UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Air Plan Revisions; California; Heavy-Duty Vehicle Inspection and Maintenance Program **90 Fed. Reg. 41525 (August 26, 2025)**	**Docket No. EPA–R09–OAR–2025–0061** **FRL–12606–01–R9** *Via regulations.gov* *September 25, 2025*

COMMENTS OF ENVIRONMENTAL AND PUBLIC HEALTH ORGANIZATIONS

The Center for Applied Environmental Law and Policy, Environmental Defense Fund, and Natural Resources Defense Council submit these comments on the U.S. Environmental Protection Agency's (EPA's) proposed action to disapprove, in part, a submission by the state of California requesting to incorporate its Clean Truck Check program into the state's plan to reduce air pollution that is harming its communities and causing violations of federal air quality standards. The Clean Air Act (CAA) places the primary responsibility for attaining those standards with states and commands that EPA approve satisfactory plans to meet them. Yet the Agency proposes to reject California's common-sense regulation ensuring that trucks within the state are properly maintained and operating cleanly, securing vital health and environmental benefits.

The proposed disapproval is ungrounded in fact and law. It undermines the framework of cooperative federalism that Congress established in the CAA by transforming a straightforward step in state planning into the unreasonable and extra-statutory task of resolving constitutional concerns including the dormant Commerce Clause, the foreign affairs doctrine, and other theories. These unfounded reasons stand in the way of progress required by the CAA, and they reflect the Administration's broader pattern of interference with states' good-faith efforts to clean up the air and protect their residents from pollution. The Agency should approve California's submission in all respects.

I. Introduction

The CAA requires EPA to set national ambient air quality standards (NAAQS) for certain widespread "criteria" air pollutants at a level designed to protect public health with an adequate margin of safety and to protect public welfare from any known or anticipated adverse effects. 42 U.S.C. § 7409. States then submit State Implementation Plans (SIPs) to implement, maintain, and enforce the NAAQS within their state and revise those plans as necessary to support attainment of the NAAQS. *Id.* § 7410. Currently, seventy percent of Californians live in areas that exceed ozone and particulate matter (PM) NAAQS,[1] which means that over twenty-seven million people in the state are exposed to excessive air pollution that causes an array of health harms including cancer, asthma, cardiopulmonary and respiratory diseases, and premature death.[2]

Despite California's urgent need to address harmful air pollution, EPA now proposes to partially disapprove revisions to California's SIP to include the state's revised heavy-duty inspection and maintenance regulation (HD I/M Regulation) that would help ensure that emissions-control systems used by heavy-duty vehicles operating within the state are working as designed and repaired promptly if they malfunction. 90 Fed. Reg. 41525. EPA bases its proposed partial disapproval on the regulation's requirements applying to vehicles registered outside of California that operate within the state, claiming that this may run afoul of the Commerce Clause of the U.S. Constitution, the foreign affairs powers vested in the Federal Government by the U.S. Constitution, and the potential for conflict with other state regulations under the CAA. As this comment explains, EPA's claims are legally incorrect as well as far too vague to support disapproving California's SIP revision. EPA must therefore promptly approve California's revision as submitted.

II. Overview of the HD I/M Regulation

California's HD I/M Regulation addresses emissions from heavy-duty vehicles (specifically non-gasoline combustion vehicles above 14,000 pounds gross vehicle weight rating[3]) operating in the state, a significant source of harmful air pollution within the state. As noted above, many Californians live in areas that exceed EPA's ozone and PM NAAQS, making it critical that the state further reduce emissions of nitrogen oxides (NOx), an ozone precursor, and PM emissions. Heavy-duty vehicles emit large quantities of both NOx and PM. In 2020, heavy-duty vehicles accounted for over half of the on-road mobile source emissions for NOx (52%) and PM (54%) in California even though they only accounted for around 3 percent of on-road vehicles in the state.[4] This makes controlling emissions from heavy-duty vehicles critical for meeting federal air quality requirements in both the San Joaquin Valley and South Coast air basins as well as generally reducing pollution across the rest of the state.

The HD I/M Regulation builds on California's efforts to reduce heavy-duty vehicle pollution by replacing existing in-use vehicle inspection programs with a more comprehensive

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[1] Public Hearing to Consider the Proposed Heavy-Duty Inspection and Maintenance Regulation; Staff Report: Initial Statement of Reasons ("ISOR") at I-2 (Oct. 2021).
[2] ISOR at ES-1.
[3] ISOR at ES-5. The regulation does exempt some vehicles from compliance such as zero-emission vehicles, authorized emergency vehicles, and military tactical vehicles. 13 Cal. Code Regs. § 2195(b).
[4] Data from 2020. ISOR at I-2, ES-1.

and effective program to help ensure vehicles are operating with functioning emissions-control systems. California Air Resources Board (CARB) studies show that about 11 to 17 percent of vehicles in California are operating with malfunctioning emissions-control systems and half of them had operated for over 1,000 engine-on hours since the malfunction indication light came on without addressing the underlying problem.[5] Behavioral studies have shown that vehicle owners often wait to repair emissions-related issues until just before inspection dates.[6] More-frequent and more-comprehensive testing will help reduce NOx and PM emissions by limiting the time vehicle operators are running with malfunctioning emissions-control systems that do not meet California's emissions standards.

