subject to the limitations of 5 U.S.C. 552a(k)(5); 5 U.S.C. 552a(c)(3); (d); (e)(1), (4)(H); and (f)(2) through (5).

(ii) To the extent that records in EPA 40 and 100 reveal a violation or potential violation of law, then an exemption under 5 U.S.C. 552a(k)(2) is also claimed for these records. EPA 40 and 100 are also exempt under 5 U.S.C. 552a(j)(2).

(5) *Reasons for exemption.* EPA 36, 40, and 100 are exempted from the above provisions of the PA for the following reasons:

* * * * *

[FR Doc. 2023–24233 Filed 11–7–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1074

[EPA–HQ–OAR–2022–0985; FRL–8952.1–01–OAR]

RIN 2060–AW12

Locomotives and Locomotive Engines; Preemption of State and Local Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing revisions to its regulations addressing preemption of State and local regulation of locomotives and engines used in locomotives. This rule implements a policy change to no longer categorically preempt certain State regulations of non-new locomotives and engines, aligning with the plain text of the Clean Air Act (CAA), and better achieving the legislative intent of providing for exclusive Federal regulation of new locomotives and new locomotive engines while preserving the ability of California and other States to adopt and enforce certain State standards regulating non-new locomotives and engines.

DATES: This final rule is effective on December 8, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2022–0985. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Nelson, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4278; email address: *nelson.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Does this action apply to me?

This action does not directly apply to any regulated industry classified by the North American Industry Classification System (NAICS) Association.[1] This action relates to State and local governments. The revisions we are finalizing do not impose any requirements that State and local governments must meet, but rather implement the Clean Air Act preemption provisions for locomotives. To determine whether your entity could be impacted by this action, you should carefully examine the applicability criteria found in 40 CFR part 1074. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

What action is the Agency taking?

The Environmental Protection Agency (EPA) is finalizing revisions to its regulations addressing preemption of State regulation of new locomotives and new engines used in locomotives, to align with language in the Clean Air Act.

What is the Agency's authority for taking this action?

Clean Air Act (CAA) section 209(e)(2)(B), 42 U.S.C. 7543(e)(2)(B), requires EPA to promulgate regulations implementing section 209(e) of the Act. CAA section 209(e)(1) addresses the prohibition of State standards regarding certain classes of new nonroad engines or new nonroad vehicles including new locomotives and new engines used in locomotives.[2] CAA section 209(e)(2)(A) specifies the criteria relevant to EPA's evaluation of California authorization requests (requests for a waiver of CAA preemption) for standards relating to the control of emissions from nonroad engines or nonroad vehicles other than those prohibited under section 209(e)(1). EPA's regulations implementing these provisions for locomotives and locomotive engines were first adopted in 1998 at 40 CFR part 85 and transcribed in 2008 at 40 CFR part 1074.[3]

I. Summary

As part of its 1998 rule finalizing Emission Standards for Locomotives and Locomotive Engines at 40 CFR part 92, which applied to new locomotives and new engines used in locomotives, EPA also adopted regulations in 40 CFR part 85 defining a broad preemption of certain State and local controls of new or other locomotives and engines used in locomotives, which we determined to be appropriate based on our understanding of the information available at the time. Recently, there has been interest in obtaining greater emissions reductions from the locomotive sector, including possibly adopting programs to achieve greater emission reductions from non-new locomotives that are not required by EPA's emission standards for new locomotives and engines under CAA section 213(a)(5).[4] On April 27, 2023, EPA published a notice of proposed rulemaking which, among other things, proposed revisions to our locomotive preemption regulations.[5] Specifically, we proposed to delete 40 CFR 1074.12(b), which preempted the State control of non-new locomotives for certain categories of State control measures for a period of 133 percent of the useful life of a new locomotive or engine,[6] along with conforming edits.

[1] NAICS Association. NAICS & SIC Identification Tools. Available online: *https://www.naics.com/search.*

[2] Section 209(e) pertains to the inability of State and political subdivisions to adopt and enforce standards and other requirements for certain nonroad engines and nonroad vehicles. EPA's reference to ''State'' herein includes political subdivisions unless otherwise noted.

