



EPA Seeks Comments on California's Request to Authorize Unprecedented Locomotive Standards for National Rail Network

by James Burnley and Fred Wagner

The U.S. Environmental Protection Agency (EPA) opened a public comment period on the California Air Resources Board's (CARB) request to authorize new state regulations dealing with locomotives and locomotive engines. The new state rules would mandate zero-emissions locomotives by 2030, even though there are no currently available models, and the timeline for testing prototypes in development is extended and uncertain. EPA's [notice](#) calls for all comments to be filed by **April 22, 2024**.

Key Provisions of CARB's New Regulation

Despite clear federal statutory mandates that the rail industry be regulated on a national, network-wide basis, last summer, CARB finalized the "In-Use Locomotive Regulation," the first time it has targeted the rail industry. The key provisions of the California regulation *ban* any locomotive that is "23 years or older" from operating in California (with minor exceptions). The regulation also sets dates after which all locomotives with engines built after specified years must operate in a "Zero Emission Configuration" at all times in California. The problem? There are no commercially viable zero-emission locomotives in North America. The timeline for advancing prototype models is uncertain, at best, and clearly could not meet the arbitrary deadlines in CARB's rule.

Moreover, the CARB regulation imposes a "Spending Account" requirement on railroads operating in California (applicable to both large operators and smaller short-line operators). The projected contributions are enormous. The largest operators will have to set aside hundreds of millions of dollars every year, diverting funds from effective and available emissions reductions actions. Worse, the required deposits could drive smaller operators out of business.

EPA's Role Under the Clean Air Act

Under Section 209 of the Clean Air Act, EPA is responsible for reviewing requests by California to depart from federal requirements. EPA has only three choices: it can approve, deny, or approve and deny in part California's request.

The sheer scope and financial burden of CARB's regulation, together with the impracticability of implementation, supports a denial of the request. This is consistent with EPA's own regulatory standards, which state that a request would be inconsistent with the Clean Air Act if "there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time." *See* 78 Fed. Reg. 58090, 58092 (Sept. 20, 2013).

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Why Commenting Is Important

The overreach of CARB's proposed regulation is stunning. If authorized, the CARB rule would have several fundamental, negative impacts on the nation's supply chain and economy as a whole.

- CARB concedes that the massive cost of compliance could drive short lines out of business. In California alone, estimates are that short lines handle over 260,000 carloads per year. The country cannot afford losing these essential links to our freight delivery system.
- The enormous cost would harm even the largest operators. Estimates suggest that the Class I railroads would be required to deposit as much as \$800 million *per year, per railroad*. Major infrastructure improvements would likely be shelved, many of which are designed to reduce operations emissions.
- The U.S. supply chain would be threatened. Railroads would be forced to use unproven technology to power locomotives and take locomotives with many years of useful life remaining out of service. Complying with CARB's impractical rule could create new logistical challenges for the timely movement of food and essential goods in and through California. All this just as America has gotten its broken supply chain back on track, largely because of the railroads.
- Substituting a state-by-state, patchwork regulatory regime over the rail industry violates federal preemption standards. The Clean Air Act gives other states the ability to adopt CARB's emissions standards, if EPA authorizes the regulations. Imagine a rail network where operators would need to switch locomotives repeatedly when crossing state lines. That's why we have a *national* rail system. It calls for national standards, not implemented on a state-by state basis.

Conclusion

EPA has discretion in this matter. It does not have to defer to CARB's rules. Comments to the agency are essential to demonstrate why the excessive cost associated with CARB's rule, as well as the lack of technology to comply with the overly aggressive deadlines, would have devastating implications for the nation's economy. The agency must also understand the limits of one state's authority over what is clearly, as a matter of law and practice, a national system.