Importantly, the HD I/M Regulation expands periodic testing requirements to nearly all heavy-duty vehicles operating inside California. This is critical because a vehicle's registration is only a rough proxy for where it operates. Vehicles often operate outside their jurisdiction of registration. The prior periodic testing requirements that were limited to California-registered vehicles allowed a substantial number of vehicles operating within California to operate with broken emissions-control systems.[7] While the regulation does contain exceptions for limited categories of vehicles[8] and allows vehicle owners who rarely operate in California to apply for one five-day pass per vehicle per calendar year that would allow them to operate in California for up to five consecutive days without meeting the regulation's requirements,[9] overall the regulation would require periodic testing for most heavy-duty vehicles operating in the state.

CARB models estimate that out-of-state vehicles contribute about 30 percent of total heavy-duty vehicle miles traveled in California and are responsible for about 27 percent of total NOx emissions and 36 percent of total PM emissions from all heavy-duty vehicles operating in California each day.[10] Expanding the periodic testing requirements helps ensure that vehicles driving on California's roads have properly functioning emissions-control equipment.[11] Based on

[5] ISOR at II-3.
[6] ISOR at II-3, III-17.
[7] ISOR at II-2.
[8] The regulation exempts the following vehicles: zero-emission heavy-duty vehicles, authorized emergency vehicles, military tactical vehicles, non-Californian motor homes used for recreational purposes, vehicles operating under a CARB-issued experimental permit, historical plated vehicles, and vehicles operating under an emergency declaration. ISOR at III-2; 13 Cal. Code Regs. § 2195(b).
[9] ISOR at III-19; 13 Cal. Code Regs. § 2196(d).
[10] ISOR at II-2.
[11] ISOR at II-3, III-17-18 ("…recent [Bureau of Automobile Repair] roadside studies show a steady increase in vehicle operation with an illuminated [Malfunction Indicator Light] following a vehicle's inspection date, and then a dramatic decrease in illuminated [Malfunction Indicator Light] rates starting at the 90-day mark before a vehicle's DMV registration date. The passage of a smog check is required to re-register a vehicle with DMV and the smog certificate is good for 90 days. Thus, vehicle owners are waiting until an enforcement hook requires them to make the

CARB's field tests, 46 percent of vehicles that had an illuminated malfunction indicator light for their emissions-control systems were out-of-state vehicles,[12] and a mal-maintained heavy-duty vehicle emits up to 5,200 percent more PM and 1,200 percent more NOx than a properly functioning vehicle.[13] Thus, it is clear that vehicles registered out-of-state constitute a large portion of the vehicles active and operating within California, that these vehicles emit large amounts of both NOx and PM in California, and that many of these vehicles have malfunctioning emissions-control systems that, if they were operating properly, could prevent significant pollution harming Californians.

Preventing that excessive NOx and PM pollution is critical for California, and the HD I/M Regulation would have substantial pollution reduction benefits. CARB estimated that the program would reduce over 680,000 tons of NOx and over 6,000 tons of PM from 2023-2050,[14] preventing more than 7,500 cardiopulmonary-related deaths, 2,500 hospital visits, and 3,500 emergency visits.[15] This equates to approximately $75.8 billion in monetized benefits.[16]

Importantly, there are immense unmonetized benefits as well. CARB notes that "the full health benefits of the [HD I/M Regulation] are underestimated because not all the adverse health outcomes from PM 2.5 and additional pollutants…are evaluated and monetized" and that "[a]n expansion of the emissions inputs and an assessment for other health outcomes, including, but not limited to, additional cardiovascular and respiratory illnesses, nonfatal/fatal cancers, nervous system diseases, and lost workdays would provide a more complete picture of the benefits from reduced exposure to air pollution."[17] Heavy-duty vehicles' emissions have been linked to over 40 known cancer-causing substances, asthma, chronic heart disease, heart attack, high blood pressure, insulin resistance, other diabetes risk factors, psychological/cognitive problems, pre-term birth, reduced birth weight, abnormal lung and cardiovascular development, reduced lung volume, irregular heartbeats, and increased mortality.[18]

Given the extensive unmonetized benefits, the monetized benefits cannot fully capture the regulation's benefits. Still, the regulation's monetized benefits alone contrast favorably with the rule's cost, which is estimated to be no more than $350 million in any year and total just

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needed repairs. Considering recent CARB roadside studies have shown that about 11 to 17 percent of heavy-duty vehicles currently in California are operating with an illuminated [Malfunction Indicator Light], similar behavioral trends are expected of the heavy-duty vehicle sector as well."); Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response (FSOR) at 20 (Aug. 2022).

