish standards for incomplete vehicles and vehicle components. See CAA section 202 (a)(6) (standards for onboard vapor recovery systems on "new light-duty vehicles", and requiring installation of such systems); section 202 (a)(5)(A) (standards to control emissions from refueling motor vehicles, and requiring consideration of, and possible design standards for, fueling system components); 202 (k) (standards to control evaporative emissions from gasoline-fueled motor vehicles).

Emission standards EPA sets pursuant to this authority thus can be, and often are focused on emissions from the new motor vehicle, and from portions, systems, parts, or components of the vehicle. Standards thus apply not just to exhaust emissions, but to emissions from non-exhaust portions of a vehicle, or from specific vehicle components or parts. See the various evaporative emission standards for light duty vehicles in 40 CFR Part 86 subpart B (e.g. 86. 146-96 and 86.150-98 (refueling spitback and refueling test procedures); sections 1060.101-103 and 73 FR 59114-115 ((various evaporative emission standards for small spark ignition equipment); : section 86.1813-17(a)(2)(iii) (canister bleed evaporative emission test procedure, where testing is solely of fuel tank and evaporative canister); see also 79 FR 23507 (April 28, 2014) (incomplete heavy duty gasoline vehicles could be subject to, and required to certify compliance with, evaporative emission standards). These standards are implemented by testing the particular vehicle component, not by whole vehicle testing, notwithstanding that the component may not yet be self-propelled or (in the case of non-road equipment), propelled by an engine [3]

EPA thus can set standards for all or just part of the motor vehicle, notwithstanding that an incomplete motor vehicle may not yet be self-propelled. This is not to say that the Act authorizes emission standards for any part of a motor vehicle, however small. EPA thus proposed that a trailer is a vehicle "when it has a frame with axles attached", and a glider kit becomes a vehicle when "it includes a passenger compartment attached to a frame with axles" Proposed sections 1037.801 (definition of "vehicle" section (1)(ii) and (iii) (80 FR 40665)).

Incomplete vehicle standards must, of course, be reasonably designed to control emissions caused by that particular vehicle segment. The standards for trailers would do so and account for the tractor-trailer combination by using a reference tractor in the trailer test procedure (and, conversely, a reference trailer in the tractor test procedure). All of these standards appear to be reasonably considered to be standards applicable to emissions from a new motor vehicle.

The following section of this memorandum discusses the issue of the entities to which emission standards can appropriately apply in incomplete vehicle situations. At the outset, however, we note that EPA has already discussed and applied the general principle for determining the appropriate entities for testing and certifying: namely, on the entities with most control over the particular vehicle segment due to producing it. . [4] EPA has proposed to implement the trailer and glider kit emission standards in accord with this principle.

[3] "Non-road vehicles" are defined differently than "motor vehicles" under the Act, but the difference does not appear relevant here. Non-road vehicles, like motor vehicles, must be propelled by an engine. See CAA section 216 (11) ("'nonroad vehicle' means a vehicle that is powered by a nonroad engine"). Pursuant to this authority, EPA has promulgated many emission standards applicable to components of engineless non-road equipment, for which the equipment manufacturer must certify.

[4] See discussion of standards applicable to small SI equipment fuel systems, implemented by standards for the manufacturers of that equipment at 73 FR 59115 ("In most cases, nonroad standards apply to the manufacturer of

c. To Whom do Emission Standards Apply

Emission standards are implemented through regulation of the manufacturer of the new motor vehicle. See, e.g. section 206 (a)(1) (certification testing of motor vehicle submitted by "a manufacturer"); 203 (a)(1) (manufacturer of new motor vehicle prohibited from introducing uncertified motor vehicles into commerce); 207 (a)(1) (manufacturer of motor vehicle to provide warranty to ultimate purchaser of compliance with applicable emission standards); 207 (c) (recall authority); 208 (a) (recordkeeping and testing can be required of every manufacturer of new motor vehicle). [5]

The Act further distinguishes between manufacturers of motor vehicles and manufacturers of motor vehicle parts. See, e.g. section 206 (a)(2) (voluntary emission control system verification testing); 203 (a)(3)(B) (prohibition on parts manufacturers and other persons relating to defeat devices); 207 (a)(2) (part manufacturer may provide warranty certification regarding use of parts); 208 (a) (recordkeeping and testing requirements for manufacturers of vehicle and engine "parts or components").

