

Daily Journal

www.dailyjournal.com

THURSDAY, NOVEMBER 16, 2017

PERSPECTIVE

Congress mulls new Clean Air Act racecar rules

By Robert Freund and Daniell Newman

Earlier this year, U.S. Sen. Richard Burr, R-N.C., introduced Senate Bill 203, titled the Recognizing the Protection of Motorsports Act of 2017. The RPM Act would amend the Clean Air Act to clarify that it is legal to modify a road-going automobile into a racecar used exclusively on racetracks regardless of whether the car thereafter complies with the CAA's emission standards. The RPM Act would also confirm that it is legal to manufacture, distribute, sell and install racing parts used to convert these vehicles for exclusive track use.



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The Clean Air Act and Motorsport

The CAA sets forth emissions standards for "new motor vehicles or new motor vehicle engines" and authorizes the U.S. Environmental Protection Agency to impose fines against individuals, manufacturers and dealers for violations, including the manufacture, sale, offer to sell or installation of "any part or component intended for use with, or as any part of, any motor vehicle or motor vehicle engine" that bypasses, defeats or renders inoperative a motor vehicle's emissions control system. The CAA also requires automakers to supply a "certificate of compliance" for new cars prior to sale.

Vehicles initially constructed as purpose-built racecars, such as those competing in NASCAR and IndyCar series, are currently exempt from the CAA and therefore outside the EPA's control. The CAA excludes purpose-built racecars from the definition of "motor vehicle" and excludes "vehicles used solely for competition" from the definition "nonroad vehicles." Additionally, EPA regulations provide criteria for determining whether vehicles are subject to the CAA: "[A] vehicle ... shall be deemed a motor vehicle, unless ... [t]he vehicle lacks features customarily associated with safe and practical street or highway use, such features including, but not being limited to, a reverse gear ..., a differential, or safety features required by state and/or federal law."

2015 Proposal Affects the Aftermarket Racing Industry

Racing hobbyists and aftermarket parts manufacturers have understood that transforming road-going motor vehicles into racecars used

exclusively for competition does not violate the CAA. That is, once a road-going vehicle is converted into a racecar lacking a reverse gear or safety equipment such as headlights, that vehicle is no longer a "motor vehicle" subject to CAA emissions regulations. The legality of the conversions was never contested until July 2015, when the EPA proposed regulations deeming such conversions illegal if the vehicle's emissions system no longer remained in its certified configuration.

In the preamble to the proposed rule, the EPA stated, "if a motor vehicle is covered by a certificate of conformity at any point, there is no exemption from the tampering and defeat-device prohibitions that would allow for converting the engine or vehicle for competition use. ... [I]t is not permissible to remove a motor vehicle or motor vehicle engine from its certified configuration regardless of the purpose for doing so."

The proposed rule also said, "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 ...; anyone modifying a certified motor vehicle or motor vehicle engine for any reason is subject to the tampering and defeat device prohibits" of the regulations.

The EPA withdrew the controversial language from the final rule, but maintains that converting road cars for competition is (and has always been) unlawful: "EPA's focus is not (nor has it ever been) on vehicles built or used exclusively for racing, but on companies that violate the rules by making and selling products that disable pollution controls on motor vehicles used on public roads. ... The proposed language was not

intended to represent a change in the law or in EPA's policies or practices towards dedicated competition vehicles."

The RPM Act's Potential Impact

Before its July 2015 proposal, the EPA never explicitly stated that converted racecars were subject to CAA requirements. Nor does any federal law explicitly allow such conversions. The RPM Act seeks to resolve this open question by expressly exempting converted racecars from the CAA.

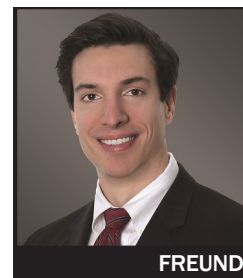
Specifically, the RPM Act would amend the CAA's definition of "motor vehicle" by adding: "The term 'motor vehicle' does not include a vehicle used solely for competition, including a vehicle used solely for competition that was converted from a motor vehicle."

The RPM Act would also exclude the manufacture, sale, and installation of racing parts designed for road-going motor vehicles from the anti-tampering and defeat-device provisions of the CAA.

These amendments would protect aftermarket parts manufacturers and modification shops that build and install engine modifications that affect emissions, including engine control modules, intakes, and exhausts.

While the EPA has stated that it is not primarily concerned with enforcing the CAA as to the aftermarket racing industry, it nonetheless contends such activities are prohibited. The looming possibility of EPA action, which could include fines of up to \$25,000 per motor vehicle or engine, could substantially chill the development, sale, and installation of aftermarket racing products. The RPM Act would allow aftermarket businesses to continue their operations without fear of government action.

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