[3] *See* Emission Standards for Locomotives and Locomotive Engines, Final Rule, 63 FR 18978, 18994 (April 16, 1998). *See also,* Control of Emissions From Nonroad Spark-Ignition Engines and Equipment, 73 FR 59034 (Oct. 8, 2008); *See also* Control of Air Pollution: Emission Standards for New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts; Preemption of State Regulation for Nonroad Engine and Vehicle Standards; Amendments to Rules, 62 FR 67733, 67734–67735 (December 30, 1997). *See also* Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards, July 20, 1994 (59 FR 36969).

[4] Throughout this document, references to the regulation of locomotives generally refer the regulation of both locomotives and engines used in locomotives.

[5] *See,* Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles-Phase 3; Proposed Rule, April 27, 2023, 88 FR 25926.

[6] Including but not limited to emission standards, mandatory fleet average standards, certification requirements, retrofit and aftermarket equipment

Because this proposal was included in EPA's larger Phase 3 Heavy-Duty Greenhouse Gas notice of proposed rulemaking, it shared and continues to share a docket ID number with that proposal. We have decided to finalize this locomotive preemption portion of the proposal as a separate final rule, while preserving our discretion to take separate final action on all other aspects of the proposal at a future date.

In this final rule, EPA is adopting the revisions to part 1074 as proposed and with no further adjustments. We received overwhelming support from commenters, as well as a few adverse comments. In this preamble, we have highlighted only a few of those comments to explain the basis of EPA's final locomotive preemption regulation. EPA has prepared a comprehensive Response to Comments document, in which we respond to all significant comments we received during the public comment period on the issues addressed in this rule.[7]

II. Background

The CAA Amendments of 1990 called on EPA to adopt emission standards for new locomotives and new locomotive engines that achieve the greatest degree of emission reduction achievable through the application of technology which EPA determines will be available for the locomotives or engines, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to associated noise, energy, and safety factors. CAA section 213(a)(5), 42 U.S.C. 7547(a)(5).[8] These 1990 amendments also added CAA section 209(e) which sets out provisions that prohibit States or any political subdivision thereof from regulating certain nonroad engines or vehicles, provisions that set forth the requirement that EPA must authorize California standards and other requirements relating to the control of emissions from other nonroad vehicles and engines unless specified criteria are found by EPA, and provisions that set forth how States other than California can adopt California nonroad vehicle or engine standards if certain criteria are met. Section 209(e)(2) directed the Administrator of EPA to issue regulations to implement section 209(e).

In April of 1998, EPA adopted its first-ever regulations addressing air pollutant emissions from new locomotives and new locomotive engines (including freshly built and remanufactured) under CAA section 213(a)(5), 42 U.S.C. 7547(a)(5).[9] As part of the 1998 final rule, EPA also promulgated regulations designed to codify the nonroad preemption provisions of section 209(e)(1)(B) to clarify the prohibition of any State standard or other requirement relating to the control of emissions from new locomotives or new engines used in locomotives.[10] EPA's rule included a provision that set a period equivalent in length to 133 percent of the regulatory useful life of a new locomotive or engine during which certain categories of control measures are preempted, whether applicable to new or other locomotives or locomotive engines.[11] EPA also adopted regulations to implement the CAA provisions allowing California to request authorization for other State requirements on non-new locomotives and engines used in locomotives not otherwise prohibited.[12]

As we explained in the April 27, 2023, proposed rule to amend part 1074, recent fleet profile data shows that the in-service locomotive fleet continues to be dominated by Tier 2 and earlier locomotives subject to EPA's less stringent emission standards.[13] According to data supporting EPA's 2020 National Emission Inventory, there are 16,787 locomotives in the Class I line-haul fleet.[14] Of these, about 26 percent are Tier 3 or Tier 4 locomotives subject to more stringent emission standards.[15] The other 74 percent are Tier 2 or earlier locomotives, broken down as follows: About 62 percent are remanufactured to the revised remanufacture standards adopted in 2008; 11 percent have not been remanufactured and continue to have the higher emissions of their original certification tier; and a small number, about 1 percent, are unregulated (pre-1973) locomotives. The Class II and III line-haul fleet consists of 3,447 locomotives. Of these, about seven percent are Tier 3 or 4 locomotives. The other 93 percent are Tier 2 or earlier, broken down as follows: About 39 percent of the locomotives are unregulated (pre-1973); 48 percent are Tier 0; and the other six percent are Tier 1 or Tier 2.

