# United States Senate

WASHINGTON, DC 20510

April 16, 2024

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

Dear Administrator Regan:

On April 27, 2023, the California Air Resources Board (CARB), the air regulator for the State of California, finalized a regulation aimed at reducing emissions in the rail sector. The In-Use Locomotive Regulation (the "Regulation") would impose significant operational and financial burdens on freight railroads operating in California, including both Class I and short line railroads. In order to go into full effect, the Regulation requires the EPA to issue a waiver pursuant to section 209 of the Clean Air Act (CAA) (42 U.S.C. 7543(e)). As the EPA considers this waiver request from CARB, we request that the EPA fully considers the limitations on the authority granted to it under the Clean Air Act and the broad impacts that such an approval would have on rail operations in California and across the United States, Canada, and Mexico.

As you are aware, beginning in 2030, the Regulation prohibits the operation in California of locomotives more than 23 years after its original manufacture date unless those locomotives operate in a zero-emissions configuration - technology that is not commercially available today. The Regulation also requires railroads to open and deposit funds into 'spending accounts' based on the emissions and energy consumption of each non-zero-emissions locomotive operating in California. These funds could only be utilized by the railroads to purchase these new, zero- emissions locomotives or to invest in the requisite infrastructure and demonstration projects associated with zero-emissions locomotives. The spending account provision of the Regulation would result in onerous financial constraints on railroads in California, with some estimates suggesting that the two Class I railroads with operations in California would each have to deposit approximately $800 million annually into such accounts. Finally, the Regulation imposes strict idling requirements on the railroads as well as stringent recordkeeping requirements by mandating that every instance of idling longer than thirty minutes be reported along with the reason for idling that length of time.

The national rail network is an interconnected system of over 144,000 track miles that spans the United States, Canada, and Mexico. It is for that very reason that Congress has passed laws which unequivocally state that, as an intrinsically interstate form of transportation, the rail industry must be regulated at the federal level and not subjected to a patchwork of varying state and local regulations as trains move goods across the continent. Attempts to create state-specific operational rules, such as those envisioned by CARB, would jeopardize the interoperability of the national network and would threaten the overall health of the supply chain.

CARB has stated its goal is to force the railroads to convert their national fleets to the currently unavailable and untested zero-emission locomotives. The CAA does not grant EPA the authority to allow states to mandate specifications for the design and manufacture of locomotives – which is precisely what CARB seeks in its authorization request.

CARB's authorization request, therefore, violates the restrictions laid out in the CAA. Section 209(e)(1) of the CAA clearly prohibits California or any other state from attempting to regulate emissions from new engines used in locomotives. Despite EPA's misguided effort last year to remove regulatory preemption language, EPA is bound by the statutory language in section 209 when determining whether to issue a waiver. By forcing railroads to adopt new zero-emissions locomotives for their operations in California, CARB clearly goes beyond the parameters of section 209(e)(2) by attempting to change the fleet nationwide to new, zero-emissions locomotives.

Rail transportation remains the most fuel-efficient mode of transporting freight by land. A single locomotive can move one ton of freight 500 miles on a single gallon of fuel and can pull the equivalent freight of nearly 100 trucks. Railroads represent less than two percent of all transportation-sector greenhouse gas emissions, less than one tenth of the greenhouse gas emissions from the tucking sector. Approval of CARB's authorization request could inadvertently increase overall emissions by forcing more shippers to utilize trucks as opposed to rail-based transportation.

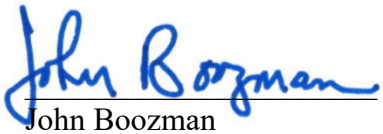
If the EPA were to approve CARB's authorization request, the results would be devastating for the rail industry and, subsequently, the economy as a whole. Under section 209(e)(2), other states would be able to follow California's lead and adopt identical standards, further disrupting the uniform regulatory landscape. In addition, the financial strain the spending account requirement of the Regulation would place on railroads could be multiplied across each other state that chooses to adopt the Regulation. Finally, the EPA's actions could jeopardize the supply chain by forcing railroads to utilize largely unproven technology to power the locomotives. The technology will also need to be evaluated by the Federal Railroad Administration to determine any safety concerns. Although railroads are currently investing in the research and development needed to commercialize zero emissions technology, that technology is years away from commercial viability.

It is for these reasons that we request the EPA carefully consider the environmental, supply chain, and modal shift implications that EPA approving CARB's waiver request would have. The economy depends on the timely, efficient, and predictable movement of goods that is facilitated by the railroads. California has failed to demonstrate the extraordinary circumstances needed to satisfy the requirements of their waiver request. And if the EPA concludes that the Regulation would substantially change the design of future locomotives in use in California and across the country, the EPA must deny the given that EPA has no authority to waive the preemptive provisions of section 209(e)(1).

Sincerely,

Pete Ricketts
United States Senator

Shelley Moore Capito
United States Senator



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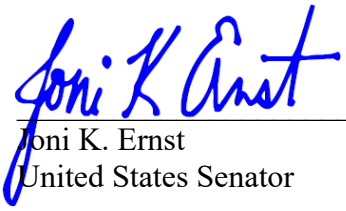

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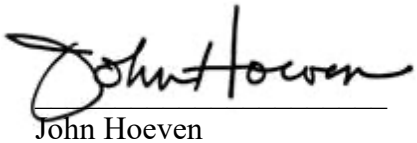

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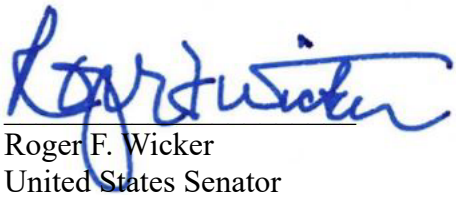

Roger F. Wicker
United States Senator