

RECOGNIZING THE PROTECTION OF MOTORSPORTS ACT
 OF 2017

DECEMBER 11, 2018.—Committed to the Committee of the Whole House on the State
 of the Union and ordered to be printed

Mr. WALDEN, from the Committee on Energy and Commerce,
 submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 350]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred
 the bill (H.R. 350) to exclude vehicles used solely for competition
 from certain provisions of the Clean Air Act, and for other pur-
 poses, having considered the same, report favorably thereon with-
 out amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 350, Recognizing the Protection of Motorsports Act of 2017, was introduced by Representative Patrick McHenry (R–NC) on January 6, 2017. It would clarify that the anti-tampering provisions in the Clean Air Act do not apply to motor vehicles used exclusively for competition.

BACKGROUND AND NEED FOR LEGISLATION

Congress did not intend for racing vehicles to be regulated as “motor vehicles” under title II of the Clean Air Act (CAA).¹ Accordingly, the Environmental Protection Agency (EPA) has never taken an enforcement action with regard to EPA certified vehicles modified solely for racing. However, on July 13, 2015, the EPA’s proposed rule on medium- and heavy-duty truck greenhouse gas emissions standards included provisions that would have reversed the agency’s longstanding practice allowing for the modification of vehicles to be used solely for competition. After receiving public comment on the proposed rule, the EPA decided to eliminate this language from the final rule, but in doing so asserted it to be a restatement of the agency’s position, leaving a cloud of legal uncertainty over the competitive racing industry. H.R. 350 clarifies that the CAA Title II anti-tampering provisions applicable to motor vehicles do not apply to vehicles used solely for competition.

COMMITTEE ACTION

On September 13, 2017, the Subcommittee on Environment held a hearing on H.R. 350. The Subcommittee received testimony from:

Ryan Parker, President and CEO, Endicott Clay Products;
 Vincent Brisini, Director of Environmental Affairs, Olympus Power, LLC, on behalf of Anthracite Region Independent Power Producers Association (ARIPPA);
 Frank Moore, President, Hardy Manufacturing Company, Inc.;
 Steve Page, President and General Manager, Sonoma Raceway;
 Alexandra E. Teitz, Principal, AT Strategies, LLC, on behalf of Sierra Club; and
 Rebecca Bascom, Professor, Penn State College of Medicine, on behalf of American Thoracic Society.

On November 15, 2017, the Subcommittee on Environment met in open markup session and forwarded H.R. 350, without amendment, to the full Committee by a record vote of 13 yeas and 9 nays. On December 6, 2017, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 350, without amendment, favorably reported to the House by a record vote of 33 yeas and 21 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

¹House Consideration of the Report of the Conference Committee (Dec. 18, 1970), reprinted in A Legislative History of the Clean Air Act Amendments of 1970, Vol. 1, U.S. GAO (1974), Serial No. 93–18, at p. 117

The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS
ROLL CALL VOTE # 62**

BILL: H.R. 350, Recognizing the Protection of Motorsports Act of 2017

AMENDMENT: A motion by Mr. Walden to order H.R. 350 favorably reported to the House, without amendment.
(Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 33 yeas and 20 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Walden	X			Mr. Pallone		X	
Mr. Barton	X			Mr. Rush		X	
Mr. Upton	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Engel		X	
Mr. Burgess	X			Mr. Green		X	
Mrs. Blackburn	X			Ms. DeGette		X	
Mr. Scalise	X			Mr. Doyle		X	
Mr. Latta	X			Ms. Schakowsky		X	
Mrs. McMorris Rodgers	X			Mr. Butterfield		X	
Mr. Harper	X			Ms. Matsui		X	
Mr. Lance	X			Ms. Castor		X	
Mr. Guthrie	X			Mr. Sarbanes		X	
Mr. Olson	X			Mr. McNerney		X	
Mr. McKinley	X			Mr. Welch		X	
Mr. Kinzinger	X			Mr. Lujan		X	
Mr. Griffith	X			Mr. Tonko		X	
Mr. Bilirakis	X			Ms. Clarke		X	
Mr. Johnson	X			Mr. Loeb sack	X		
Mr. Long	X			Mr. Schrader	X		
Mr. Bucshon	X			Mr. Kennedy			
Mr. Flores	X			Mr. Cardenas		X	
Mrs. Brooks	X			Mr. Ruiz	X		
Mr. Mullin	X			Mr. Peters		X	
Mr. Hudson	X			Ms. Dingell		X	
Mr. Collins	X						
Mr. Cramer	X						
Mr. Walberg							
Mrs. Walters	X						
Mr. Costello	X						
Mr. Carter	X						
Mr. Duncan	X						

12/06/2017

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held a hearing and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 350 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 22, 2018.

