Comments for the Record

Addressed to the

U.S. Environmental Protection Agency

In response to the

Notice of Opportunity for Public Hearing and Comment entitled:

"California State Nonroad Engine Pollution Control Standards; In-Use Locomotive Regulation; Requests for Authorization"

Docket ID No. EPA–HQ–OAR–2023–0574

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Steven G. Bradbury, a Distinguished Fellow at The Heritage Foundation, and the **Washington Legal Foundation**, a national public-interest law firm and legal policy center, respectfully submit these comments in response to the following notice of opportunity for public hearing and comment from the U.S. Environmental Protection Agency (EPA):

> **"*California State Nonroad Engine Pollution Control Standards; In-Use Locomotive Regulation; Requests for Authorization*," Docket ID No. EPA–HQ–OAR–2023–0574, published in the Federal Register on February 27, 2024.**[1]

California has sought authorization from EPA under section 209 of the Clean Air Act[2] to implement the *In-Use Locomotive Regulation* promulgated by the California Air Resources Board (CARB).[3] These comments explain why federal law requires that EPA reject the requested authorization.

About the Commenters

As a Distinguished Fellow at The Heritage Foundation, Steven G. Bradbury frequently addresses public policy questions involving proposed regulatory actions by EPA and other federal agencies, including through published articles, congressional testimony, television and radio spots, and the filing of formal comments. Before joining Heritage, Mr. Bradbury served under President Trump and Secretary of Transportation Elaine L. Chao as the Senate-confirmed General Counsel of the U.S. Department of Transportation, as the Acting Deputy Secretary of Transportation (by designation of the President), and briefly as the Acting Secretary of Transportation. Previously, during the administration of George W. Bush, he served as the Acting Assistant Attorney General and Principal Deputy Assistant Attorney General for the Office of Legal Counsel in the U.S. Department of Justice.

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[1] 89 FR 14,484 (Feb. 27, 2024), https://www.govinfo.gov/content/pkg/FR-2024-02-27/pdf/2024-03955.pdf.

[2] 42 U.S.C. § 7543, available at https://www.law.cornell.edu/uscode/text/42/7543.

[3] CARB, Final Regulation Order, *In-Use Locomotive Regulation*, approved Oct. 27, 2023 (to be codified at 13 California Code of Regulations (CCR) § 2478), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/fro2.pdf; *see* Letter from Steven S. Cliff, Executive Officer, CARB, to Hon. Michael S. Regan, Administrator, EPA, re *Request for Authorization Action Pursuant to Clean Air Act Section 209(e)(2) [for] California's Non-Road Program, including the In-Use Locomotive Regulation*, Nov. 7, 2023, https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/authorization.pdf; CARB, *Clean Air Act § 209(e)(2) Authorization Support Document*, Nov. 7, 2023, https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/authorizationsdoc.pdf.

Mr. Bradbury is submitting these comments in his personal capacity, and the views expressed here should not be construed as representing the official position of The Heritage Foundation.

The Washington Legal Foundation, or WLF, is an independent, nonpartisan 501(c)(3) organization based in Washington, D.C., with supporters nationwide. WLF defends free enterprise, individual rights, limited government, and the rule of law. In support of those values, WLF regularly takes positions on legal matters and policy issues, including by filing comments in agency regulatory proceedings and participating in litigation as an *amicus curiae*.

Introduction

EPA must deny California's request. Despite its deceptive title as a regulation of locomotive "use," CARB's rule would require rail operators in California to purchase or lease new locomotives or locomotive engines that meet CARB's emissions limits. Under Supreme Court precedent, that is a regulation relating to emissions controls for new locomotives and engines and therefore cannot be authorized by EPA under the plain language of section 209 of the Clean Air Act.

CARB's rule is also entirely barred by the ICC Termination Act because it would directly affect the management of railroads and would impose severe economic burdens on the business of railroads in contravention of Congress's comprehensive system of federal regulation. And it is partially barred to the extent it trenches on the federal government's exclusive responsibility for the safety of railroad equipment and operations. Although EPA is not the agency empowered to regulate the economics or safety of railroads, EPA cannot properly ignore these obviously germane preemptive mandates from Congress when considering CARB's request.