[12] ISOR at II-2.

[13] ISOR at II-3.

[14] ISOR at IX-42.

[15] ISOR at ES-14.

[16] ISOR at IX-42.

[17] ISOR Appendix E at E-2.

[18] ISOR Appendix E at E-3.

$4.09-4.12 billion from 2023-2050.[19] Thus, benefits outstrip costs by over eighteen times. The costs per pound of reductions also align with past CARB rules[20] showing that the costs are reasonable. CARB examined alternative options with more and less stringent testing requirements and found that both options decrease cost-effectiveness.[21]

On a per vehicle and per fleet basis, the costs are also reasonable. CARB estimated costs for a typical California fleet of seven vehicles to be $772 to $2,180 annually and for single-vehicle fleets to be $225 to $701 annually.[22] This is eminently reasonable given the huge emission-reduction benefits from ensuring that vehicles operating within the state have functioning emissions-control systems (over 18 times greater than the costs) and the availability of a five-day pass exemption for vehicles that only rarely operate in California. This is especially true because a full 30.3 percent of the rule's costs are attributable to repair costs of systems that should be operating.[23] In other words, almost a third of the costs attributed to the rule are the costs of repairs to malfunctioning emissions-control systems that would have otherwise gone unfixed (but would eventually have to be fixed anyway, in all likelihood) allowing vehicles to operate in violation of the state's emission-control requirements.

Overall, California's HD I/M Regulation is well-designed and tailored to reduce emissions cost-effectively. The regulation applies fairly to all covered heavy-duty vehicles operating within the state and directly serves California's critical need to reduce harmful NOx and PM pollution, as required to meet federal air quality standards and protect public health.

Despite the obvious need for and benefits from California's HD I/M Regulation, EPA now proposes to partially disapprove this addition to California's SIP. 90 Fed. Reg. 41525. EPA claims that California has failed to provide the "necessary assurances" required under CAA section 110(a)(2)(E)(i)[24] that the regulation's application to vehicles registered outside California

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[19] ISOR at IX-14, FSOR at 3. The difference in cost estimates is due to the FSOR incorporating the HD Omnibus Regulation in the emissions baseline.
[20] CARB's ISOR estimated costs at $62.27/pound PM (76th percentile of previous CARB regulations) and $1.84/pound NOx (40th percentile of previous CARB regulations) (ISOR at IX-14) and the FSOR estimated costs at $60.65/pound PM and $1.80/pound NOx (with the change attributed to the recently adopted HD Omnibus Regulation) (FSOR at 3).
[21] ISOR at ES-18-19, X-1-22 (showing that the regulation's projected cost-effectiveness ($62.27/pound PM and $1.84/pound NOx) is better than the projected cost-effectiveness of a less stringent testing requirement ($65.41/pound PM and $2.16/pound NOx) and more stringent testing requirement ($69.02/pound PM and $2.22/pound NOx)); FSOR at 3 (similarly showing that the cost-effectiveness of the HD I/M Regulation is better than both a less stringent and a more stringent alternative).
[22] ISOR at IX-18-21.
[23] ISOR at IX-17.
[24] 42 U.S.C. § 7410(a)(2)(E)(i) requires that a SIP shall provide "necessary assurances that the State…will have adequate personnel, funding, and authority under State (and, as appropriate,

is not prohibited by federal law, primarily by the U.S. Constitution. 90 Fed. Reg. 41525, 41528. EPA claims, with sparse justification, that "the Commerce Clause appears to prohibit the implementation of the HD I/M Regulation" and that the regulation "appears to abrogate the foreign relation powers vested exclusively in the Federal Government by the U.S. Constitution." *Id*. EPA's theoretical arguments are incorrect as a matter of law and fall well short of what is required to disapprove incorporation of the full HD I/M Regulation in California's revised SIP, and its proposed action is arbitrary and unlawful.