Hon. GREG WALDEN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 350, the RPM Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jon Sperl.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 350—RPM Act of 2017

Summary: H.R. 350 would amend the Clean Air Act (CAA) to prohibit the Environmental Protection Agency (EPA) from regulating emissions from motor vehicles that are modified solely for motorsports competition. Specifically, H.R. 350 would amend the CAA's definition of a motor vehicle to exclude vehicles that are modified solely for competition, and it would make the manufacture, sale, installation, and use of "defeat devices" that bypass emissions controls legal only for competitive motorsports. CBO estimates that the agency would spend about \$500,000 over the 2018–2022 period to revise regulations; such spending would be subject to the availability of appropriated funds.

Because the bill would shift the legal focus of enforcement cases to how a motor vehicle is ultimately used, it would significantly increase the burden on EPA to prove that manufacturers and sellers are complicit in the use of defeat devices for purposes other than competition. As a result, CBO estimates that enacting H.R. 350 would reduce penalties (which are recorded as revenues) by \$18 million over the 2018–2027 period.

Because enacting H.R. 350 would affect revenues, pay-as-you-go procedures apply. Enacting the bill would not affect direct spending.

CBO estimates that enacting H.R. 350 would not affect direct spending and would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 350 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 350 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018– 2022	2018– 2027
	DECREASES IN REVENUES											
Revenues	0	–2	–2	–2	–2	–2	–2	–2	–2	–2	–8	–18

In addition CBO estimates that implementing the bill would cost less than \$500,000, subject to the availability of appropriated funds.

Basis of estimate: For this estimate, CBO assumes that H.R. 350 will be enacted near the end of 2018.

Spending subject to appropriation

To implement the bill, EPA also would need to revise some regulations. Using information from EPA, CBO estimates that the agency would spend about \$500,000 over the 2018–2022 period to revise regulations; such spending would be subject to the availability of appropriated funds. That amount includes personnel and contract costs required to develop and issue a proposal, to receive and respond to public comments, and to issue a final rule for the revision.

Revenues

Under the CAA, EPA prescribes emissions standards for new motor vehicles and engines and may enforce civil penalties against any motor vehicle manufacturer, seller, or person who illegally modifies (or tampers with) a vehicle to bypass its emissions control system.

H.R. 350 would amend the CAA to prohibit EPA from regulating emissions from motor vehicles that are modified solely for motor-sports competition. Under current law, EPA may impose penalties against any company that manufactures or sells illegal parts, such as defeat devices, that can bypass emissions controls. H.R. 350 would amend the CAA’s definition of a motor vehicle to exclude vehicles that are modified solely for competition, and it would make the manufacture, sale, installation, and use of defeat devices legal for competitive motorsports.

According to officials in EPA’s Office of Civil Enforcement, the agency currently focuses its efforts on manufacturers and sellers of defeat devices that affect emissions from vehicles that are operated on public roads. Although, EPA has the legal authority under current law to pursue such violations for any motor vehicle—including those converted for use in motorsports—the agency has historically

neither enforced that rule nor collected penalties from the motor-sports industry.

Because the bill would shift the legal focus of enforcement cases to how a motor vehicle is ultimately used, it would significantly increase the burden on EPA's enforcement officials to prove that manufacturers and sellers are complicit in the use of defeat devices for purposes other than competition.

Based on information from EPA, CBO expects that enacting the bill would probably lead to the agency shifting enforcement resources away from manufacturers and sellers and toward individual users and installers of defeat devices that are not used in competition and for which end-use violations would be easier to demonstrate under law.

Over the 2013–2017 period, EPA settled 13 cases—mostly against manufacturers—for CAA violations related to defeat devices, resulting in the collection of \$14 million in penalties. Over the same period, the agency collected a nominal amount in penalties from installers and users of defeat devices. CBO estimates that enactment of H.R. 350 would reduce collections by about \$2 million a year over the 2018–2027 period, because the agency's enforcement would no longer be focused on manufacturers. The effect on collections in any particular year during that period could be higher or lower depending the details of individual cases that occur in each year.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 350, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON ENERGY AND COMMERCE ON DECEMBER 6, 2017

	By fiscal year, in millions of dollars—											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018–2022	2018–2027
NET INCREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	–2	–2	–2	–2	–2	–2	–2	–2	–2	–8	–18

