

# ISSUE BRIEF

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## A Regulatory Fix for the Trucking Industry

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On February 28, the Senate confirmed Andrew Wheeler as the 15th Administrator of the U.S. Environmental Protection Agency (EPA). Under Administrator Wheeler's leadership, the EPA has been providing a much-needed course correction to the Obama Administration's expansive regulatory overreach. A number of outstanding regulatory fixes remain, one of which is for heavy-duty trucking regulations.

Implemented jointly by the EPA and the National Highway Traffic Safety Administration (NHTSA) in 2011, Phase 1 of the Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles placed fuel-economy mandates and climate regulations on medium-duty and heavy-duty trucks. In 2016, the agencies imposed additional climate regulations and more stringent fuel-efficiency mandates for later model years. These Phase 2 regulations also placed a limit on glider kit vehicles—trucks with a new body and re-manufactured engines from older engines. Phase 2 regulations placed a limit of 300 gliders per manufacturer per year. Glider kits combine a certified reconditioned engine and transmission with a new cab-chassis for extended use and improved efficiency. Despite the fact that glider kit manufacturers

use refurbished engines, the Obama Administration regulated them as new vehicles.<sup>1</sup> Some companies produce more than 10 times the cap set by the Phase 2 regulations.

The Obama Administration's regulation is not just bad for glider kit manufacturers, but for the heavy-duty vehicle industry and for consumers. The fuel-economy mandates and greenhouse gas regulations impose significant costs by increasing up-front prices for new trucks and increasing maintenance bills. The regulations disregard the fact that the trucking industry already has a strong incentive to be fuel efficient. The impact that glider kits and heavy-duty trucks have on the overall climate is negligible. Enforcing the regulations would have no meaningful impact on abating warming. The EPA should finalize a repeal from the 2016 Obama-era rule in its entirety. If the federal government has concerns over glider kits' emissions of conventional pollutants, such as particulate matter and nitrous oxide, it should study and address those emissions separately. Rather than unnecessarily destroy small businesses across the country, policymakers should make decisions informed by sound, transparent science.

### U.S. Trucking Is Small Business

The trucking industry is essential for moving consumer and industrial products across the country. Trucks moved more than 70 percent of America's freight (measured by weight) in 2017.<sup>2</sup> For many Americans, owning and operating a truck or two constitutes their business. In fact, of the motor carriers that operate in the United States, 91 percent own six or fewer trucks.<sup>3</sup> Consequently, when the federal government promulgates regulations, it significantly

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affects their business and income. Glider vehicles comprise only a small percentage of the overall highway truck market, representing about 3 percent to 5 percent of all trucks.<sup>4</sup>

Glider kit manufacturers have carved out a niche market for truck owners who want more affordable, reliable, fuel-efficient vehicles.<sup>5</sup> Glider kits are approximately 25 percent cheaper than new trucks and achieve better fuel economy, even in some cases compared to newer vehicles.<sup>6</sup> For a trucker who uses nearly 20,000 gallons of fuel each year,<sup>7</sup> and for an industry that operates on thin margins and measures driving routes with detailed precision, these fuel savings are critical. Gliders also have fewer maintenance issues and less downtime.<sup>8</sup> The complications of the newer models and compliance with environmental regulations have resulted in maintenance costs reaching thousands, if not tens of thousands of dollars per business.<sup>9</sup> Because of these advantages, glider kit sales increased substantially over the past decade.

Environmentally, glider kits emit more nitrous oxide and particulate matter than new trucks, but they also recycle approximately 4,000 pounds of cast steel for each remanufactured engine.<sup>10</sup> A 2014 study in the *Journal of Industrial Ecology* finds a number of other environmental benefits when comparing life-cycle assessments of remanufactured diesel engines compared to new engines.<sup>11</sup>

## The Controversial Obama-Era Regulations and Their Problems

As part of the Obama Administration's climate change agenda, the EPA and the NHTSA finalized fuel economy and greenhouse gas regulations for medium-duty and heavy-duty vehicles. The regulations affect "semi-trucks, large pickup trucks, vans, and all types and sizes of buses and work trucks."<sup>12</sup> Finalized in August 2011, Phase 1 covers model years 2014 to 2018.<sup>13</sup> Phase 2 applies to model years 2021 to 2027, and contains standards for glider trucks.<sup>14</sup>