III. California's submission meets the requirements of CAA section 110.

A. The HD I/M Regulation is a valid plan component and must be approved under the Act.

As an initial matter, EPA acknowledges that the Rule "generally meet[s] the requirements of the CAA and the EPA's implementing regulations with respect to vehicles registered in California including because it satisfies the applicable requirements of CAA sections 110(a)(2)(A) and (E)." 90 Fed. Reg. at 41528. Indeed, this program undoubtedly qualifies as one among the "enforceable emission limitations and other control measures, means, or techniques" that a SIP must contain, because the Act *requires* inspection and maintenance programs in certain nonattainment SIPs. *See* 42 U.S.C. § 7511a; *see also* 40 C.F.R. § 51.350 (outlining applicability requirements for such programs). In general, EPA has a mandatory duty to approve plan submissions—including inspection and maintenance programs—that meet the requirements of the Act; it cannot disapprove such a program for policy reasons unmoored from the statute. *See* 42 U.S.C. § 7410(k)(3); *Indiana v. EPA*, 796 F.3d 803, 812 (7th Cir. 2015) (rejecting the argument that EPA should have disapproved an inspection and maintenance program exemption because Illinois had improperly adopted it and it arguably had interfered with maintenance of air quality standards in the past). Because inspection and maintenance programs are plainly valid plan components under the Act, and because any disapproval must be grounded in specific statutory requirements, EPA cannot disapprove the present submission because of specious legal theories or vague claims of "state overreach."[25]

The proposal additionally suggests that disapproval of inclusion of the HD I/M Regulation in the SIP could be inappropriate under CAA section 110 and (unspecified) related provisions because other states may have their own, similar programs that somehow conflict with California's. 90 Fed. Reg. at 41529. To begin, EPA has not identified any such programs and therefore disapproval on this basis would not be grounded in the evidence before the Agency. Indeed, it is difficult to imagine a hypothetical situation in which truck owners and operators choosing to do business in California and some other state with a similar regulation could not

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local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof)."

[25] Exec. Order No. 14,260, 90 Fed. Reg. 15513 (Apr. 14, 2025).

simply comply with both inspection and maintenance programs, meeting the more stringent requirements of each. At any rate, EPA has not explained how refusing to include the HD I/M Regulation in a federally enforceable plan would be authorized by a provision solely focused on *the submitting state's own authority* to enforce plan requirements and consistency with federal law—much less address EPA's purported concern about conflicting state-level requirements. In other words, section 110 does not authorize EPA to require states to compare their programs to 49 other such programs and show compatibility as a prerequisite to inclusion of that program in the state's plan. Even partial reliance on this rationale would render a disapproval action arbitrary and unlawful.

B. Section 110(a)(2)(E)'s requirement that a SIP submission contain "necessary assurances" does not support the proposal.

Under CAA section 110(a)(2)(E), a state submitting a SIP must provide "necessary assurances that the State . . . "is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof." 42 U.S.C. § 7410(a)(2)(E)(i). The text and context indicate that this task is intended to be well-defined and manageable: there must be a *prohibition* on implementation of the plan, rather than some vague legal concern; and the requirement appears as a parenthetical alongside the requirement that the state show that it has adequate personnel, funding, and authority under state law to implement the plan—determinations that should be straightforward for a state air agency to make. Here, however, EPA treats the provision as requiring states to resolve in advance any theoretical legal challenge to its authority—which cannot be what Congress intended. The statutory text and context demonstrate that EPA's proposed approach contravenes the best reading of the Act and must be rejected. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

Unlike in other CAA provisions that grant EPA policymaking discretion in setting emission limits or making technical determinations, *e.g.*, 42 U.S.C. § 7412(d)(6) (requiring EPA to make "necessary" revisions to standards), the use of the word "necessary" in the context of section 110(a)(2)(E) does not evince a delegation of discretion to EPA to demand that states resolve speculative or theoretical legal issues—as opposed to concrete issues that may involve application of well-established law to a unique set of facts, as with the potential violations of Title VI of the Civil Rights Act raised in the case discussed below. *Cf. Loper Bright*, 603 U.S. at 395 (observing that some statutes "empower an agency . . . to *regulate* subject to the limits imposed by a term or phrase that leaves agencies with flexibility" (emphasis added) (cleaned up)). Under section 110(a)(2), it is the states that are in the regulatory driver's seat.

Although EPA has some discretion to determine the sufficiency of evidence that States must provide to make "necessary assurances," the proposal exceeds that limited discretion. *El Comité para el Bienestar de Earlimart v. EPA*, 786 F.3d 688, 700 (9th Cir. 2015), held that EPA has some discretion in determining the amount and type of evidence that a state must provide to make "necessary assurances" that a SIP submission does not violate federal law, at least where stakeholders have raised legitimate concerns. In that case, EPA had previously found a prima facie violation of Title VI of the Civil Rights Act based on an assessment of disproportionate exposure to a pesticide. *Id.* The legal and factual issues were therefore well-defined in advance of the state's submission. Notably, the court did *not* interpret section 110(a)(2)(E) to authorize EPA to posit speculative legal theories that could, theoretically, if opponents succeeded in a future legal challenge, preclude implementation of the plan measure, and to require the state to anticipate and resolve those issues as part of the SIP development or approval process. EPA's demands in the proposal exceed its authority under section 110(a)(2)(E) and must be abandoned in the final action approving California's submission.