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 350 would not affect direct spending and would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

Mandates: H.R. 350 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Jon Sperl; Mandates: Zach Byrum.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to clarify that the anti-tampering provisions in the Clean Air Act do not apply to motor vehicles used exclusively for competition.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 350 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 350 contains no earmarks, limited tax benefits, or limited tariff benefits.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, the Committee finds that the following directed rule makings are contained in H.R. 350:

- Section 5 requires the Administrator of the Environmental Protection Agency to finalize any regulations necessary to implement the amendments made by H.R. 350.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title of the “Recognizing the Protection of Motorsports Act of 2017.”

Section 2. Findings

This section states four congressional findings related to vehicles used solely for competition and EPA regulatory actions under the Clean Air Act.

Section 3. Exclusion of vehicles used solely for competition from the anti-tampering provisions of the Clean Air Act

This section amends section 203 of the CAA to allow any action with respect to any device or element of design if the action is for the purpose of modifying a motor vehicle into a vehicle to be used solely for competition.

Section 4. Exclusion of vehicles used solely for competition from the definition of motor vehicle in the Clean Air Act

This section amends section 216 to exclude vehicles used solely for competition from the definition of “motor vehicle” in the CAA.

Section 5. Implementation

This section directs the Administrator of the EPA to finalize any regulations necessary to implement the amendments made by this Act not later than 12 months after the date of enactment of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CLEAN AIR ACT

* * * * *

TITLE II—EMISSION STANDARDS FOR MOVING SOURCES

* * * * *

PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

* * * * *

PROHIBITED ACTS

SEC. 203. (a) The following acts and the causing thereof are prohibited—

(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered

by a certificate of conformity issued (and in effect) under regulations prescribed under this part or part C in the case of clean-fuel vehicles (except as provided in subsection (b));

(2)(A) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under section 208;

(B) for any person to fail or refuse to permit entry, testing or inspection authorized under section 206(c) or section 208;

(C) for any person to fail or refuse to perform tests, or have tests performed as required under section 208;

(D) for any manufacturer to fail to make information available as provided by regulation under section 202(m)(5);

(3)(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(B) for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use; or

(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 202 or Part C—

(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with (i) the requirements of section 207 (a) and (b) with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 207(c)(3), or (ii) the corresponding requirements of part C in the case of clean fuel vehicles unless the manufacturer has complied with the corresponding requirements of part C

(B) to fail or refuse to comply with the requirements of section 207 (c) or (e), or the corresponding requirements of part C in the case of clean fuel vehicles

(C) except as provided in subsection (c)(3) of section 207 and the corresponding requirements of part C in the case of clean fuel vehicles, to provide directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of any warranty under this Act is conditioned upon use of any part, component, or system manufactured by such manufacturer or any person acting for such manufacturer or under his control, or conditioned upon service performed by any such person, or

(D) to fail or refuse to comply with the terms and conditions of the warranty under section 207 (a) or (b) or the

corresponding requirements of part C in the case of clean fuel vehicles with respect to any vehicle; or

(5) for any person to violate section 218, 219, or part C of this title or any regulations under section 218, 219, or part C. No action with respect to any element of design referred to in paragraph (3) (including any adjustment or alteration of such element) shall be treated as a prohibited act under such paragraph (3) if such action is in accordance with section 215. Nothing in paragraph (3) shall be construed to require the use of manufacturer parts in maintaining or repairing any motor vehicle or motor vehicle engine. For the purposes of the preceding sentence, the term "manufacturer parts" means, with respect to a motor vehicle engine, parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine. No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if (i) the action is for the purpose of repair or replacement of the device or element, or is a necessary and temporary procedure to repair or replace any other item and the device or element is replaced upon completion of the procedure, and (ii) such action thereafter results in the proper functioning of the device or element referred to in paragraph (3). No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if the action is for the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in this title) and if such vehicle complies with the applicable standard under section 202 when operating on such fuel, and if in the case of a clean alternative fuel vehicle (as defined by rule by the Administrator), the device or element is replaced upon completion of the conversion procedure and such action results in proper functioning of the device or element when the motor vehicle operates on conventional fuel. *No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if the action is for the purpose of modifying a motor vehicle into a vehicle to be used solely for competition.*

(b)(1) The Administrator may exempt any new motor vehicle or new motor vehicle engine from subsection (a), upon such terms and conditions as he may find necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(2) A new motor vehicle or new motor vehicle engine offered for importation or imported by any person in violation of subsection (a) shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date

of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Administrator under this part.