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1. Congressional Research Service, "Phase 2 Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles," July 18, 2018, <https://fas.org/sgp/crs/misc/IF10927.pdf> (accessed May 9, 2019).
  2. American Trucking Associations, "Reports, Trends & Statistics," [https://www.trucking.org/News\\_and\\_Information\\_Reports\\_Industry\\_Data.aspx](https://www.trucking.org/News_and_Information_Reports_Industry_Data.aspx) (accessed May 9, 2019).
  3. Ibid.
  4. Richard K. Lattanzio and Sean Lowry, "Glider Kit, Engine, and Vehicle Regulations," Congressional Research Service, September 10, 2018, <https://fas.org/sgp/crs/misc/R45286.pdf> (accessed May 9, 2019); Steve Milloy, "EPA Bureaucrats Go Rogue on 'Glider Truck' Emissions," *The Wall Street Journal*, January 12, 2018, <https://www.wsj.com/articles/epa-bureaucrats-go-rogue-on-glider-truck-emissions-1515800360> (accessed May 9, 2019); and Mindy Long, "Some Small Carriers Embrace Glider Kits to Avoid Costs of Emissions Systems," *Transport Topics*, January 18, 2018, <https://www.ttnews.com/articles/some-small-carriers-embrace-glider-kits-avoid-costs-emissions-systems> (accessed May 9, 2019).
  5. Lattanzio and Lowry, "Glider Kit, Engine, and Vehicle Regulations."
  6. Collin Lang, "Examining the Underlying Science and Impacts of Glider Truck Regulations," testimony before the Subcommittee on the Environment and Subcommittee on Oversight, Committee on Science, Space and Technology, U.S. House of Representatives, September 13, 2018, <https://www.ooida.com/newsletter/Testimony-HouseScienceCommitteeJointSubcommittee%20Hearing9-13-2018.pdf> (accessed May 9, 2019).
  7. Ibid.
  8. Long, "Some Small Carriers Embrace Glider Kits to Avoid Costs of Emissions Systems," and John E. Schneider, "Comment on the Environmental Protection Agency (EPA) Proposed Rule: Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits," EPA-HQ-OAR-2014-0827-5390, January 2, 2018, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-5390> (accessed May 9, 2019).
  9. Long, "Some Small Carriers Embrace Glider Kits to Avoid Costs of Emissions Systems."
  10. Fitzgerald Glider Kits, "What is a Glider Kit?" <https://www.fitzgeraldgliderkits.com/what-is-a-glider-kit/> (accessed May 9, 2019).
  11. Zhi-Chao Liu et al., "Comparative Life Cycle Assessment of Remanufacturing and New Manufacturing of a Diesel Engine," *Journal of Industrial Ecology*, Vol. 18, No. 4 (August 2014), pp. 567-576, [https://www.researchgate.net/publication/284163684\\_Comparative\\_Life\\_Cycle\\_Assessment\\_of\\_Remanufacturing\\_and\\_New\\_Manufacturing\\_of\\_a\\_Diesel\\_Engine](https://www.researchgate.net/publication/284163684_Comparative_Life_Cycle_Assessment_of_Remanufacturing_and_New_Manufacturing_of_a_Diesel_Engine) (accessed May 13, 2019).
  12. National Highway Traffic Safety Administration, "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2," *Federal Register*, Vol. 81, No. 206 (October 25, 2016), pp. 73478-74274, <https://www.govinfo.gov/content/pkg/FR-2016-10-25/pdf/2016-21203.pdf> (accessed May 13, 2019).
  13. National Highway Traffic Safety Administration, "Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles," *Federal Register*, Vol. 76, No. 179 (September 15, 2011), pp. 57106-57513, <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/2011-20740.pdf> (accessed May 13, 2019).
  14. National Highway Traffic Safety Administration, "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2," *Federal Register*.
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The Phase 2 regulation, and fuel economy mandates generally, are fraught with problems. Specifically, the Phase 2 regulation:

- **Overrides choice and employs a flawed regulatory-impact analysis.** The trucking industry already has a strong incentive to save on fuel costs, but regulators should not override the preferences of other attributes the industry values in a truck or heavy-duty vehicle. Moreover, the regulatory-impact analysis that claims economic and environmental benefits has many problems. For instance, the estimated fuel cost savings (up to \$170 billion over the lifetime of the truck) project out past the year 2045.<sup>15</sup> Projecting where fuel prices will be in the next two years, let alone 25 years, is extremely difficult. The savings could be much less or much more than that. Furthermore, the EPA may also be underestimating the maintenance costs of using new and unfamiliar technologies. Not only are labor costs increasing, but, as Jim Buell, executive vice president of sales and marketing of truck maintenance provider FleetNet America, explains: “The complexity of the trucks and the number of computers on them, combined with the number of specialty tools needed to work on the trucks are driving up maintenance costs.”<sup>16</sup>
- **Treats glider kits as new vehicles.** The Phase 2 mandates regulate glider kits as if they were new vehicles when in fact they are not. The cab-chassis is new, but the engine and transmission are rebuilt. They are not new vehicles and the EPA should not regulate them as such. Regulators must also consider what companies would do in the absence of upcycled engines. Petitioners who advocate the repeal of the of the Obama-era standard clearly stated that they would rather buy older, refurbished trucks than deal with the cost

and reliability problems created by regulations of original equipment manufacturer (OEM) trucks. One small business of 35 people from Allentown, Pennsylvania, wrote in its public comment:

If we cannot buy gliders, we will not buy OEM trucks due to the simple facts that they are too expensive and they are not reliable. We cannot afford any truck that we cannot count on running down the highway on a daily basis. Without gliders, we will buy older trucks and refurbish them as well as refurbishing the older trucks that we already own. These trucks will not have the latest safety features or the latest computers but we will have to sacrifice those items for trucks that can go down the road every day.<sup>17</sup>

The result could be even more pollution if truck purchasers hold onto older trucks longer, or buy used, dirtier trucks with engines that have not been upcycled.

- **Is fraught with political controversy.** At the heart of the controversy of glider truck regulations is a 2017 study released by the EPA. The study, which was not peer-reviewed, nor did it have any official agency seal, concluded that glider kits emit significantly more pollution than new engines. A Freedom of Information Act (FOIA) request exposed a major company’s (which supports the regulation of glider kits) involvement and collaboration with testing glider kits.<sup>18</sup> The FOIA’d e-mails show that the company coordinated with the EPA to provide glider kit engines for testing; however, the EPA responded, saying that the officials who worked on the study conducted the tests themselves and wrote that the study is “independent of any outside stakeholder input.”<sup>19</sup> After an initial request from Representative Greg Gianforte

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15. Ibid.

16. Clarissa Hawes, “Repairs, Labor Crunch Lead to Rising Maintenance Costs for Truckers,” Trucks.com, July 14, 2018, <https://www.trucks.com/2018/06/14/repairs-labor-rising-maintenance-costs-truckers/> (accessed May 9, 2019).

17. Schneider, “Comment on the Environmental Protection Agency (EPA) Proposed Rule: Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits.”

18. Michael Bastasch, “Emails Suggest an Even Deeper Level of Collusion Between Top EPA Officials and Lobbyists,” *The Daily Caller*, August 22, 2018, <https://dailycaller.com/2018/08/22/emails-epa-collusion-volvo-lobbyist/> (accessed May 9, 2019).

19. Letter from William Wehrum, EPA Assistant Administrator, to Lamar Smith, Chairman, House Committee on Science, Space, and Technology, August 21, 2018, <http://src.bna.com/Bme> (accessed May 13, 2019).

(R-MT), Subcommittee Chairman of House Committee on Oversight and Government Reform, the EPA's Office of Inspector General is conducting an investigation on the study's legitimacy and objectivity.<sup>20</sup>

Before his resignation in July 2018, EPA Administrator Scott Pruitt proposed to lift the per-manufacturer glider kit cap in a Conditional No Action Assurance memorandum.<sup>21</sup> In effect, the memo said that the EPA would suspend enforcement of the cap. However, the U.S. District Court of Appeals for Washington, DC, issued a stay, forcing the EPA to enforce the rules.<sup>22</sup> Then-acting EPA Administrator Andrew Wheeler withdrew former Administrator Pruitt's No Action Assurance.<sup>23</sup>

