April 1, 2016

The Honorable Gina McCarthy
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket: EPA-HQ-OAR-2014-0827; NHTSA-2014-0132 Comments: Proposed Rule: Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy-Duty Engines and Vehicles—Phase 2: Vehicles Used Solely in Competition (RIN 2060-AS16)

Dear Administrator McCarthy,

As the chief legal officers of our states, we write to express our concerns about a conflict with the federal Clean Air Act found within the provisions of the 629-page rule referenced above, which states: "Certified motor vehicles and motor vehicle engines and their emission control devices must remain in their certified configuration even if they are used solely for competition or if they become nonroad vehicles or engines."

As proposed, this rule attempts to expand the USEPA's statutory jurisdiction under the Clean Air Act to cover vehicles modified solely for racing or competition. This approach is contrary to the law and would reverse decades of practice by the USEPA. This unnecessary regulation conflicts with the expressed intent of Congress, and we urge you to remedy this problem in the final rule by deleting the provision quoted above.

Throughout the United States, modifying and racing cars is one of our nation's pastimes. It is also a large part of our country's economy. In 2014, consumers spent $36 billion on automotive specialty equipment parts and accessories. All over the U.S., manufacturers, retailers, and technicians represent tens of thousands of jobs and billions of dollars. This proposed rule would purport to make many of the products made, sold, and installed by those businesses illegal, dealing a heavy blow to our economy.

While the federal Clean Air Act prohibits certain modifications to everyday motor vehicles used on public roads, statutory language and the USEPA's historic practice have made it clear that vehicles built or modified for racing purposes, and not used on public streets, are not regulated under the Clean Air Act.

For example, 42 U.S.C. § 7550(2) limits the definition of a covered "motor vehicle" to a vehicle designed for transport "on a street or highway" as opposed to operation on a racetrack. Correspondingly, 42 U.S.C. § 7550(10) limits the term "nonroad engine" to an engine "that is not used in a motor vehicle or a vehicle used solely for competition," while 42 U.S.C. § 7550(11) makes clear that the term "nonroad vehicle" also does not apply to "a motor vehicle or a vehicle used solely for competition."

Congress did not make these choices at random. It intended to differentiate between a vehicle covered by this sort of rule and "a vehicle used solely for competition." In fact, the House Committee on Foreign and Interstate Commerce identified and discussed this issue before passing the Clean Air Act in 1970:

> MR. NICHOLS. I would like to ask a question of the chairman, if I may.
>
> I am sure the distinguished chairman would recognize and agree with me, I hope, that many automobile improvements in the efficiency and safety of motor vehicles have resulted from experience gained in operating motor vehicles under demanding circumstances such as those circumstances encountered in motor racing. I refer to the tracks as Talladega in my own State, to Daytona and Indianapolis, competition. I would ask the distinguished chairman if I am correct in stating that the terms "vehicle" and "vehicle engine" as used in the act do not include vehicles or vehicle engines manufactured for, modified for or utilized in organized motorized racing events which, of course, are held very infrequently but which utilize all types of vehicles and vehicle engines?
>
> MR. STAGGERS. In response to the gentleman from Alabama, I would say to the gentleman they would not come under the provisions of this act, because the act deals only with automobiles used on our roads in everyday use. The act would not cover the types of racing vehicles to which the gentleman referred, and present law does not cover them either[1].

Statutory language and legislative history clearly show that vehicles used solely for competition, including a race vehicle that has been converted from a certified highway vehicle, are not regulated under the Clean Air Act. While the USEPA is authorized to create regulations that interpret laws passed by Congress, the agency cannot rewrite statutory definitions and—as the United States Supreme Court has made clear—"must always give effect to the unambiguously expressed intent of Congress."[2]

---

[1] House Consideration of the Report of the Conference Committee, Dec. 18, 1970 (reprinted in *A legislative history of the Clean air amendments of 1970, together with a section-by-section index*, U.S. LIBRARY OF CONGRESS, ENVIRONMENTAL POLICY DIVISION, Washington: U.S. Govt. Print. Off. Serial No. 93-18, 1974, p. 117).

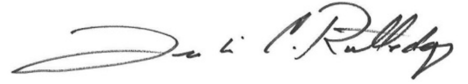
[2] *Utility Air Regulatory Group v. Environmental Protection Agency* 573 U. S. ____ (2014), quoting *National Assn. of Home Builders v. Defenders of Wildlife*, 551 U. S. 644, 665.

On behalf of the undersigned states, we strongly urge the USEPA to remove the aforementioned language referencing vehicles "used solely for competition" from the final rule. Not only is this language inconsistent with the federal Clean Air Act, but any purported benefit from this change would pale in comparison to the economic damage caused by this regulation.

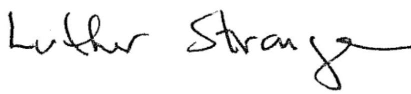
Sincerely,

Mike DeWine
Attorney General
State of Ohio

Patrick Morrisey
Attorney General
State of West Virginia



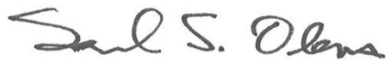
Leslie Rutledge
Attorney General
State of Arkansas



Luther Strange
Attorney General
State of Alabama

Jeff Landry
Attorney General
State of Louisiana

Bill Schuette
Attorney General
State of Michigan



Sam Olens
Attorney General
State of Georgia

Adam P. Laxalt
Attorney General
State of Nevada