(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of subsection (a), except that if the country which is to receive such vehicle or engine has emission standards which differ from the standards prescribed under section 202, then such vehicle or engine shall comply with the standards of such country which is to receive such vehicle or engine.

* * * * *

DEFINITIONS FOR PART A

SEC. 216. As used in this part—

(1) The term “manufacturer” as used in sections 202, 203, 206, 207, and 208 means 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.

(2) The term “motor vehicle” means any self-propelled vehicle designed for transporting persons or property on a street or highway^[.] and that is not a vehicle used solely for competition, including any vehicle so used that was converted from a motor vehicle.

(3) Except with respect to vehicles or engines imported or offered for importation, the term “new motor vehicle” means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term “new motor vehicle engine” means 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; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 202 which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

(4) The term “dealer” means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term “ultimate purchaser” means, with respect to any new motor vehicle or new motor vehicle engine, the first

person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term "commerce" means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

(7) VEHICLE CURB WEIGHT, GROSS VEHICLE WEIGHT RATING, LIGHT-DUTY TRUCK, LIGHT-DUTY VEHICLE, AND LOADED VEHICLE WEIGHT.—The terms "vehicle curb weight", "gross vehicle weight rating" (GVWR), "light-duty truck" (LDT), light-duty vehicle, and "loaded vehicle weight" (LVW) have the meaning provided in regulations promulgated by the Administrator and in effect as of the enactment of the Clean Air Act Amendments of 1990. The abbreviations in parentheses corresponding to any term referred to in this paragraph shall have the same meaning as the corresponding term.

(8) TEST WEIGHT.—The term "test weight" and the abbreviation "tw" mean the vehicle curb weight added to the gross vehicle weight rating (gvwr) and divided by 2.

(9) MOTOR VEHICLE OR ENGINE PART MANUFACTURER.—The term "motor vehicle or engine part manufacturer" as used in sections 207 and 208 means any person engaged in the manufacturing, assembling or rebuilding of any device, system, part, component or element of design which is installed in or on motor vehicles or motor vehicle engines.

(10) NONROAD ENGINE.—The term "nonroad engine" means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 111 or section 202.

(11) NONROAD VEHICLE.—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.

* * * * *

DISSENTING VIEWS

H.R. 350, the Recognizing the Protection of Motorsports (RPM) Act of 2017, creates a large loophole in the Clean Air Act (CAA) that could result in a massive increase in dangerous air pollution by modified vehicles that are used on public roadways. H.R. 350 undermines the Environmental Protection Agency's (EPA) enforcement authority to prevent widespread tampering with the emission control equipment of motor vehicles.

AMATEUR RACING IS ALREADY PROTECTED BY THE CLEAN AIR ACT

Amateur racing is a popular, long-standing activity throughout the nation. The CAA establishes no legal barrier to racing a motor vehicle. However, many amateur racers frequently modify their vehicles for use as race cars by installing aftermarket products to improve a vehicle's racing performance. Some of these products are emissions control defeat devices that disable or impair the proper function of a vehicle's emissions controls, resulting in increased pollution; these would be prohibited under the CAA. As a practical matter, operation of these modified vehicles is not always limited to the race track, meaning they are also emitting illegal levels of pollution when they are driven on streets and highways.

The CAA requires EPA to certify that vehicles, and engines meet specific emissions standards designed to control dangerous air pollution—including particulate matter, nitrogen oxides, carbon monoxide, volatile organic compounds—and prohibits anyone from removing or disabling these emissions control systems, or from selling or installing parts that would “bypass, defeat, or render inoperative” a vehicle's emissions controls.¹ Vehicle manufacturers have invested millions of dollars and many years in systems to reduce emissions and improve the environmental performance of the vehicles on our roadways. The CAA exempts from such requirements vehicles manufactured and used solely for professional competition.²

H.R. 350 UNNECESSARILY CREATES A CLEAN AIR LOOPHOLE THAT COULD RESULT IN TREMENDOUS AMOUNTS OF POLLUTION

The RPM Act goes much further than “clarifying” the law with respect to vehicles that have been modified into dedicated racing vehicles with the installation of a defeat device. The bill creates an exclusion from the Act's anti-tampering prohibition. It also amends the definition of a motor vehicle in section 216 to exclude vehicles “used solely for competition” and vehicles “converted from a motor vehicle.”

¹The Clean Air Act § 203(b)(3).