Even if EPA were correct about the scope of its authority under section 110(a)(2)(E), the proposal disregards points of law and factual evidence that would support a finding that the state has made the necessary assurances, and therefore finalizing disapproval here would be arbitrary and unlawful. *Cf. id.* at 700-01. EPA's perfunctory proposed partial disapproval has cited no evidence in the record which would establish violations of the Commerce Clause or a treaty, convention, or other international agreement. And, as discussed below, EPA has overlooked the record evidence that the HD I/M Regulation imposes minimal burdens on interstate commerce and delivers substantial—indeed, statutorily required—benefits in California. The Agency's total failure to grapple with the facts and relevant law renders the proposed action arbitrary, and it must accordingly approve a submission that it acknowledges meets the Act's requirements apart from its nebulous and unsubstantiated concerns.

IV. The HD I/M Regulation comports with the Commerce Clause.

As explained above, CAA section 110(a)(2)(E) does not require California's SIP submission to affirmatively resolve every theoretical legal argument that could be brought against a proposed plan measure. But even so, EPA's vague statement that the HD I/M Regulation appears to violate the Commerce Clause goes against any reasonable understanding of the Commerce Clause. Litigants have previously challenged California pollution-control measures under the Commerce Clause and lost because those claims were proven to be unfounded for the same reason any Commerce Clause claims against the HD I/M Regulation would fail: this is a regulation that treats out-of-state and California entities equally, does not regulate outside California's borders, and serves a critical local interest without unduly burdening interstate commerce. *E.g.*, *Pac. Merch. Shipping Ass'n. v. Goldstene*, 639 F.3d 1154 (9th Cir. 2009), *cert. denied*, 567 U.S. 934 (2012) (rejecting Commerce Clause arguments against CARB's air emission standards for marine vessels); *Rocky Mountain Farmers Union v. Corey*, 730 F. 3d 1070 (9th Cir. 2013) (rejecting Commerce Clause arguments against CARB's low carbon fuel standard); *Cent. Valley Chrysler-Jeep v. Witherspoon*, 456 F. Supp. 2d 1160 (E.D. Cal. 2006) (rejecting Commerce Clause arguments against CARB's vehicle-emissions regulation).

A. The HD I/M Regulation does not discriminate against out-of-state entities.

EPA's claim that the Commerce Clause "appears to prohibit the implementation of the HD I/M Regulation," 90 Fed. Reg. 41525, 41528, is unsupported and incorrect as a matter of law. The Commerce Clause grants Congress the power to "regulate Commerce…among the several States," U.S. Const. art. I, § 8, cl. 3, and has long been interpreted to also include a prohibition on state laws that unduly restrict interstate commerce even absent congressional action. *See*, *e.g.*, *Gibbons v. Ogden*, 22 U.S. 1, 196-97 (1824); *Guy v. Baltimore*, 100 U.S. 434, 443 (1880); *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 368-370 (2023). The Supreme Court has interpreted this negative implication to prohibit state action that discriminates against out-of-state entities, either facially, through its purpose, or through its effect. *E.g.*, *City of Philadelphia v. New Jersey*, 437 U.S. 617, 626-29 (1978) (striking down New Jersey prohibition on states shipping garbage to New Jersey landfills); *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 352-53 (1977) (striking down North Carolina law that required USDA certification for apples because it was intended to make it harder for Washington apple growers to sell in North Carolina); *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 204-205 (1994) (striking down tax on all milk sold in Massachusetts because the proceeds were used to subsidize Massachusetts dairy farmers). California's HD I/M Regulation does not discriminate facially, through its purpose, or through its effect.