Background on CARB's Locomotive Rule

CARB's *In-Use Locomotive Regulation* would govern the commercial operation of most locomotives in California, including freight line-haul locomotives (powerful engines used by railroads to pull freight trains), passenger locomotives (which propel passenger trains and provide the electrical power needed for their railcars), switch locomotives (smaller engines used by railroads to move railcars and assemble trains), and industrial locomotives (used by companies to move their own goods and materials without offering rail service to other companies or passengers).[4]

[4] *See* 13 CCR §§ 2478.1 (applicability), 2478.2 (exemptions), and 2478.3 (definitions).

Restrictions on Locomotive Operations

The central provision in the rule would impose restrictive "In-Use Operational Requirements" on locomotive usage.[5] Beginning in 2030, the rule would ban the use of most locomotives that are more than 23 years old, as measured from the assembly date of the locomotive's original engine.[6] After January 1, 2030, all new passenger, switch, and industrial locomotives or any such locomotives that exceed the 23-year age limit could be operated in California only in a "zero-emission" mode—meaning that none of the locomotive's propulsion systems could generate any pollutants or any carbon dioxide whatsoever during operation (which would theoretically be possible, for example, if the locomotive were powered at all times entirely by electricity).[7] For freight line-haul locomotives, the same prohibition and zero-emission requirement would begin on January 1, 2035.[8]

This hyperaggressive schedule for the forced phaseout of diesel-powered locomotives is based on CARB's general review of different manufacturers' research and development (R&D) programs and published literature describing (with rosy optimism) the potential for developing viable new zero-emission propulsion technologies for rail systems.[9] Nothing suggests that CARB has made its own in-depth investigation into the safety or practical utility of these new technologies in real-world operations.[10]

One thing is certain: CARB's operational restrictions on locomotive usage are all designed to force rail operators to purchase or lease new locomotive systems capable of operating with zero emissions. These requirements will impose enormous practical and

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[5] *See id.* § 2478.5.

[6] *Id*. § 2478.5(a); *see id.* § 2478.3 (definition of "Original Engine Build Date"). If the locomotive's engine was remanufactured before 2030 to meet EPA's Tier 4 emissions standards, then the 23-year age limit would be measured from the date of remanufacture. *Id.* § 2478.5(a)(1); *see id*. § 2478.3 (definition of "Cleaner Locomotive"). Under EPA's current rules, Tier 4 standards apply to locomotives originally built after 2014. *See* 40 CFR § 1033.101.

[7] 13 CCR § 2478.5(b); *see id*. § 2478.3 (definitions of "Zero Emission" locomotive operations).

[8] *Id*. § 2478.5(c).

[9] *See* CARB, *Technology Feasibility Assessment for the Proposed In-Use Locomotive Regulation* (Sept. 20, 2022), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/appf.pdf; CARB, *Second Notice of Public Availability of Modified Text and Availability of Additional Documents and Information—In-Use Locomotive Regulation* 8–9 (Aug. 8, 2023), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/2nd15daynotice1.pdf (listing additional articles on zero-emission locomotive technologies relied upon by CARB).

[10] Evidently aware that the projected timeline could well prove unworkable, CARB has directed its staff to undertake future "assessments" of progress in locomotive R&D and advise whether the deadlines "need to be adjusted forward or backward in time." 13 CCR §§ 2478.5(b)(1) & (c)(1). Given the track record of this rulemaking so far, however, it is likely these staff assessments will also be based on little more than an updated literature search.

financial burdens on the Nation's rail network and on the entire economy and consumer interests that depend on it.

America's rail system functions as a single integrated national network. No railroad operates in isolation: The entire system depends on extensive overlapping operations from coast to coast with shared use of tracks, locomotives, and rail stock. It is not practicable for railroads to switch out their locomotives when they cross state lines or move onto the tracks of another railroad. At any given time, somewhere between 5 percent and 10 percent of the freight line-haul locomotives operated by the six Class I railroads are owned or leased by another railroad. In a typical month, a single freight locomotive may traverse the lines of several railroads and visit most regions of the country.

Given this reality, CARB acknowledges that its rule will force railroads operating in California—including the two Class I carriers with extensive California operations, BNSF Railway and Union Pacific Railroad—to replace their entire fleets of locomotives nationwide.[11] Indeed, that would seem to be the precise goal behind the rule, which is aimed at affecting global climate change, not merely improving local air quality.