In the April 27, 2023, proposal, we noted that there is interest from entities who must develop State implementation plans (SIPs) demonstrating attainment of national ambient air quality standards (NAAQS) in obtaining greater emissions reductions from the locomotive sector, including possibly adopting programs to achieve greater emission reductions from non-new locomotives that are not required by EPA's emissions standards for new locomotives and engines under CAA section 213(a)(5). This interest is related to the large share of older locomotives in the Class I, II, and III railroad fleets and their emissions contribution to ambient concentrations of air pollution that may violate the ozone and particulate matter NAAQS.

Nevertheless, the action taken here to revise our locomotive preemption regulations does not achieve reductions of such emissions. Rather, by aligning with the CAA, it may provide latitude for the development of State approaches to addressing emissions from non-new locomotives and non-new engines used in locomotives that are not required to be reduced by EPA's emissions standards for new locomotives and engines under CAA section 213(a)(5). In enacting the 1990 CAA amendments and section 209(e) for nonroad equipment including non-new locomotives, Congress recognized the unique role and air quality concerns of California and clearly envisioned the

requirements, and non-Federal in-use testing requirements.

[7] Response to Comments: Revisions to Preemption Regulations for Locomotives and Locomotive Engines, EPA–420–R–23–032, available at *https://www.epa.gov/regulations-emissions-vehicles-and-engines/revisions-preemption-regulations-locomotives-and.*

[8] EPA provides this discussion of the Federal locomotive requirements under the CAA for background purposes only. In this rulemaking, EPA did not reopen the Federal locomotive requirements, and any comments on such are beyond the scope of the action and will not be addressed here.

[9] Emission Standards for Locomotives and Locomotive Engines, 63 FR 18978 (April 16, 1998), codified at 40 CFR parts 85, 89 and 92. EPA's locomotive emission regulations were later moved to 40 CFR part 1033. The preemption regulations were later transcribed at 40 CFR 1074.12; see 73 FR 59034 (Oct. 8, 2008).

[10] EPA had previously set out the other nonroad preemption provisions (except for locomotives) in 1994 (59 FR 36969) and revised them in 1997 (62 FR 67733).

[11] See Note 6.

[12] To avoid confusion of the term ''used'' sometimes meaning ''placed or mounted,'' we employ the term ''non-new'' to describe engines that do not meet the definition of ''new'' in § 1074.5.

[13] 2020 National Emissions Inventory Locomotive Methodology Prepared for U.S. Environmental Protection Agency by Eastern Research Group, Inc. (May 19, 2022). *https://gaftp.epa.gov/air/nei/2020/doc/supporting_data/nonpoint/Rail/2020_NEI_Rail_062722.pdf.*

[14] The current classification of railroads adopted by the Surface Transportation Board (STB) in 2021 is based on annual carrier operating revenue, as follows: Class I railroads, greater than $943.9 million; Class II railroads, $42.4 to $943.9 million; Class III railroads less than $42.4 million. See 49 CFR part 1201 (1–1 Classification of Carriers).

[15] EPA took action to set additional emission standards for new locomotives and engines in 2008; see final rule published at 73 FR 37096 (June 30, 2008), codified at 40 CFR part 1033, Control of Emissions of Air Pollution From Locomotive Engines and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder.

potential for California to regulate non-new locomotives. This is plainly shown by the combination of statutory provisions—at CAA sections 213(a)(5), 209(e)(1)(B), and 209(e)(2)(A)—that clearly show that although EPA has exclusive authority to regulate emissions from new locomotives and engines and certain other new nonroad engines and vehicles, California retained the ability to seek authorization to regulate ''other nonroad engines or vehicles,'' including those that are non-new locomotives and locomotive engines. The purpose of EPA's revisions is to effectuate this Congressional intent and the language of the CAA whereby control measures for non-new locomotives must be able to obtain authorization so long as they satisfy the criteria in section 209(e) of the Act.

III. Regulatory Changes in This Final Rule

EPA is finalizing several revisions in 40 CFR part 1074, including §§ 1074.10, 1074.12, and 1074.101, to align EPA's regulations with CAA section 209(e).

In 40 CFR 1074.10, ''Scope of preemption,'' we are revising § 1074.10(b) to contain text that is currently located in § 1074.12(a) and shifting the current text of § 1074.10(b) into a new § 1074.10(c). This is solely a housekeeping measure and does not revise the text contained in current § 1074.12(a); it is only a transcription.