Thus, the question here is whether a trailer manufacturer or glider kit manufacturer can be a manufacturer of a new motor vehicle, or must necessarily be classified as a manufacturer of a motor vehicle part or component. We show in the following section that EPA may reasonably classify trailer manufacturers and glider kit manufacturers as motor vehicle manufacturers, although we also believe that EPA would have adequate authority for the standards even if these entities were classified simply as manufacturers of motor vehicle parts.

d. Trailer Manufacturers May Be Classified as Motor Vehicle Manufacturers

Section 216 (1) defines a "manufacturer" as:

> any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce

It appears plain that this definition was not intended to restrict the definition of "manufacturer" to a single person per vehicle. The use of the conjunctive, specifying that a manufacturer is "any person engaged in the manufacturing or assembling of new motor vehicles . . . or who acts for and is under the

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the engine or the manufacturer of the nonroad equipment. Here, the products subject to the standards (fuel lines and fuel tanks) are typically manufactured by a different manufacturer. In most cases the engine manufacturers do not produce complete fuel systems and therefore are not in a position to do all the testing and certification work necessary to cover the whole range of products that will be used. We are therefore providing an arrangement in which manufacturers of fuel-system components are in most cases subject to the standards and are subject to certification and other compliance requirements associated with the applicable standards.")

[5] See also *Engine Manufacturers Ass'n v. South Coast Air Quality Management District*, 541 U.S.246, 254-55 (2004) (distinction between standards, and implementation of standards by means of requirements for manufacturers).

control of any such person…" indicates that Congress anticipated that motor vehicles could have more than one manufacturer, since in at least some cases those will plainly be different people.

Moreover, even had the statute simply referred to "any person engaged in the manufacturing of motor vehicles" the natural inference would be that more that it could apply to multiple people engaged in manufacturing. See *United States v. Gonzales,* 520 U.S. 1, 5, (1997) ("Read naturally the word `any' has an expansive meaning, that is, `one or some indiscriminately of whatever kind'); *New York v. EPA*, 443 F.3d 880, 884-87 (DC Cir. 2006).

The provision also applies both to entities which manufacture and entities which assemble, and does so in such a way as to encompass multiple parties: manufacturers "or" (rather than 'and') assemblers are included. Nor is there any obvious reason that only one person can be engaged in vehicle manufacture or vehicle assembling.

Reading the Act to provide for multiple motor vehicle manufacturers reasonably reflects industry realities, and achieves important goals of the CAA. Since title II requirements are generally imposed on "manufacturers" it is important that the appropriate parties be included within the definition of manufacturer --"any person engaged in the manufacturing or assembling of new motor vehicles". Indeed, as set out in chapter 1 of the draft RIA, most heavy duty vehicles are manufactured or assembled by multiple entities; see also Comments of Daimler (October 1, 2015) p. 103.[6] One entity produces a chassis; a different entity manufactures the engine; specialized components (e.g. garbage compactors, cement mixers) are produced by still different entities. For tractor-trailers, one person manufactures the tractor, another the trailer, a third the engine, and another typically assembles the trailer to the tractor. Installation of various vehicle components occurs at different and varied points and by different entities, depending on ultimate desired configurations. See, e.g. Comments of Navistar (October 1, 2015), pp. 12-13. The heavy duty sector thus differs markedly from the light duty sector (and from manufacturing of light duty pickups and vans), where a single company designs the vehicle and engine (and many of the parts), and does all assembling of components into the finished motor vehicle.

It is reasonable to view the trailer manufacturer as "engaged in" (section 216 (1)) the manufacturing or assembling of the tractor-trailer. The trailer manufacturer designs, builds, and assembles a complete and finished portion of the tractor-trailer. All components of the trailer – the tires, axles, flat bed, outsider cover, aerodynamics – are within its control and are part of its assembling process. The trailer manufacturer sets the design specifications that affect the GHG emissions attributable to pulling the trailer. It commences all work on the trailer, and when that work is complete, nothing more is to be done. The trailer is a finished product. With respect to the trailer, the trailer manufacturer is analogous to the manufacturer of the light duty vehicle, specifying, controlling, and assembling all aspects of the product from inception to completion. GHG emissions attributable to the trailer are a substantial

[6] "The EPA should understand that vehicle manufacturing is a multi-stage process (regardless of the technologies on the vehicles) and that each stage of manufacturer has the incentive to properly complete manufacturing …[T]he EPA should continue the longstanding industry practice of allowing primary manufacturers to pass incomplete vehicles with incomplete vehicle documents to secondary manufacturers who complete the installation."

portion of the total GHG emissions from the tractor-trailer.[7] Moreover, the trailer manufacturer is not fully analogous to the manufacturer of a vehicle part or component, like a tire manufacturer, or the manufacturer of a side skirt.[8] The trailer is a significant, integral part of the finished motor vehicle, and is essential for the tractor-trailer to carry out its commercial purpose. See 80 FR 40170. Although it is true that another person may ultimately hitch the trailer to a tractor (which might be viewed as completing assembly of the tractor-trailer), as noted above, EPA does not believe that the fact that one person might qualify as a manufacturer, due to "assembling" the motor vehicle, precludes another person from qualifying as a manufacturer, due to "manufacturing" the motor vehicle.

