



*Testimony of*

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*before the*

Subcommittee on Clean Air and Nuclear Safety

*on*

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## Introduction

Chairwoman Capito, Ranking Member Whitehouse, and members of the Subcommittee, I appreciate the opportunity to speak with you today in support of S. 203, the “Recognizing the Protection of Motorsports Act.” With this legislation, Congress would re-affirm that the long-established practice of converting street vehicles for use in motorsports is not a prohibited activity under the Clean Air Act. The motorsports community applauds Sen. Richard Burr for introducing S. 203, along with 38 other bipartisan cosponsors, including Environment and Public Works Committee Chairman Barrasso, Subcommittee Chair Capito and Subcommittee members Sens. Inhofe, Boozman, Fischer, Moran and Ernst.

My name is Chris Kersting and I am the President and CEO of the Specialty Equipment Market Association (SEMA). SEMA is a national trade association that represents more than 6,900 mostly small businesses that manufacture, market and sell a wide variety of specialty automotive aftermarket products, including performance equipment for vehicles used in motorsports competition.

The RPM Act clarifies that it has always been legal to make the emissions-system modifications needed to convert a previously street-legal motor vehicle into a racecar used exclusively at the track under the Clean Air Act (CAA). The bill also confirms that it is legal to manufacture, distribute, sell, and install race parts used to convert these vehicles for exclusive use on the track.

## Issue

In July of 2015, the U.S. Environmental Protection Agency (EPA) issued a proposed regulation<sup>1</sup> declaring that the Clean Air Act prohibits converting a motor vehicle—defined as a car, truck or motorcycle designed for use on the public streets and highways—into a racecar. Under the EPA interpretation, manufacturing, selling and installing racing parts to accomplish such a conversion would also be a violation of the CAA. Although the EPA did not finalize the proposed rule, it maintains that the CAA prohibits racecar conversions along with the sale and use of racing products that can be installed on these vehicles.

SEMA contends the EPA interpretation contradicts 47 years of previous EPA policy and practice. Further, the EPA position renders illegal the majority of current (and future) race cars and motorcycles and would devastate the 1,300 motorsports facilities located across the country. It will also crush thousands of small businesses that supply the products used in motorsports – an industry that alone generates more than \$1.6 billion in annual sales and provides tens of thousands of jobs across America.

In response, the RPM Act was introduced as a narrowly-crafted bill which will restore certainty and the status quo under the law. The bill will preserve decades of American motorsport tradition, countless related small businesses and the many jobs they provide.

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<sup>1</sup> Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2, 80 Fed. Reg. 40138 (proposed July 13, 2015).

## EPA Position on the Clean Air Act

Congress never intended for the EPA to regulate racecars. The Motor Vehicle Air Pollution Control Act of 1965 defined a “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” When the Clean Air Act Amendments were enacted in 1970, Congress clarified in conference committee deliberations that the term “motor vehicle” did not include vehicles manufactured or modified for racing.<sup>2</sup> Then in 1990, Congress provided authority to the EPA to regulate nonroad vehicles and engines. Because the term “nonroad vehicle” could easily be construed to include race vehicles, Congress included language to expressly exclude from the definition vehicles used solely for competition.<sup>3</sup>

Despite the clarity of congressional intent, the EPA’s 2015 proposed rule made it illegal to convert a motor vehicle into a dedicated racecar and a violation of the tampering provisions, which are subject to civil fines and related penalties. The EPA proposed regulation read in part as follows:

40 CFR § 86.1854-12(b) covering “Prohibited Acts” would be amended to add the following provision:

(5) 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; anyone modifying a certified motor vehicle or motor vehicle engine for any reason is subject to the tampering and defeat device prohibitions of paragraph (a)(3) of this section and 42 U.S.C. 7522(a)(3). [80 FR 40565]

The EPA’s interpretation would apply to any vehicle which started life as a street car or motorcycle originally certified to meet federal emissions standards—meaning that it is illegal to make any modifications that affect any emissions-related component, even if the vehicle is converted into a dedicated track car.

For nearly five decades, the Act has allowed the modification of street vehicles for racing. During that time, the EPA has had, and has utilized, the clear authority under the Act to enforce against anyone who offers, sells or installs products that knowingly take a regulated street vehicle out-of-compliance. Opponents of the RPM Act have asserted that the legislation provides a loophole that allows racing equipment to be sold for use on the

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<sup>2</sup> See 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) (Representative Nichols: “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?”; Representative 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.”).

<sup>3</sup> See 42 U.S.C. § 7550(10) (2016) (“The term ‘nonroad vehicle’ means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.”).

street. However, it is not apparent how the language of the RPM Act would bring about this result. The RPM Act does nothing to amend or alter EPA's enforcement authority. The agency will continue to have the full authority it has had in the past, and has today, to enforce against tampering violations.

### Economic Impact of the EPA Proposal

Motorsports encompasses a wide variety of racing categories (stock, drag, sprint, etc.) and track types (oval, off-road, drag, etc.). Across the United States, far more racecars originate on an assembly line as street vehicles as compared to racecars that are purpose-built (e.g. dragsters, formula and midget cars). The converted street vehicles are driven mainly by amateur and sportsman drivers.

