

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States

House of Representatives
COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-3641

Minority (202) 225-2927

May 8, 2024

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

Dear Administrator Regan:

We write regarding the “In-use Locomotive Regulation” (hereinafter “the CARB regulation”) issued by the California Air Resources Board (CARB), which would force the premature retirement of reliable and affordable diesel locomotives and has the potential to upend our nation’s rail system and supply chains.¹ CARB has made a request to the U.S. Environmental Protection Agency (EPA) for a Federal authorization of the CARB regulation, which would impose zero-emissions requirements on locomotives.² Given the interconnectedness and importance of rail service to our nation’s transportation and commerce systems, Congress has consistently found that railroads are to be regulated at the federal level. California’s requested authorization, if granted, would violate statutory authority, negatively impact States without the public policy goals of California, lead to higher consumer prices, impair the country’s transportation system, and harm interstate commerce.

The Clean Air Act (CAA) section 209(e)(1)(B) grants exclusive authority to the federal government to set emission standards for new locomotives and new engines used in locomotives. Additionally, other statutes reflecting this intent include the Interstate Commerce Commission Termination Act and the Locomotive Inspection Act. Congress has long recognized that reliable and affordable rail service is an essential piece of interstate commerce, carrying approximately 40 percent of U.S. long-distance freight volume annually.³ Approximately 72 percent of line haul Class I locomotives in the country enter California each year. Rather than allowing one State the ability to alter the nation’s rail transportation system, Congress has consistently found such State action would interfere with interstate commerce and the nation’s supply chains.

¹ *Public Hearing to Consider the Proposed In-Use Locomotive Regulation Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response*, 27 Apr. 2023, ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/accii/acciiifro1962.2.pdf

² CARB made its request to EPA for a federal authorization of its regulation under Clean Air Act section 209.

³ [Freight Rail Data Center - AAR](#)

In addition to the clear intent of Congress, there is Supreme Court precedent holding that actions by States to address local public interests (i.e., emissions reductions) violate the Dormant Commerce Clause if the burden imposed on commerce is excessive in relation to the local benefits.⁴ That is the case here with the CARB regulation. Nitrogen oxide (NOx) emissions from locomotives represent approximately four percent of all NOx emissions in the most extreme nonattainment area of California according to the South Coast Air Quality Management District.⁵ Locomotives also contribute a minor amount of fine particulate matter when all sources are aggregated and are the smallest share of freight sources in the State.⁶ Further, locomotives contribute just 0.5 percent of all U.S. greenhouse gas emissions (GHGs), a minor amount relative to the rest of emissions.⁷ It is clear the benefits of the CARB regulation pale in comparison to the burdens it would place on interstate commerce.

Concerningly, on November 8, 2023, the EPA finalized a rule reversing its previous determination that non-new locomotives and engines were preempted from potential State regulation until those technologies exceeded 133 percent of their useful life.⁸ The EPA proposed this action, specific to locomotives, in an unrelated Notice of Proposed Rulemaking (NPR) on GHG Emissions Standards for Heavy-Duty Vehicles – Phase 3.⁹ The NPR was published the same day that CARB approved its own locomotive regulation.¹⁰ Later, the agency finalized this proposal just one day after CARB requested that the EPA authorize the In-Use Locomotive Regulation.¹¹ This questionable action now allows CARB a glidepath to force rail operators to either upgrade their locomotives at an exorbitant cost under a government-mandated spending program or phase-out well-functioning locomotives before the end of their useful life.

Starting in 2030, as a condition for operating in California, the CARB regulation would require new passenger, switch and yard, and industrial locomotives to meet zero-emissions standards, with the zero-emissions deadline for line haul locomotives starting in 2035. Additionally, beginning in 2030, all locomotives operating in California must be less than 23 years old unless that locomotive is remanufactured or repowered to meet Tier 4 emission limits or better.¹² CARB is also attempting to require locomotive operators to fund spending accounts (based on an operator's contribution to particulate matter and nitrogen oxides emissions)¹³ to finance the State's mandated fleet turnover. Beginning in 2030, operators must use funds from the spending account to purchase, lease, or rent zero-emissions locomotives, zero-emissions-capable locomotives, zero-emissions rail equipment, and to repower or upgrade locomotives to be zero-emissions or capable of it, in line with the CARB regulation's timeline.¹⁴

⁴ *Pike v. Bruce Church, Inc.*, 142.

⁵ [03-es.pdf \(aqmd.gov\)](#), ES-5.

⁶ [In-Use Locomotive Regulation \(ca.gov\)](#), 5.