Given these circumstances, it is also reasonable to interpret section 216 (1) as including the trailer manufacturer as one of the persons engaged in the manufacture or assembly of the motor vehicle – the tractor-trailer. As just explained, the trailer manufacturer designs, builds, and assembles a substantial, complete and finished portion of the motor vehicle. That portion contributes substantially to the GHG emissions from the tractor-trailer. Given the magnitude of the activity and the contribution to GHG emissions, it appears reasonable (if not evident) to view a trailer manufacturer as a manufacturer of the vehicle, rather than as solely a manufacturer of parts**.** As noted above, current rules distinguish between manufacture of parts and manufacture of vehicles. Section 1037.801 states that a piece of equipment intended for self-propelled highway use becomes a "vehicle" "when it includes a passenger compartment attached to a frame with axles". EPA further proposed in this rulemaking a further definition that a trailer becomes a "vehicle" when it has a frame with axles attached. This continues to appear reasonable. Given that section 216(1) does not restrict motor vehicle manufacturers to a single entity, it appears to be consistent with the facts and the Act to consider trailer manufacturers as persons engaged in the manufacture of a motor vehicle.

This interpretation fits well within the related structure of the Act. As noted above, the section 202 standard-setting authority applies not just to exhaust emissions, but to parts or portions of the vehicle as well. This broad standard setting authority is consistent with the view that more than one person can meet the definition of manufacturer and thereby be subject to those emission standards.

This interpretation of section 216(1) is also reasonable in light of the various provisions noted above relating to implementation of the emissions standards – certification under section 206, prohibitions on entry into commerce under section 203, warranty and recall under section 207, and recall under section 208. All of these provisions are naturally applied to the entity responsible for manufacturing the trailer, which manufacturer is likewise responsible for its GHG emissions.

TTMA maintains that if a tractor-trailer is a motor vehicle, then only the entity connecting the trailer to the tractor could be subject to regulation.[9] This is not a necessary interpretation of section 216 (1), as explained above. TTMA does not discuss that provision, but notes that other provisions refer to "a" manufacturer (or, in one instance, "the" manufacturer), and maintains that this shows that only a single

[7] The relative contribution of trailer controls depends on the types of tractors and trailers, as well as the tier of standards applicable; however, it can be approximately one-third of the total reduction achievable for the tractor-trailer.

[8] For purposes of this memorandum, we take no position as to the possibility of such component manufacturers also being vehicle manufacturers.

[9] Consequently, the essential issue here is not whether EPA can issue and implement emission standards for trailers, but at what point in the implementation process those standards apply.

entity can be a manufacturer. See TTMA Comment pp. 4-5, citing to sections 206 (a)(1), 206 (b), 207, and 203 (a). This reading does not appear to be compelled. First, the term "manufacturer" in all of all of these provisions necessarily reflects the underlying definition in section 216(1), and therefore is not limited to a single entity, as discussed above. Second, the interpretation makes no practical sense. An end assembler of a tractor-trailer is not in a position to certify and warrant performance of the trailer, given that the end-assembler has no control over how trailers are designed, constructed, or even which trailers are attached to the tractor. It makes little sense for the entity least able to control the outcome to be responsible for that outcome. The EPA doubts that Congress compelled such an ungainly implementation mechanism, especially given that it is well known that vehicle manufacture responsibility in the heavy duty vehicle sector is divided, and given further that title II includes requirements for EPA to promulgate standards for portions of vehicles.[10]

However, EPA is also soliciting comment on other possible bases for establishing requirements for trailer manufacturers. .