This anti-discrimination principle "lies at the 'very core' of the . . . dormant Commerce Clause," *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023), and EPA makes no claim that the regulation is facially discriminatory or has a discriminatory effect. Indeed, such claims would be impossible to justify. The rule is clearly non-discriminatory on its face, applying to "all non-gasoline combustion vehicles above 14,000 pounds gross vehicle weight rating (GVWR) that operate in California." 90 Fed. Reg. at 41527. This broad applicability does not single out California-based entities for special treatment or benefits over out-of-state entities.[26]

Industry commenters did raise Commerce Clause concerns during the California rulemaking process over the regulation's $30 flat fee for both in-state and out-of-state trucks,[27] presumably under the assumption that a flat fee benefits in-state trucks because they generally operate inside California more than out-of-state trucks and would thus gain more benefits from the fee. As CARB explained when responding to the comments, this is a flawed argument because the regulation's $30 fee was calculated to defray the costs of implementing the HD I/M Regulation's vehicle testing, certification, and inspection program, costs that vary on a per-

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[26] The sole exception to the regulation's registration-location-neutral treatment of vehicles is that vehicles registered in California would have their California DMV registration tied to compliance with the HD I/M Regulation. ISOR at III-31. This is nothing more than an additional enforcement mechanism that provides no advantage for California-registered vehicles. *Id.*
[27] FSOR at 18.

vehicle basis rather than another metric such as miles traveled.[28] The Supreme Court endorsed a rationale similar to CARB's logic in *American Trucking Ass'ns v. Michigan Public Service Commission*, 545 U.S. 429 (2005), where it held that a $100 flat fee on intrastate commercial trucks in Michigan did not violate the Commerce Clause, reasoning that the fee was meant to defray costs that "seem more likely to vary per truck or per carrier than to vary per mile traveled . . . [a]nd that fact means that a per-truck, rather than a per-mile, assessment is likely fair." *Id*. at 435-36. Here, as CARB explained, "the costs and benefits of reviewing testing data, issuing certificates, answering questions, monitoring for fraud, and taking enforcement actions . . . are unlikely to vary significantly, if at all, based on an operator's location inside or outside California."[29]

Overall, it is clear the HD I/M Regulation does not discriminate against out-of-state entities either on its face or through its effects. The costs are not based on where a vehicle is registered, apply equally to any vehicle operating in the state, and are proportioned in a fair way that reflects how each additional vehicle impacts overall program costs. The Ninth Circuit has roundly rejected contentions that evenhanded policies reflecting the actual, on-the-ground impacts of an activity cannot be applied to out-of-state entities solely because those entities would effectively see higher regulatory costs because of their geographic location. *See Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, 1091-92 (9th Cir. 2013).

B. The HD I/M Regulation does not regulate extraterritorially.

With any discrimination claims foreclosed by the HD I/M Regulation's alignment with neutral principles, EPA's proposed disapproval instead makes a non-committal statement that "the Commerce Clause appears to prohibit the implementation of the HD I/M Regulation because its extraterritorial reach burdens interstate commerce." 90 Fed. Reg. 41525, 41528. EPA then argues that "[t]o the extent the HD I/M Regulation applies to out-of-state vehicles that pass through or operate within California for almost any length of time, [the regulation's costs] would also be imposed on other States and regulated entities in those States," *id.*, and that, due to the structure of CAA section 110, "an approval [of California's SIP revision] would delegate to California the ability to enforce the State's I/M requirements throughout the nation to the extent a vehicle passes through or operates within the State for almost any length of time." *Id*. Therefore, EPA claims, "an approval would effectively force regulated entities in other States to comply with California's HD I/M requirements, rather than the applicable requirements in their respective states." *Id*.

Given that the compliance requirements are solely for vehicles operating inside California, EPA's claim seems to be that somehow—through the magic of registering a vehicle outside California—entities become exempt from complying with California's laws while

[28] FSOR at 19.
[29] FSOR at 19.

operating inside California. This would be like saying California cannot enforce its criminal laws against another state's residents traveling through California or that California that cannot require a Delaware corporation to register with the California Secretary of State before transacting business in Los Angeles.[30] The location of a vehicle registration does not override California's authority to regulate polluting activity within its own borders. In no way does the California HD I/M Regulation require compliance from any vehicle that does not operate in California, nor does it impose any cost on such vehicles or require compliance when such vehicles are outside California. The rule simply requires compliance when a non-exempted vehicle chooses to come to California and operate within the state; that a vehicle may have a functioning emissions-control system before or after operating in California because the HD I/M Regulation requires it while inside California is incidental and certainly does not amount to California's regulating extraterritorially. And the plurality in *Pork Producers* rejected the argument that any "practical effect" of controlling the conduct of commerce outside the state is barred, noting that the Supreme Court precedents cited for that premise involved price controls that essentially dictated the terms of entirely out-of-state transactions. 598 U.S. at 373-74. Additionally, nothing in the rule prevents other states from implementing their own inspection and maintenance programs for vehicles operating in their states, and EPA does not point out any actual conflicts to support the vague claim that entities could be forced to "comply with California's HD I/M requirements, rather than the applicable requirements in their respective States." 90 Fed. Reg. 41525, 41528.