By CARB's own estimates, the net cost for BNSF and Union Pacific to transition their national fleets of line-haul locomotives plus their California switch locomotives to zero-emission technologies by 2050 will exceed $86 billion.[12] Within California alone, CARB estimates that the rule will impose $16 billion in direct regulatory costs on locomotive operators (net of diesel fuel savings), including more than $6 billion each for BNSF and Union Pacific.[13] CARB has speculated that the Class I carriers will be able to pass these enormous costs on to their customers "across the nation," but it concedes that the smaller short line railroads in California, which have narrower operating margins and face especially aggressive competition from local truckers, may be unable to absorb the costs, so "it is possible" (read guaranteed) that some smaller railroads "would be eliminated."[14]

As big as they are, these cost estimates ignore the rule's safety implications or the broader economic impact this regulation will have on railroad customers and the market sectors, supply chains, and families across America that rely on efficient and economical rail transportation.

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[11] CARB, *Staff Report: Initial Statement of Reasons* 177 (Sept. 20, 2022), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/isor.pdf.

[12] *See* CARB, *Standardized Regulatory Impact Assessment* 88–90 (May 26, 2022), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/appb.pdf.

[13] *See id.* at 86–87, 90–94.

[14] *Id.* at 143.

Railroads account for about 40 percent of America's domestic freight carriage, and, despite the potential for terrible disasters like the hazardous train derailment in East Palestine, Ohio, rail still offers the safest and most fuel-efficient mode of surface transportation.[15] The main competition to freight railroads is commercial trucking, and if the costs of rail service spike as a result of CARB's rule, more freight carriage will shift to trucks.[16]

The rail industry submitted extensive comments to CARB on all these considerations, but the agency largely dismissed the warnings.[17]

Spending Account Requirements

The rule forces industry to fund the acquisition of new locomotives and locomotive engines needed to achieve the intended technological transformation by requiring locomotive operators to make large annual deposits of cash, starting on July 1, 2026, into so-called "spending accounts."[18] From 2030 on, these accounts could be used only for the purchase or lease of zero-emission locomotives and associated zero-emission rail equipment.[19] The amount of money each operator must deposit into its spending account in a given year would be based on the total emissions generated by its locomotive operations in California during the previous calendar year, and credits could be claimed for the actual deployment in California of zero-emission rail systems.[20]

BNSF and Union Pacific have estimated that they will each have to set aside $700 million to $800 million *per year* to meet this spending account obligation, and California's many smaller short line and regional railroads have estimated that they will be required to divert annual amounts ranging from several hundred thousand dollars to $5 million for this

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[15] *See* Association of American Railroads (AAR), *U.S. Freight Railroads: Congress Fact Sheet* (Apr. 2023), https://www.aar.org/wp-content/uploads/2023/01/AAR-Railroad-101-Freight-Railroads-2023-Congress-Fact-Sheet.pdf.

[16] Besides its locomotive rule, CARB plans to impose zero-emission requirements on some (but not all) heavy-duty truck operations in California through its proposed *Advanced Clean Fleets Regulation* and has also applied to EPA for a waiver under section 209 of the Clean Air Act to enforce those requirements. *See* Steven G. Bradbury, *California's Ruinous (and Unlawful) Assault on America's Trucking Industry*, Heritage Foundation Legal Memorandum (Feb. 13, 2024), https://www.heritage.org/environment/report/californias-ruinous-and-unlawful-assault-americas-trucking-industry.

[17] *See* CARB, *Response to Comments on Draft Environmental Analysis: In-Use Locomotive Regulation* (Apr. 14, 2023), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/locomotive_rtc.pdf.

[18] 13 CCR § 2478.4.

[19] *Id*. § 2478.4(d). Prior to 2030, they could also be used for the purchase or lease of locomotives meeting EPA's strictest Tier 4 emissions standards. *Id.*

[20] *See id*. §§ 2478.4(f) & (g).

purpose.[21] Even for those railroads that can afford this annual financial obligation, the diversion of such sizable cashflows each year will necessarily come at the expense of investments in the safety and improved efficiency of their rail operations and, where consistent with competitive pressures, will drive up the costs of their services for customers.[22]