e. Controls on Tractor-Trailers

There appears to be no legitimate question but that a tractor-trailer is a motor vehicle and hence subject to standards controlling the pollutants it emits. TTMA, however, notes that under Department of Transportation regulations, trailers and tractors have separate Vehicle identification Numbers (VIN) and therefore should be regarded as separate vehicles under the Clean Air Act. This does not seem persuasive. The Clean Air Act contains no provisions which would make VIN classifications by other entities determinative of whether a vehicle is a motor vehicle under the CAA. TTMA's position is also inconsistent with the Act's statutory scheme that contemplates emission standards for incomplete vehicles, and allows for multiple manufacturers of a motor vehicle.

f. Controls on Manufacturers of Glider Kits

As noted above, glider kits include the entire tractor chassis, cab, tires, body, and brakes. Glider kit manufacturers thus control critical elements of the ultimate vehicle's greenhouse gas emissions, in particular, all aerodynamic features and all emissions related to tire type. Glider kit manufacturers would therefore be the entity generating critical GEM inputs – at the least, those for aerodynamics and tires. Glider kit manufacturers also invariably know the final configuration of the glider vehicle, i.e. the type of engine and transmission which the final assembler will add to the glider kit. This is because the glider kit contains all necessary wiring, and it is necessary, in turn, for the glider kit manufacturer to know the end configuration in order to wire the kit properly. Thus, a manufacturer of a glider kit can reasonably be viewed as a manufacturer of a motor vehicle under the same logic as above: there can be multiple manufacturers of a motor vehicle; the glider kit manufacturer designs, builds, and assembles a

[10] We would likely prohibit the introduction into commerce of a noncompliant trailer intended for use with a tractor. EPA would thus take the view that the prohibition in section 203 (a) (1) can apply before final assembly of discrete components of the motor vehicle. This appears to be reasonable given that the Act contemplates standards for incomplete vehicle segments, and allows for multiple motor vehicle manufacturers. See also discussion below that the prohibition in section 203 (a) applies to acts which cause a Title II violation as well as to enumerated prohibited acts

substantial, complete and finished portion of the motor vehicle; and that portion contributes substantially to the GHG emissions from the ultimate glider vehicle.

Under current EPA rules, glider kits are considered to be incomplete vehicles which may be introduced into commerce to a secondary manufacturer for final assembly. 1037.620 (b)(1)(i) and 1037.801 (definition of "vehicle" and "incomplete vehicle"). EPA proposed to expand somewhat on these provisions, but in essence, under the proposed rule, glider kit manufacturers would continue to be able to ship uncertified kits to secondary manufacturers, and the secondary manufacturer must assemble the vehicle into certifiable condition. Proposed section 1037.622. Glider kit and glider vehicle manufacturers could also operate under delegated assembly provisions whereby the glider kit manufacturer would be the certificate holder. See proposed section 1037.621. These provisions appear to be well within EPA's authority for the reasons just given**.**

g. Alternative Provisions for Trailer and Glider Kit Manufacturers as Manufacturers of Motor Vehicle Parts

The EPA also is considering the following provisions that would apply to manufacturers of trailers and glider kits in the event that the primary implementation provisions are held not to apply, so that the standards only apply to the "manufacturer" of the combined tractor-trailer, i.e. the entity that attaches the trailer to the tractor, or to the entity which installs the engine into the glider vehicle. These alternative provision would take effect automatically should those primary implementation provisions be held inapplicable. .

Section 203 (a)(1) of the Act prohibits certain acts, and also prohibits "the causing" of those acts. If the trailer standard were to apply only to the entity attaching the trailer to the tractor, then furnishing a trailer not meeting the trailer standard would cause a violation of that standard, and the trailer manufacturer would be liable under section 203 (a)(1) for causing the prohibited act to occur. In addition, section 203 (a)(3)(B) prohibits use of 'defeat devices' – which include "any part or component intended for use with, or as part of, any motor vehicle … where a principal effect of the part or component is to … defeat … any … element of design installed … in a motor vehicle" otherwise in compliance with emission standards. Manufacturing or installing a trailer not meeting the trailer emission standard could thus be a defeat device causing a violation of the emission standard.

Similarly, a glider kit manufacturer furnishing a glider kit in a configuration that would not meet the tractor standard when the specified engine, transmission, and axle are installed would likewise cause a violation of the tractor emission standard. For example, providing a tractor with a coefficient of drag or tire rolling resistance level inconsistent with tractor certified condition would be a violation of the Act because it would cause the glider final assembler to introduce into commerce a new tractor that is not covered by a *valid* certificate of conformity.