We are deleting 40 CFR 1074.12, ''Scope of preemption-specific provisions for locomotives and locomotive engines,'' in its entirety. The previous text at 40 CFR 1074.12(b) preempted the State control of non-new locomotives for certain categories of State control measures for a period of 133 percent of useful life of a new locomotive or engine.[16] We believe the removal of the explicit period of preemption in § 1074.12(b) as well as the listed categories of State control measures will reflect that not all State regulations addressing non-new locomotives were intended by Congress to be preempted without the possibility of obtaining a waiver of preemption and will align the requirements and effects of the regulation with the plain language of the CAA.

In 40 CFR 1074.101, ''Procedures for California nonroad authorization requests,'' we are finalizing a minor housekeeping edit to paragraph (a) of this section, to refer to the relocated text in § 1074.10(b) that is being moved out of § 1074.12.

[16] See Note 6.

IV. Comments Received and Responses

We received several comments expressing concerns about emissions from non-new locomotives and their impact on communities, especially for areas located along high traffic rail lines and/or in communities with environmental justice concerns. We acknowledge these concerns about the harmful impacts of locomotive emissions on these communities. We received many comments supporting the removal of § 1074.12(b), including from the Environmental Defense Fund, the Moving Forward Network, and the National Association of Clean Air Agencies. We are finalizing the revisions as proposed.

Comments from industry on this topic include concerns from Wabtec that EPA's proposed revisions could take away the stability and predictability of a Federally-uniform regulatory program for new locomotives and engines.[17] We acknowledge the concern, but it is misplaced. Only EPA has the authority to promulgate standards and requirements that apply to new locomotives and new engines used in locomotives, and this rule does nothing to change that exclusive authority. California may not adopt and enforce standards or requirements that apply to new locomotives or new engines used in locomotives, as is plainly prohibited by section 209(e)(1)(B). As EPA noted in the proposal, section 209(e)(2)(A) of the Act requires EPA to authorize California's emission standards for certain nonroad engines and vehicles, including for non-new locomotives and non-new engines used in locomotives, so long as California meets the requirements of that provision. Further, section 209(e)(2)(B) also allows certain States to adopt California's standards so long as they meet the statutory criteria. EPA's final rule aligns the regulation with these clear statutory requirements.

In any case, we do not believe that our action improperly diminishes the regulatory stability referred to by the commenter. The underlying CAA preemption language protects manufacturers from having to juggle compliance with conflicting State and Federal regulations of new locomotives, and only EPA's regulations promulgated under CAA section 213(a)(5) can impose compliance requirements on new locomotives and new engines used in locomotives. There is no possibility, under either the CAA or as a result of EPA's amended preemption regulations, for California or any other State to adopt and enforce different standards or other requirements that would apply to new locomotives or new engines used in locomotives. In addition, EPA's authorization process insulates manufacturers from State-level rules that could significantly affect the design and manufacture of new locomotives or new locomotive engines. Under this final rule, EPA remains obliged to adhere to the statutory authorization criteria in CAA section 209(e)(2). EPA also intends to consider the reasoning of *Allway Taxi* in reviewing any California rules submitted to EPA for authorization pursuant to 40 CFR 1074.101 through 1074.105.[18] A comment received from the Association of American Railroads supports this point, emphasizing that the removal of the categorical preemption of certain types of State regulations that EPA has, to date, deemed likely to significantly affect the design and manufacture of new locomotives or new locomotive engines, does not change the underlying statutory limitation against which EPA would evaluate a future request.[19] Specifically, the statutory limitation referenced in that comment is the one at CAA section 209(e)(2)(A), which requires the Administrator, after notice and opportunity for public hearing, to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such nonroad vehicles or engines not preempted by CAA section 209(e)(1) if California

[17] See comment from Westinghouse Air Brake Technologies Corporation at EPA–HQ–OAR–2022–0985–1580–A1, pp. 8–9.