Alternative Compliance and Alternative Fleet Milestone Options

The locomotive rule includes two alternative ways for operators to comply without having to meet the spending account obligation and operational restrictions. The first is the "Alternative Compliance Plan" option,[23] which would allow an operator to choose its own measures for reducing locomotive emissions, provided it shows to CARB's satisfaction that those measures will achieve emissions reductions "equivalent to or greater than" what it would achieve through strict implementation of the spending account and operating requirements.[24]

What goes unsaid is that under this option, if an operator found it impracticable to make the capital investments needed to satisfy the rule's operational requirements, it could always choose to meet the required emissions reductions by cutting back on its operations or completely ending locomotive operations in California. Such a reduction or cessation in operations would be similar to the alternatives EPA offered coal-fired power plant operators for complying with EPA's industry-transforming Clean Power Plan, which the Supreme Court struck down under the Major Questions Doctrine in *West Virginia v. EPA*.[25]

The other alternative path offered by CARB is the "Alternative Fleet Milestone Option," which would require the operator to commit to transition all its California operations to 100-percent zero-emission locomotives by 2047 in four prescribed phases.[26] Once approved to use this option, the operator would be bound to this transition schedule "in perpetuity," with no possible opt out—even if the milestones proved unachievable. Because there is no realistic possibility that suitable new zero-emission freight line-haul

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[21] *See* Complaint, *AAR & American Short Line & Regional Railroad Ass'n v. Randolph*, Case No. 2:23-cv-00582 (E.D. Cal. filed June 16, 2023) ¶ 46, at p. 13, available at https://climatecasechart.com/wp-content/uploads/case-documents/2023/20230616_docket-223-cv-01154_complaint.pdf.

[22] Section 2478.6 of the rule would provide for temporary extensions of the compliance requirements but only in very limited circumstances. It would also allow for extensions of deadlines for up to one year if the delivery or availability of necessary equipment purchased or leased by the railroad is unavoidably delayed. *See* 13 CCR § 2478.6.

[23] *Id.* § 2478.7.

[24] *See id.* § 2478.7(b).

[25] 597 U.S. 697 (2022), available at https://www.oyez.org/cases/2021/20-1530.

[26] *See* 13 CCR § 2478.8.

locomotives will actually be available on the prescribed timeline, CARB recognizes that this option would only be used, if at all, by passenger railroads.[27]

Other Requirements

Separately, the rule would impose locomotive idling restrictions,[28] administrative fee requirements,[29] and extensive reporting and recordkeeping obligations on all locomotive operators in California.[30] The idling restrictions would apply to diesel-powered locomotives equipped with an automatic engine stop/start device and would prohibit operators from parking the locomotive in a stationary position for more than 30 minutes without shutting down the engine, subject to narrow exceptions.[31] These idling restrictions are modeled on the idling controls EPA requires original equipment manufacturers to build into new locomotives,[32] but CARB's restrictions would apply to railroads and other locomotive operators, not to manufacturers. The rule would also prohibit operators from removing or disabling the engine stop/start device.[33]

Discussion

A premise of American federalism is that each State is free to experiment with different solutions to issues of local concern. But the benefits of federalism disappear when one State's regulations override the policy judgments of other States or of Congress and threaten to dictate the market conditions and commercial opportunities available to citizens throughout the Nation. That is exactly what would happen if CARB's *In-Use Locomotive Regulation* were implemented.

Because railroads are the paradigmatic instrumentality of interstate commerce, Congress has opted for comprehensive federal regulation of rail operations—environmental, economic, and safety—through three different statutory regimes, each bolstered by a sweeping prohibition on state rules. None allows for waivers or other exceptions from preemption. CARB's *In-Use Locomotive Regulation* is plainly barred by these federal prohibitions, and EPA lacks authority to approve the request.

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[27] *See* CARB, *Notice of Public Availability of Modified Text and Availability of Additional Documents and Information—Proposed In-Use Locomotive Regulation* 8 (Mar. 1, 2023), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/15daynotice.pdf.

[28] 13 CCR § 2478.9.

[29] *See id.* § 2478.12.

[30] *Id.* § 2478.10.

[31] *See id.* § 2478.9(a).

[32] 40 CFR § 1033.115(g).

[33] *See* 13 CCR § 2478.9(b) & (c).

The Clean Air Act Prohibits EPA from Authorizing CARB's Rule.