## What the EPA Should Do

In his confirmation hearing, Administrator Wheeler committed the EPA to taking a measured approach. In answering questions for the record from his confirmation hearing, Administrator Wheeler wrote:

We are focusing on establishing an emission standard that is not predicated on the industry going out of business or substantially reducing economic growth potential while also using the appropriate source of authority, such as authority for remanufactured engines under the Clean Air Act. We are also assessing the most appropriate means for analyzing costs and benefits associated with a future rulemaking, including comparing remanufactured glider trucks to used trucks as gliders tend to be bought in lieu of used and not new trucks.<sup>24</sup>

In that vein, the EPA should:

- **Withdraw the 2016 Obama-era greenhouse gas regulations and fuel economy mandates for heavy-duty trucks.** The regulations are costly, ineffective, and take choices from the trucking industry and supplementary small businesses. Truckers—by definition—value fuel efficiency; but regulations that increase sticker prices of trucks, impose higher maintenance costs, and result in more unscheduled downtime do more harm than good. Truckers lose opportunities and consumers lose because they pay more for the goods that heavy-duty trucks transport.
- **Consider nitrous oxide and particulate matter emissions from glider kits separately.**<sup>25</sup> As Administrator Wheeler mentioned, any regulation should be consistent with the rule of law and the EPA's statutory authority, and policymaking should be informed by sound, transparent science. The EPA should conduct an up-to-date lifecycle assessment and analyze the glider kit sales in the proper context. That is, the EPA should consider the environmental impacts of truckers keeping their trucks on the road longer (or purchasing used trucks) instead of buying new trucks due to the costs and documented maintenance and reliability problems associated with new trucks. Doing so will ensure that the EPA is regulating criterion pollutants based on a proper cost-benefit analysis.

Much like the EPA's re-evaluation of the Obama Administration's Corporate Average Fuel Economy (CAFE) standards, the EPA needs to take corrective action on heavy-duty truck and vehicle

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20. Lattanzio and Lowry, "Glider Kit, Engine, and Vehicle Regulations."

21. Environmental Protection Agency, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles," memorandum from Susan Parker Bodine to Bill Wehrum, July 6, 2018, <https://www.epa.gov/sites/production/files/2018-07/documents/glidernoactionassurance070618.pdf> (accessed May 13, 2019).

22. Lattanzio and Lowry, "Glider Kit, Engine, and Vehicle Regulations."

23. Environmental Protection Agency, "Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles," memorandum from Andrew R. Wheeler to, Susan Parker Bodine and William L. Wehrum, July 26, 2018, [https://www.epa.gov/sites/production/files/2018-07/documents/memo\\_re\\_withdrawal\\_of\\_conditional\\_naa\\_regarding\\_small\\_manufacturers\\_of\\_glider\\_vehicles\\_07-26-2018.pdf](https://www.epa.gov/sites/production/files/2018-07/documents/memo_re_withdrawal_of_conditional_naa_regarding_small_manufacturers_of_glider_vehicles_07-26-2018.pdf) (accessed May 13, 2019).

24. U.S. Senate Committee on the Environment and Public Works, "Hearing on the Nomination of Andrew Wheeler to Be Administrator of the Environmental Protection Agency," Questions for the Record, January 16, 2019, [https://www.epw.senate.gov/public/\\_cache/files/4/9/49a48117-2e79-437e-8385-7dad4f8de643/30EC89F8C2D1CAEA5DC9FD1E08A9AB82.responses-to-senator-carper-qfrs-redacted.pdf](https://www.epw.senate.gov/public/_cache/files/4/9/49a48117-2e79-437e-8385-7dad4f8de643/30EC89F8C2D1CAEA5DC9FD1E08A9AB82.responses-to-senator-carper-qfrs-redacted.pdf) (accessed May 13, 2019).

25. In its proposed repeal of the glider kit regulation, the EPA noted that a separate authority applies to re-manufactured engines.

regulations. Doing so will remove paternalistic actions by the previous EPA that override preferences and prevent the destruction of a cottage glider kit industry. A proper cost-benefit analysis that guides future rulemaking will ensure that regulators make informed decisions.

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