[18] EPA notes, as set out in the notice of proposed rulemaking, that in implementing this authorization authority it also expects to continue to consider the reasoning of *Allway Taxi* v. *City of New York,* 340 F. Supp. 1120 (S.D.N.Y 1972), *aff 'd,* 468 F.2d 624 (2d Cir. 1972): ''We do not say that a state or locality is free to impose its own emission control standards the moment after a new car is bought and registered. That would be an obvious circumvention of the Clean Air Act and would defeat the congressional purpose of preventing obstruction to interstate commerce. The preemption sections, however, do not preclude a state or locality from imposing its own exhaust emission control standards upon the resale or reregistration of the automobile. Nor do they preclude a locality from setting its own standards for the licensing of vehicles for commercial use within that locality. Such regulations would cause only minimal interference with interstate commerce, since they would be directed primarily to intrastate activities and the burden of compliance would be on individual owners and not on manufacturers and distributors.'' See also, *Engine Manufacturers Ass'n* v. *EPA,* 88 F.3d 1075, 1086 & n. 39 (D.C. Cir. 1996) (endorsing *Allway Taxi* rationale); *Engine Manufacturers Ass'n* v. *South Coast Air Quality Management Dist.,* 541 U.S. 246, 254 (2004) (holding that Section 209(a) preempts certain State rules that would pressure manufacturers to change the design of new engines even when ''not enforced through manufacturer-directed regulation'').

[19] See comment from the Association of American Railroads & American Short Line and Regional Railroad Association at EPA–HQ–OAR–2022–0985–1492–A1, p. 4–5.

determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. Further, 209(e)(2)(A) states EPA shall not grant such authorization if it finds that (1) the protectiveness determination of California is arbitrary and capricious; (2) California does not need such standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with CAA section 209.

We also received an adverse comment on this topic from the American Free Enterprise Chamber of Commerce, claiming that the proposal did not provide a compelling policy reason for deviating from the previous approach to Federal preemption of State regulation of locomotives and engines, whether new or other locomotives and engines.[20] While EPA is making a policy change to no longer categorically preempt State regulation of non-new locomotives and engines, this final rule aligns with the plain text of the CAA, is well supported by the factual record including developments since the 1998 final rule, and better achieves the legislative intent of providing for exclusive Federal regulation of new locomotives and new locomotive engines while preserving the ability of obtaining a waiver of preemption for regulating non-new locomotives and engines.[21] As we explain in section II of this document, the final rule aligns EPA's regulations with the clear text of sections 213(a)(5), 209(e)(1)(B) and 209(e)(2)(A) of the CAA. While the agency has discretion to establish further criteria for authorizations by regulation beyond what are specified in the statute, as we did in the 1998 rule, the statute does not require this result.[22] Rather, the statute at section 209(e)(2) establishes a process where EPA authorizes, on a case-by-case basis, certain California nonroad engine and vehicle standards, including those applicable to non-new locomotives, so long as they satisfy the criteria in section 209(e)(2)(A). The final rule faithfully implements this statutory process for non-new locomotives and engines.

Moreover, EPA is making new factual findings that support the change in policy. As explained in the April 27, 2023, proposal and further explained in the Response to Comments document, we have identified certain developments that indicate that the categorical exclusion of some of the specified standards and requirements for 133 percent of the useful life period of new locomotives or engines is no longer in all cases appropriate. We identified illustrative emissions control technologies which have been voluntarily applied to non-new locomotives and prima facie would not appear to significantly affect the design or manufacture of new locomotives.[23] In light of the changed factual record, we believe that the 1998 rule's categorical bar on certain types of controls for non-new locomotives is no longer appropriate, and that instead, the agency ought to evaluate on a case-by-case basis whether to authorize standards involving such controls for non-new locomotives.

Finally, as we explained in the proposal, this rule better achieves Congress's intent to differentiate between Federal regulation of new locomotives and possible State regulation of non-new locomotives. Although it is clear from the plain language of CAA sections 213(a)(5) and 209(e)(1)(B) that only EPA is to regulate new locomotives and engines, section 209(e)(2) contemplates that California may adopt certain standards for non-new locomotives to address its air quality problems, and that other States may follow California's lead. Throughout section 209, Congress contemplated that authorizing California's ''pioneering'' regulatory efforts would create a State-level laboratory for innovation, driving experimentation in ''new control systems and designs'' that would benefit the nation as a whole.[24] Although Congress, in section 209(e)(1)(B), precluded California's ability to regulate new locomotives and engines, the 1998 final rule's categorical bar on certain controls whether applicable to new or other locomotives and engines may have also precluded California and other States from exploring innovative local programs to address pollution from non-new locomotives and in turn achieving the potential emissions reductions of such programs—programs that EPA could not include in its emission standards under section 213(a)(5) that apply only to new locomotives and engines. This final rule ensures that such programs for non-new locomotives and engines may be authorized so long as they meet the statutory authorization criteria and in turn yield benefits for public health and the environment.