Under the Clean Air Act, EPA is the only agency, federal or state, that may set emissions standards for new and remanufactured locomotives and locomotive engines. All States, including California, are expressly preempted from imposing "any standard or other requirement relating to the control of" such emissions.[34] Unlike with automobiles, EPA is not allowed to grant any waiver from this preemption provision, but, if certain standards are met, it may authorize California to regulate emissions from *existing* locomotives and engines.[35]

Because CARB's locomotive rule would impose "standard[s] or other requirement[s] relating to the control of emissions from . . . *new locomotives and new [locomotive] engines*" in violation of section 209(e)(1) of the Clean Air Act,[36] EPA cannot grant an authorization under section 209(e)(2).[37]

All substantive provisions of CARB's rule, including the operational restrictions, the spending account obligations, and the alternative compliance options are designed to force rail operators to replace diesel-powered engines *with new locomotives that produce zero emissions of specified pollutants*. Because the purpose and intended effect of these requirements are to ensure that all new locomotives purchased or leased for use in California (or for use anywhere by the Class I railroads) will satisfy CARB's preferred emissions standard (zero emissions), they undeniably "relat[e] to the control of emissions from" new locomotives and fall within the scope of Clean Air Act preemption and are not permitted.[38]

It does not matter that CARB's mandates are directed at the *use* of locomotives, rather than their *manufacture*. Nor does it matter that EPA has recently redefined the preemption period to end with the transfer of a new locomotive to the purchaser.[39] As the Supreme Court held in *Engine Manufacturers Association v. South Coast Air Quality Management District*, "A command . . . that certain purchasers may buy only vehicles with particular

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[34] *See* 42 U.S.C. § 7547(a)(5) (granting EPA authority to set emissions standards for "new locomotives and new engines used in locomotives"); *id.* § 7543(e)(1) (preempting all state regulation "relating to the control of emissions from . . . [n]ew locomotives or new engines used in locomotives"); 40 CFR § 1033.901 (providing that when a locomotive or engine is "remanufactured," it "becomes new" for purposes of emissions controls and therefore preemption); *id.* § 1074.10(b) (confirming scope of preemption).

[35] *See* 42 U.S.C. § 7543(e)(2).

[36] 42 U.S.C. § 7543(e)(1).

[37] *See id.* § 7543(e)(2).

[38] *Ibid.*

[39] *See* EPA, Final Rule, *Locomotives and Locomotive Engines; Preemption of State and Local Regulations*, 88 FR 77,004 (Nov. 8, 2023), https://www.govinfo.gov/content/pkg/FR-2023-11-08/pdf/2023-24513.pdf.

emission characteristics is as much [a prohibited standard under section 209] . . . as a command . . . that a certain percentage of a manufacturer's sales volume must consist of such vehicles."[40]

The Court reasoned that a state emissions standard directed for enforcement purposes at the purchasers or users of a new vehicle falls within the preemptive scope of section 209 just as surely as does a standard enforced against the manufacturers. The manufacturers' right to sell vehicles that satisfy federal emissions standards would be "meaningless" if state law could prohibit operators from buying or using them.[41] Either way, the need for new vehicles that satisfy the operational requirements imposed by the State on users "would effectively coerce manufacturers into meeting the artificially created demand."[42]

Thus, as the Supreme Court has held, even though CARB's locomotive rule would impose direct obligations only on rail operators, because the rule is aimed at creating artificial demand for new zero-emission locomotives, it is "effectively" the same as a production mandate imposed on manufacturers for preemption purposes.[43]

Because the rule is barred by section 209, EPA lacks authority to grant the requested authorization.

CARB's Rule Is Barred by the ICC Termination Act.

The *In-Use Locomotive Regulation* is separately preempted by the Interstate Commerce Commission Termination Act, or ICCTA. The ICCTA gives the Surface Transportation Board (STB) sole regulatory authority over the economics and business practices of railroads,[44] and it preempts state regulations that "have the effect of managing or governing rail transportation" or "unreasonably burdening or interfering with" railroad operations.[45]

Every part of CARB's locomotive rule violates the ICCTA—the requirements to retire older locomotives from service and transition to new locomotive technologies, the restrictions on locomotive emissions and usage, the spending account obligations, the idling restrictions, the administrative fees, and even the reporting and recordkeeping obli-

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[40] 541 U.S. 246, 255 (2004), available at https://www.oyez.org/cases/2003/02-1343.

[41] *Ibid.*

[42] *Id.* at 256.