There are about 1,300 race tracks across the country and most cater to organized amateur racing events. The tracks host thousands of annual local races along with test-and-tuning events. While professional racing receives more publicity, amateur racing has more participants. Drivers, race teams and spectators help drive local economies by filling up motel rooms and restaurants, and shopping at local stores. In turn, these activities support jobs and generate tax revenues at the local, state and federal levels.

To cite just a few states as examples, an estimated 23,000 Indiana residents are employed by motorsports companies.<sup>4</sup> Indianapolis Motor Speedway alone contributes over \$510 million of economic activity annually in Indiana.<sup>5</sup> In Ohio, Summit Motorsports Park sponsored by aftermarket parts supplier Summit Racing has a \$99.5 million economic impact on the surrounding community.<sup>6</sup> In 2005, motorsports generated almost \$6 billion for North Carolina's economy and supported more than 27,000 jobs.<sup>7</sup> The state is home to more than 1,000 teams, tracks, businesses and educational institutions related to motorsports, including 90% of the NASCAR teams, with many based in the Charlotte region, home of the Charlotte Motor Speedway.

At the local level, the Sonoma County Economic Development Board estimates that Sonoma Raceway in California generated nearly \$2 million in regional economic impact for a single vintage race weekend. The Raceway demonstrates the nexus between racing and the economy. About 75 small businesses are in the adjoining industrial park where many of these vehicles are converted, modified, stored, prepared for events and fixed when they break. Those businesses employ hundreds of skilled technicians and they in turn support a range of high-performance parts and components manufacturers and distributors whose products are delivered to the facility daily. Sonoma Raceway employs about 80 full-time workers and another 300-400 people work

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<sup>4</sup> Rich Van Wyk, *Study Shows Motorsports Impact on Indiana Economy*, WTHR (Dec. 6, 2012), available at <http://www.wthr.com/story/20281896/study-shows-motorsports-impact-on-indiana-economy>.

<sup>5</sup> Drew Klacik, *Estimating the Annual Economic Contributions of Indianapolis Motor Speedway*, INDIANA UNIVERSITY PUBLIC POLICY INSTITUTE at 3 (2013), available at [http://www.imsproject100.com/wp-content/uploads/2013/07/Report\\_Update.pdf](http://www.imsproject100.com/wp-content/uploads/2013/07/Report_Update.pdf).

<sup>6</sup> <https://www.summitmotorsportspark.com/news/81-news/217-economic-impact-study-released>

<sup>7</sup> The Economic Impacts and Occupational Analysis of the North Carolina Motorsports Industry for 2005, The Belk College of Business, University of North Carolina at Charlotte (January 2006), available at [http://charlotteusa.com/images/uploads/CharlotteUSA\\_Motorsports\\_Report\\_2006.pdf](http://charlotteusa.com/images/uploads/CharlotteUSA_Motorsports_Report_2006.pdf)

every day in the industrial park. During large events, staffing numbers can balloon as high as 2,000-2,500 workers. This same pattern of small business employment and economic impact can be found at tracks located all around the U.S.

Also figuring into the economic impact of motorsports is the racing equipment industry. The specialty equipment aftermarket employs about one million Americans across all 50 states, and retail sales of racing parts and equipment alone make up a \$1.6 billion market annually. Race vehicles are modified in shops across the nation and the vehicles are outfitted with safety equipment such as five-point seat belts, roll bars, cages and safety netting, suspension, wheels and tires. These sales and services would be eliminated if racing modifications are prohibited.

Beyond specialty racing equipment, the EPA's interpretation would have a significant negative impact on the motorsports divisions of the major auto makers, divisions that include advanced product engineering and development, safety systems and sales and marketing. And the EPA itself would suffer a setback. The EPA's "Green Racing" program seeks to collaborate with industry and race sanctioning organizations to promote innovative product development through racing. The Program serves as a testing platform for new performance technologies that will eventually benefit the public when incorporated into mass-produced vehicles. The EPA's interpretation of the Clean Air Act would have a stifling effect on new products that could emerge through the Program.

#### California: Express Exemption

California's counterpart law to the federal Clean Air Act expressly exempts race cars and parts in both statute and regulation. California defines a "racing vehicle" as a competition vehicle not used on public highways.<sup>8</sup>

For parts that may be mistakenly or improperly installed on a highway vehicle, California instructs companies to mark the products "for race use only" and closely monitor sales to help ensure proper use. SEMA has urged the EPA to take the same approach. The RPM Act is consistent with California law.

#### Conclusion

The RPM Act is a necessary re-affirmation that street vehicles can legally be converted into dedicated race vehicles and that parts sold and installed on such vehicles are not subject to the requirements of the CAA. The RPM Act is narrow in scope. It does not create a loophole or seek major changes to the CAA. The EPA retains all authority provided to pursue tampering when defeat devices are illegally installed on street vehicles. SEMA has supported these enforcement efforts and will continue to do so.

The EPA's interpretation of the Clean Air Act jeopardizes the legality of an important industry and the motorsports tradition enjoyed by tens of thousands of enthusiasts. The RPM Act provides a permanent solution by returning the law to what Congress intended.

Thank you again for this opportunity to speak in support of the RPM Act.

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<sup>8</sup> Cal Health & Saf Code § 39048.