This action does not change the scope of preemption of State regulation of new locomotives and new engines used by locomotives, which is established by CAA section 209(e)(1). EPA agrees with the commenter that we are making a policy change with regard to whether to evaluate State regulation of non-new locomotives and engines at all, but we are not changing any of the criteria for evaluating authorization requests. On review of the extension of the preemption provisions adopted in 1998 as reaching ''other locomotives or locomotive engines,'' in addition to those that are ''new,'' without preserving the authority under CAA section 209(e)(2) to consider for authorization State regulation of the types of standards or requirements listed at § 1074.12(b), we now view the provisions at § 1074.12(b) as unnecessarily restricting such consideration beyond what the statute requires at CAA section 209(e)(1)(B). Moreover, as explained in the April 27, 2023, proposal, we have identified certain developments that indicate that the categorial exclusion of some of the specified standards and requirements for the 133 percent of the useful life period of new locomotives or engines is no longer in all cases appropriate. Consequently, we believe it is important that our regulations not unnecessarily constrain EPA's future evaluation of a State request for authorization to regulate non-new locomotives and non-new engines used in locomotives under § 1074.101. Indeed, one reason for this revision is to eliminate any such constraint that is apparent in current 40 CFR 1074.12(b).

EPA notes that concerns may exist related to authorization requests that include forms of State controls that could significantly affect the design or manufacture of a new locomotive or new engines used in locomotives. As explained in the April 27, 2023, proposal, EPA recognizes that significant advances in technology have occurred in the intervening years since 1998, along with innovative forms of regulations. Any State authorization application that includes locomotive emission regulations would be subject to consideration of whether such regulations significantly affect the design or manufacture of a new

[20] See comment from the American Free Enterprise Chamber of Commerce at EPA–HQ–OAR–2022–0985–1660–A1, p. 70.

[21] Under governing caselaw, an agency may change policies so long as it recognizes the change and articulates a good reason for it. To the extent the commenter believes that some heightened standard applies, such that a ''compelling'' justification is required, that argument has not been raised with reasonable specificity as required by CAA section 307(d)(7)(B), and in any event is inconsistent with the caselaw. See *F.C.C.* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 514–15 (2009).

[22] *NLRB* v. *Bell Aerospace Co.,* 416 U.S. 267, 294 (1974). (''the choice between rulemaking and adjudication lies in the first instance within the [agency's] discretion'').

[23] 88 FR 26094–95.

[24] S. Rep. No. 90–403, at 33.

locomotive or new engine used in a locomotive to the extent such is prohibited by section 209(e)(1)(B). EPA will evaluate any such application on a case-by-case basis to determine if the controls may be authorized under section 209(e)(2)(A) and 40 CFR 1074.101 through 1074.110.

Our proposed rule to revise the preemption language did not reopen any aspect of the Federal regulatory program for new locomotives and new engines used in locomotives set forth at 40 CFR part 1033. Consequently, none of the changes to our preemption regulations will have any impact on EPA's regulation of new locomotives or engines used in locomotives (including freshly built and remanufactured) under 40 CFR part 1033. There are no potential costs or benefits to regulated entities of any size as a result of these amendments to our preemption regulations. Although several commenters on our proposed rule urged EPA to take steps toward more stringent Federal emissions standards for locomotives, those comments are beyond the scope of this rulemaking as EPA did not propose or seek comments on any amendments to EPA's Federal regulations to reduce the air emissions from new locomotives or new engines used in locomotives. EPA reserves its discretion to revisit the part 1033 regulations separately.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This rule simply revises EPA's regulations to align with section 209 of the Clean Air Act and to preserve for separate future adjudications under CAA section 209(e)(2) whether a State rule addressing non-new locomotives or engines would impermissibly relate to the control of emissions from new locomotives or engines under section 209(e)(1). As a result of this action alone there are no potential impacts to railroads, of any size.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local, or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action has federalism implications because these revisions to part 1074 involve existing regulations that preempt State law under CAA section 209(e). In this rule, EPA is revising our locomotive preemption regulations to align with language Congress provided in section 209(e)(1)(B) and the congressional directive to EPA to implement the prohibition of State regulation of new locomotives and new engines used in locomotives while ensuring that States are not impeded from adopting standards and other requirements relating to the control of emissions as allowed by the CAA to address the contribution of air pollutant emissions from non-new locomotives and non-new engines used in locomotives to their air quality issues. EPA consulted with representatives of various State and local governments in developing this rule. Our outreach to State and local governments has satisfied Executive Order 13132. EPA solicited and received comments on this revision from many State and local officials. Specifically, we received a letter with strongly supportive comments signed by officials from 12 States, as well as supportive comments from the Ozone Transport Commission, National Association of Clean Air Agencies (NACAA), and Northeast States for Coordinated Air Use Management (NESCAUM).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. This action does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. In the development of the proposed Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3 and this final rule, EPA engaged with our Tribal stakeholders. We did so primarily by offering government-to-government consultation upon request but also offered information sessions and presentations to Tribal audiences.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order.