[43] *See ibid.*

[44] *See* 49 U.S.C. § 10501 (setting forth STB's exclusive jurisdiction over rail "transportation"); *see id.* § 10102(9) (defining rail "transportation").

[45] *Delaware v. STB*, 859 F.3d 16, 19 (D.C. Cir. 2017) (internal quotation marks removed); *see* 49 U.S.C. § 10501(b).

gations. They would all directly affect the management of railroads and impose substantial (in fact, transformational) burdens on their business operations.

If CARB could impose these requirements, then every other State could put different restrictions on railroads, defeating Congress's plan for uniform national regulation. Indeed, CARB's legal staff previously recognized that the ICCTA shields railroads from direct state regulation of locomotive emissions and usage.[46] Now, with its locomotive rule, CARB is deliberately attempting to defy federal law under orders from California Governor Gavin Newsom.[47]

In exercising its authority under section 209, EPA cannot ignore the conclusion that the ICCTA preempts CARB's rule. Although EPA does not regulate the economics and business practices of railroads, it would be arbitrary and capricious for EPA to disregard the ICCTA's sweeping preemption mandate when ruling on California's authorization request. CARB's rule could never hope to be "at least as protective of public health and welfare" as federal locomotive emissions standards within the meaning of section 209(e)(2)(A)[48] if the rule is clearly preempted by federal law.

At a minimum, EPA should conclude that CARB itself acted arbitrarily and capriciously in adopting its *In-Use Locomotive Regulation* contrary to what CARB's own legal staff had previously recognized to be the ICCTA's preemptive bar. Because CARB failed to address and grapple with, let alone act in accordance with, the ICCTA's broad preemption provision when it finalized the rule, "the determination of California" that CARB's rule could ever be enforced as framed and therefore "will be, in the aggregate, at least as protective" as federal law is certainly "arbitrary and capricious" in violation of section 209(e)(2)(A)(i).[49] For that reason alone, EPA must reject the request.

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[46] *See* CARB Office of Legal Affairs, *June 2005 ARB/Railroad Statewide Agreement on Particulate Emissions from Rail Yards—Public Comments Raising Legal Issues and Agency Responses* 9–29 (Oct. 24, 2005), https://ww2.arb.ca.gov/sites/default/files/2020-06/2005%20MOU%20Remediated%2003102020.pdf (discussing case law and STB precedents under the ICCTA and recognizing a substantial likelihood that state environmental restrictions directed at rail operations, including emissions limits, idling requirements, and others, would be preempted).

[47] *See* Gavin Newsom, Governor of California, Executive Order No. N-79-20 (Sept. 23, 2020), § 2(c), available at https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf (directing CARB to develop proposals "to achieve 100 percent zero-emission from off-road vehicles and equipment operations in the State by 2035"); CARB Staff Report, Initial Statement of Reasons (Sept. 20, 2022), p. 64 (explaining that the proposed locomotive rule is required to support the directive in Executive Order N-79-20).

[48] 42 U.S.C. § 7543(e)(2)(A).

[49] *See id.* §§ 7543(e)(2)(A) & 7543(e)(2)(A)(i) (providing that "No such authorization shall be granted if the Administrator finds that . . . the determination of California is arbitrary and capricious").

The Locomotive Inspection Act Preempts Part of CARB's Rule.

Finally, the idling restrictions in CARB's locomotive rule are also preempted by the federal Locomotive Inspection Act, which governs the safety of all railroad equipment and operations. That statute provides that railroads may only use locomotives and other pieces of rail equipment that are "in proper condition and safe to operate" as determined in accordance with regulations issued by the Secretary of Transportation.[50] The Supreme Court has held that this law "occup[ies] the entire field of regulating locomotive equipment" and prohibits any state rules that would "require railroads to equip their locomotives with parts meeting state-imposed specifications."[51] The idling restrictions in CARB's rule fall within the scope of this prohibition, and for that reason, too, cannot be properly authorized by EPA.

Conclusion

For all these reasons, we respectfully urge EPA to deny the requested authorization.

[50] *See* 49 U.S.C. § 20701. This regulatory authority is exercised by the Federal Railroad Administration.

[51] *Kurns v. Railroad Friction Prods. Corp.*, 565 U.S. 625, 631, 636 (2012) (internal quotation marks removed).