⁷ [Freight Rail & Climate Change - AAR](#)

⁸ [Locomotives and Locomotive Engines; Preemption of State and Local Regulations– Final Rulemaking | US EPA](#)

⁹ [Federal Register :: Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles-Phase 3](#)

¹⁰ [Locomotive Fact Sheets | California Air Resources Board](#)

¹¹ [Federal Register :: California State Nonroad Engine Pollution Control Standards; In-Use Locomotive Regulation; Requests for Authorization; Opportunity for Public Hearing and Comment](#)

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

The CARB regulation also attempts to prevent locomotive idling and imposes an obligation on operators to have a working Automatic Engine Stop Start (AESS) device on all locomotives operating within California. If an AESS device is not properly functioning, a locomotive operator must, with a few exceptions, manually shut down the locomotive engine after 30 minutes for any locomotive unless the locomotive is zero-emissions.¹⁵ This requirement has the potential to harm the integrity of rail operations in States without the same State aims as California. For example, because locomotive engines use water rather than antifreeze for coolant they cannot shut down when temperatures reach the point of freezing. Idling is also necessary to maintain cabin temperature for crews and passengers, air pressure for the brake system, and to operate a locomotive's electrical system. The CARB regulation also creates significant new recordkeeping requirements, including annual reporting of specific emissions information, a record of any time that a locomotive idled for longer than thirty minutes, and a purchase history of locomotives procured via the spending account.¹⁶

According to CARB's own calculations, costs for the two Class I operators in California to transition their national fleets of line-haul locomotives plus their California switch and yard locomotives to zero-emission technologies by 2050 will exceed \$86 billion.¹⁷ Class I operators estimate the CARB regulation will cost \$700-\$800 million annually to comply with the spending account demands. Short line operators estimate they could be required to make annual deposits of up to \$5 million.¹⁸ These costs may be spread across downstream consumers raising prices of all goods transported via rail on top of potential cost increases associated with supply chain disruption. Additionally, short line operators with much smaller margins and local competition from competing modes of transportation may be unable to absorb the costs and have to shut down. Those shutdowns would result in market consolidation, lost jobs, and increased emissions from less efficient modes of transportation.

Rail transportation makes up just 1.7 percent of transportation-related greenhouse gas emissions in the United States.¹⁹ Rather than seeking top-down, command and control policies, which will raise costs, hasten consolidation in the rail sector, and do little to reduce the overall emissions footprint of the globe, we urge you to reject California's authorization request.

Additionally, we ask that you assist the Committee with its oversight of the EPA and their involvement with the CARB regulation and its consideration of California's authorization request by responding to the following questions in writing by May __, 2024.

1. Describe all EPA interactions with CARB during CARB's development of its regulation and EPA's development of its locomotive preemption rule. Provide all records, including correspondence between the EPA and CARB, relating to development of CARB's locomotive regulations and EPA's locomotive preemption rule.

¹⁵ Final Regulation Order, 27 Oct. 2023, ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/acf22/acffroa1.pdf. 38.

¹⁶ Id., 41-46.

¹⁷ CARB, Standardized Regulatory Impact Assessment (May 26, 2022), 88-90.

¹⁸ See *AAR & ASLRRRA v. Randolph*, Case No. 2:23-at-00582 (E.D. Cal. filed June 16, 2023). 13.

¹⁹ Freight Railroads Are Part of the Solution to Climate Change, Dec. 2023, www.aar.org/wp-content/uploads/2023/06/AAR-Climate-Change-Fact-Sheet.pdf

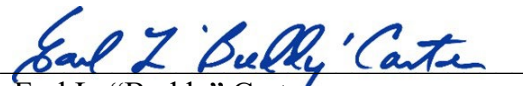
2. Why did the EPA propose its now finalized locomotive preemption rule within the GHG Emissions Heavy-Duty Vehicles Phase 3 rule?
3. As the EPA contemplates CARB's request, will it commit to convening a Small Business Advocacy Review panel to examine the CARB regulation's impact on short line operators?
4. Will the EPA limit its analysis of the authorization request to California on issues such as electricity demand, infrastructure needs, air quality, and public health, or examine these impacts nationally?
5. Will the EPA consult with the Surface Transportation Board during the authorization review process?
6. Nearly 90 national, state, and regional agriculture associations have expressed concerns about the CARB regulation. Will the EPA consult with the U.S. Department of Agriculture during EPA's review of California's authorization request?
7. During a recent Senate Armed Services Committee hearing with the United States Transportation Command, General Van Ovost expressed concerns that reduction in rail capacity across California as a result of the CARB regulation could impact military readiness.²⁰ Will the EPA consult with the Department of Defense during the EPA's review of the authorization request?

We look forward to your prompt response. Thank you in advance for your cooperation. If you have any questions regarding this matter, please contact Mary Martin or Drew Lingle with the Majority Committee staff at (202) 225-3641.

Sincerely,



Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce



Earl L. "Buddy" Carter
Chair
Subcommittee on Environment,
Manufacturing, and Critical Materials

Cc: Liane M. Randolph, Chair, California Air Resources Board

²⁰ [Fischer: California's Radical Environmental Agenda Puts Military Readiness at Risk \(youtube.com\)](#)