This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since the action does not concern human health, EPA's Policy on Children's Health also does not apply.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns. This rule does not achieve reductions of locomotive emissions.

Although this action does not concern human health or environmental conditions, EPA recognizes that locomotive emissions are an environmental justice concern, and we promoted meaningful involvement in

several ways. For example, we contacted individuals in environmental justice groups about the proposal and provided information about the public hearings and the comment period; provided information on our website in both Spanish and English; and provided Spanish translation during the public hearings. We received and considered comments from those with environmental justice concerns, as described in the Response to Comments document.[25]

K. Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VI. Statutory Authority and Legal Provisions

Statutory authority for these revisions to our preemption regulations is found in CAA section 209(e)(2)(B), 42 U.S.C. 7543(e)(2)(B), which requires EPA to promulgate regulations implementing CAA section 209(e), which in turn addresses the prohibition of State standards regarding certain classes of new nonroad engines or new nonroad vehicles including new locomotives and new engines used in locomotives, as well as EPA's authorization criteria for certain California standards for other nonroad engines or nonroad vehicles.

VII. Judicial Review and Administrative Reconsideration

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by January 8, 2024. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements. Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Under CAA section 307(b)(1), the filing of a petition for reconsideration shall not affect the finality of the rule for purposes of judicial review nor extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of the rule.

[25] See Note 7.

List of Subjects in 40 CFR Part 1074

Environmental protection, Administrative practice and procedure, Air pollution control, Locomotives, Nonroad engines, Scope of preemption.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, EPA amends title 40, chapter I of the Code of Federal Regulations as set forth below.

PART 1074—PREEMPTION OF STATE STANDARDS AND PROCEDURES FOR WAIVER OF FEDERAL PREEMPTION FOR NONROAD ENGINES AND NONROAD VEHICLES

■ 1. The authority citation for part 1074 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—Applicability and General Provisions

■ 2. Amend § 1074.10 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 1074.10 Scope of preemption.

* * * * *

(b) States and localities are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new locomotives and new engines used in locomotives.

(c) For nonroad engines or vehicles other than those described in paragraphs (a) and (b) of this section, States and localities are preempted from enforcing any standards or other requirements relating to control of emissions from nonroad engines or vehicles except as provided in subpart B of this part.

§ 1074.12 [Removed]

■ 3. Remove § 1074.12.

Subpart B—Procedures for Authorization

■ 4. Amend § 1074.101 by revising paragraph (a) to read as follows:

§ 1074.101 Procedures for California nonroad authorization requests.

(a) California must request authorization from the Administrator to enforce its adopted standards and other requirements relating to control of emissions from nonroad engines or vehicles that are not preempted by § 1074.10(a) or (b). The request must include the record on which the State rulemaking was based.

* * * * *

[FR Doc. 2023–24513 Filed 11–7–23; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–296; RM–11964; DA 23–1030; FR ID 183180]

Television Broadcasting Services Des Moines, Iowa

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Video Division, Media Bureau (Bureau) has before it a notice of proposed rulemaking issued in response to a petition for rulemaking filed by Iowa Public Broadcasting Board (Petitioner), the licensee of noncommercial educational television PBS member station KDIN–TV (KDIN–TV or Station), channel *11, Des Moines, Iowa. The Petitioner has requested the substitution of channel *34 in place of channel *11 at Des Moines in the Table of TV Allotments, and requested that we delete vacant channel *34, Ames, Iowa (Ames) and substitute it with the allotment of vacant channel *21 to Ames. Petitioner filed comments in support of the petition, as required by the Commission's rules (rules), reaffirming its commitment to apply for channel *34.

DATES: Effective November 8, 2023.

FOR FURTHER INFORMATION CONTACT: Emily Harrison, Media Bureau, at (202) 418–1665 or *Emily.Harrison@fcc.gov*.