To prevent these prohibited acts, the EPA is considering an alternative rule which requires trailer and glider kit manufacturers to do one of two things: either a) affix a label on the trailer or glider kit stating that the trailer or glider kit is not to be used in combination with tractors certified to the applicable phase 2 GHG standard; or b1) for trailers, conduct testing to demonstrate that the trailer meets the applicable phase 2 GHG standard, the results of such testing to be provided by the trailer manufacturer to each entity attaching trailers to tractors, or b2) for glider kits, conduct testing (including aerodynamic and tire testing) to show that the glider kit is consistent with the glider vehicle's final certified condition.

There is also additional authority for EPA to adopt testing requirements for manufacturers of motor vehicle parts. Section 208 (a) of the Act authorizes EPA to require "every manufacturer of new motor vehicle or engine parts or components" to "perform tests where such testing is not otherwise reasonably available". This testing can be required to "provide information the Administrator may reasonably require to determine whether the manufacturer … has acted or is acting in compliance with this part", which includes showing whether or not the parts manufacturer is engaged in conduct which can cause a prohibited act. Testing would be required to show that the trailer will conform to the vehicle emission standards. In addition, testing for trailer manufacturers would be necessary here to show that the trailer manufacturer is not causing a violation of the combined tractor-trailer GHG emission standard either by manufacturing a trailer which fails to comply with the trailer emission standards, or by furnishing a trailer to the entity assembling tractor-trailers inconsistent with tractor-trailer certified condition . Testing for glider kit manufacturers is necessary to prevent a glider kit manufacturer furnishing a glider kit inconsistent with tractor certified condition, as noted above.

h. Alternative Provisions for Engine Remanufacturers

The EPA also is considering, and solicit comment on, the following provisions that would apply to remanufacturers of engines used in glider vehicles in the event that the primary implementation provisions are held not to apply, so that the standards only apply to the "manufacturer" which assembles the glider vehicle. These alternative provisions would take effect automatically should those primary implementation provisions be held inapplicable.

Section 202 (a)(3)(D) of the Act authorizes EPA to "prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare taking costs into account." EPA is considering an alternative rule pursuant to this authority that would require any rebuilt/remanufactured motor vehicle engines to meet current model year engine standards if they are intended to be installed in new motor vehicle chassis. See 80 FR 40529 and n. 2 above. In this context, we recognize that the new chassis enables the use of aftertreatment devices that might not be feasible for older chassis due to space constraints on an existing chassis.

i. Glider Vehicles Using Newer Engines

In addition to raising questions about EPA's legal authority to regulate glider kits and glider vehicles, commenters also raised concerns about the lack of distinction between gliders that reuse relatively new engines and those that use very old engines. In response to such comments, EPA is considering revising the proposed regulations to treat these two groups separately.

Since the proposal, EPA has become aware that it is common for vehicles in certain severe duty applications (such as cement mixers and dump trucks) to incur substantial chassis damage before the engine reaches the end of its regulatory useful life. (For Class 8 vehicles, regulatory useful life is 435,000 miles or 10 years, whichever comes first.) Thus, glider vehicles in these applications are often produced using engines meeting the 2010 NOx and PM standards. Because the potential for adverse environmental effects from such vehicles is significantly reduced (compared to the more common use of pre-2004 model year engines, with their much higher criteria pollutant emissions), EPA is considering allowing greater flexibility for them. For example, EPA could cap sales at some higher value than the

proposed 300 glider vehicles per assembler per year for glider vehicles using engines still within their regulatory useful life. EPA could also eliminate the cap altogether for them.

For Class 8 engines to be within their useful life, they must both be less than 10 years old and have fewer than 435,000 miles of use. We are aware that in some very low use applications, vehicles may have less than 100,000 miles after 10 years. At the other extreme, some vehicles may reach 435,000 miles within a few years. EPA is also considering whether we should offer additional flexibility for these vehicles. For example, EPA could treat engines that are more than 10 years old but have fewer than 100,000 miles of service accumulation the same as other engines that are within their useful life in terms of both miles and years. EPA could similarly treat engines that are less than 3 years old as being within their useful life, without regard to the number of miles they have accumulated.

Finally, EPA could also make a distinction between pre-2010 engines and later engines that were certified to meet the 2010 NOx and PM standards (i.e., to allow a higher cap or eliminate the cap for engines meeting the 2010 standards). This would generally be less flexible (than the useful life-based flexibility discussed above) in earlier years of the glider requirements because it would not address pre-2010 engines that are still within their useful life. However, in the longer term it could be more flexible because it would cover all 2010 and later engines, without regard to their useful life. EPA solicits comments from the public on these various options.