C. Local concerns addressed by the regulation far outweigh any incidental burden on interstate commerce.

Even accepting EPA's incorrect supposition that the regulation has a burden on interstate commerce and that EPA should make that determination rather than courts, examining the regulation shows that the rule does not violate the Commerce Clause. The Supreme Court has rejected a universal prohibition on laws with incidental extraterritorial effects because that "would cast a shadow over laws long understood to represent valid exercises of the States' constitutionally reserved powers." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 375 (2023). Instead, the court has often engaged in a balancing test described in *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970), to weigh the state's interest in a regulation against the burdens on interstate commerce.

Pike held that a state law that "regulates even-handedly to effectuate a legitimate local public interest" with only incidental effects on interstate commerce "will be upheld unless the

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[30] Cal. Corp. Code § 2105(a) ("A foreign corporation shall not transact intrastate business without having first obtained from the Secretary of State a certificate of qualification."). Other states have similar provisions. *E.g.,* S.C. Code § 33-15-101(a) ("A foreign corporation may not transact business in this State until it obtains a certificate of authority from the Secretary of State."); Tex. Bus. Orgs. Code § 9.001(a) ("To transact business in this state, a foreign entity must register under this chapter…").

burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Id.* EPA is well aware of this case, since they cited it to emphasize excessive burdens, *see* 90 Fed. Reg. at 41528, yet they do nothing to examine the legitimate local benefits of the HD I/M Regulation.

Instead of analyzing the HD I/M Regulation in the context of *Pike*, EPA ignores any benefits of the regulation and focuses solely on the burdens of the regulation, claiming the burdens are "undoubtably significant" and that the regulation "adds significant costs to operation of heavy-duty vehicles in California." *Id.*

EPA makes these conclusory claims about "undoubtably significant" costs without any real analysis beyond quoting two cost estimates provided by CARB, the rule's total cost estimate and the estimated annual cost for fleets and single-vehicle operators. The first cost estimate they quote is for the entire rule over 27 years of $4.12 billion between 2023-2050, with a maximum annual cost of $350 million in 2024. *Id.* Since EPA takes no issue with the rule's application to in-state registered vehicles, citing the rule's total cost inclusive of in-state registered vehicles as proof of an undue burden on vehicles registered out-of-state is disingenuous. Regardless of EPA's use of an overstated number, EPA also does nothing to show that the burden is significant given that the cost is spread among the millions of vehicles operating in California.

The second cost estimate EPA cites to support their cursory conclusion of an "undoubtably significant" burden on interstate commerce reveals this flaw in EPA's logic. EPA cites the average seven-vehicle fleet cost of $772 to $2,180 annually and average single-vehicle fleet cost of $225 to $701 annually to claim the burden is undoubtably significant, but this shows that the costs are quite low on a per-vehicle basis. *Id.* To put this in perspective, this would cost an individual heavy-duty truck less than $2 a day over a year even if they had the highest possible costs of $701 per truck,[31] much less than a single gallon of fuel or a cup of coffee. Even in the worst-case scenario of a truck that operated in California for just 6 days (thus exceeding the time limit on the 5-day pass available to avoid compliance), the maximum projected costs would be less than $120 per day of operation in California.[32] That same truck driving across Pennsylvania's turnpike to travel between New Jersey and Ohio (less than a day's ride at 400 miles) would pay around $238.75 with an EZ-Pass and $458.71 using toll by plate,[33] far more than the cost to comply with California's HD I/M Regulation. Even this back-of-the-envelope

[31] The highest estimated annual cost per vehicle is $701. Divided by 365 days would amount to $1.92 per day.
[32] The highest estimated annual cost per vehicle is $701. Divided by 6 days would amount to $116.83 per day.
[33] Toll fees calculated using Pennsylvania's toll calculator for a five-axel commercial vehicle with a high profile. Available at: https://www.paturnpike.com/toll-calculator

analysis is more than EPA does in concluding that the regulation's costs have "undoubtedly significant" impact on interstate commerce.

While EPA has no business adjudicating the constitutionality of state laws and the agency should leave *Pike* balancing tests to courts, EPA's lack of actual analysis to support its conclusion shows that the agency's proposed partial denial is arbitrary and capricious. Furthermore, even if EPA had done extensive analysis to support its cost claim, EPA's failure to examine those costs as compared against California's legitimate interest in protecting its population from harmful pollution reveals EPA's flawed Commerce Clause concern.