²40 CFR §§ 1042620 and 1068.235.

Proponents argue that Congress must pass legislation to protect amateur racing from EPA enforcement against individuals who have converted their vehicles into race cars. These concerns are misplaced. EPA has never enforced this provision of the CAA against individual vehicle owners, nor does it have sufficient resources to make this an enforcement priority. EPA has initiated enforcement cases against manufacturers of defeat devices for use in motor vehicles not exclusively used for racing and continue to operate on public roads. Such uses of defeat devices and modified vehicles are not, and should not, be permitted.

While we support amateur racing, we cannot support a bill that would enable the manufacture, sale, installation or use of defeat devices for vehicles that continue to operate on public roadways. Any vehicle modified with a defeat device for the purpose of conversion to a dedicated racing vehicle should no longer be legal to operate on the road.

EPA reviewed H.R. 350 and indicated that it created ambiguity in the CAA's definition of a "motor vehicle" and, if enacted, the bill would undermine its authority to control the illegal sale of aftermarket defeat devices and keep polluting vehicles off the public roads. EPA's technical assistance also requested changes to the bill, clarifying that the only motor vehicles eligible for an exemption from the CAA's anti-tampering provisions are those that have been permanently converted to competition use only.

Ultimately, the RPM Act creates a loophole in the CAA that blocks EPA's ability to enforce against those manufacturing or selling emissions control defeat devices, regardless of how they are used. The bill grants immunity to manufacturers of defeat devices, so long as the manufacturer says the product is intended for racing. But, the intent of the manufacturer is not predictive of, nor does it impact how consumers will use these products. Once they are installed EPA will have little ability to penalize those using a product beyond its intent. By preventing EPA from enforcing against the manufacture and sale of defeat devices, this bill takes away an important tool for stopping illegal vehicle pollution.

Without this EPA enforcement authority, there is no assurance that motor vehicles modified with defeat devices would, in fact, be used solely for competition. Previous EPA enforcement cases suggest that marketing and sales of defeat devices can be widespread and difficult to control, and the additional pollution released is significant. In fact, this is the same authority EPA recently used to detect that a company, H&S Performance, had been manufacturing and selling products resulted in nearly double the illegal NOx emissions of the Volkswagen diesel scandal.³ EPA must retain meaningful enforcement authority to prevent widespread tampering that will undermine air quality and harm public health.

CONGRESS CAN PROTECT AMATEUR RACERS AND PUBLIC HEALTH

At the December 6, 2017, Full Committee Markup, Representative Dingell (D-MI) offered an amendment to ensure vehicles modified for racing remained off the public roadways, and that EPA re-

³Union of Concerned Scientists, *Is Your Representative Setting Us Up for Another Dieselgate?* (Oct. 5, 2017) (blog.ucsusa.org/jonna-hamilton/is-your-representative-setting-us-up-for-another-dieselgate).

tains necessary enforcement authority against bad actor.⁴ Representative Dingell's amendment was consistent with technical assistance provided by EPA. The amendment also reflected witness testimony and bipartisan Members' statements agreeing that any CAA exemption should only apply to dedicated racing vehicles, not to vehicles used on public roadways.⁵ However, the amendment was not accepted.

It is unfortunate the Majority insisted on rushing H.R. 350 through the Committee process before a compromise could be reached with all interested Members and stakeholders. In its current form, the RPM Act does not provide the narrowly tailored CAA exemption the amateur racing community requested. Rather, it creates a massive loophole in the law. H.R. 350 will lead to the legalization of widespread vehicle tampering, and only serves to significantly increase air pollution. We believe there is a reasonable compromise that would enable an amateur racer to convert a motor vehicle into a dedicated racing vehicle without facilitating widespread violation of the CAA. We remain open to finding that compromise.

For these reasons, we oppose H.R. 350 in its current form.

FRANK PALLONE, JR.,
*Ranking Member, Committee
 on Energy and Commerce.*
 PAUL D. TONKO,
*Ranking Member, Sub-
 committee on Environ-
 ment.*

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⁴House Committee on Energy and Commerce, *Full Committee Markup of H.R. 350, The Recognizing the Protection of Motorsports Act of 2017*, 115th Cong, Dec. 6, 2017.

⁵House Committee on Energy and Commerce, Subcommittee on Environment, *Hearing on Big Relief for Small Business: Legislation Reducing Regulatory Burdens on Small Manufacturers and Other Job Creators*, 115th Cong, Sept. 13, 2017.