As explained above, the rule is expected to prevent over 7,500 cardiopulmonary-related deaths, 2,500 hospital visits, and 3,500 emergency visits and reduce over 680,000 tons of NOx and 6,000 tons of PM pollution.[34] This leads to substantial monetized benefits that outweigh the rule's costs by a factor of eighteen,[35] showing California's strong interest in controlling harmful air pollution from NOx and PM. A state's authority to protect the health of its citizens has long been understood as a legitimate exercise of the state's police power, which encompasses all "laws in relation to persons and property within its borders as may promote the public health, the public morals, and the general prosperity and safety of its inhabitants." *W. Union Tel. Co. v. James*, 162 U.S. 650, 653 (1896). Indeed, Congress structured CAA section 110 as a cooperative-federalist program because of the long history of state authority in deciding how to reduce pollution within state borders. 42 U.S.C. § 7401(a)(3); *see also Train v. Nat. Res. Def. Council*, 421 U.S. 60, 79 (1975) ("[S]o long as the ultimate effect of a State's choice of emission limitations is compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation."). This makes EPA's failure to discuss California's interests in reducing air pollution even more egregious. Again, EPA should not be adjudicating the constitutionality of state laws, but if EPA insists on doing so, the agency would have to look at the regulation's benefits and compare them to the regulation's costs, as *Pike* demands, and find that the HD I/M Regulation falls well within California's authority and is not constitutionally prohibited because the state's interests far outweigh any burdens the regulation places on interstate commerce.

V. The HD I/M Regulation comports with the foreign affairs doctrine.

EPA posits that "the extraterritorial reach of the HD I/M regulation appears to abrogate the foreign relation powers vested exclusively in the Federal Government by the U.S. Constitution." 90 Fed. Reg. at 41528. This grand statement is wrong both in its premise—because, as discussed above, the regulation does not regulate in other states, much less in other countries—and in its conclusion—because, as discussed in this section, the regulation in no way

[34] ISOR at ES-14, V-2.
[35] ISOR at IX-14 (showing total costs of $4.12B from 2023-2050) and ISOR at IX-42 (showing total statewide monetized health benefits of $75.8B from 2023-2050).

impinges upon the federal government's conduct of foreign affairs. Without specifying any potential "conflict with applicable international treaties and conventions adopted by the United States," EPA suggests that the mere presence of vehicles from Mexico or Canada in California for tourism, commerce, trade, or diplomacy could (if a court were so to hold) run afoul of "the Constitution's assignment of foreign affairs authority to Congress and the President, respectively." *Id.* at 41529. That position, if true, would be staggering in its breadth: effectively, the federal government could block any state policy that it disfavored simply because it might have some marginal effect on foreign entities, and thus the United States' foreign affairs.[36] But the Supreme Court has long rejected this view, demanding a showing of "a direct impact upon foreign relations" that "may well adversely affect the power of the central government to deal with [relevant] problems." *Zschernig v. Miller*, 389 U.S. 429, 441 (1968). EPA (with no case law to support its position) cannot seriously claim that the HD I/M Regulation adversely affects the federal government's power to conduct foreign relations, and it has made no attempt to do so. Rather, the proposal presents a less-than-subtle assault on the exercise of traditional authorities historically exercised by the states, and reserved to them under the Tenth Amendment. This dangerous foray should end here.

A. The HD I/M Regulation is not expressly preempted.

The Supreme Court has recognized that "at some point an exercise of state power that touches on foreign relations must yield to the National Government's policy, given the concern for uniformity in this country's dealings with foreign nations that animated the Constitution's allocation of the foreign relations power to the National Government in the first place." *American Ins. Assn. v. Garamendi*, 539 U.S. 396, 413 (2003) (cleaned up). In *Garamendi*, several bilateral executive agreements showed a "consistent Presidential foreign policy" to seek settlement funds from European governments and companies rather than force payment of insurance claims to victims of the Holocaust. *Id.* at 421. The court concluded that California's law intending to do the latter was incompatible with that foreign policy. *Id.* at 423-25. In contrast, the HD I/M Regulation does not conflict with any treaties, conventions, or executive agreements—much less a "consistent Presidential foreign policy" toward securing proper maintenance of heavy-duty vehicles in other countries that may enter the United States. The only plausibly relevant federal policies have little to do with the HD I/M Regulation: EPA's collaboration with its counterpart in Mexico is focused on controlling pollution in border communities—not ensuring that long-haul trucks operating throughout the other country control

[36] Further, to the extent that the proposal suggests that foreign entities doing business in California could be immunized from state health and safety regulations simply because of a possible effect on the conduct of foreign affairs, that position raises separation-of-powers concerns because only Congress may alter a state's constitutional exercise of personal jurisdiction. *See, e.g.*, *Young v. Mitsubishi Motors N. Am. Corp.*, 2020 U.S. Dist. LEXIS 142811, at *2, *7-8 (W.D. Wash. Aug. 10, 2020).

their emissions.[37] Similarly, the Canada-United States Air Quality Agreement seeks to address transboundary air pollution, defined as "emissions of air pollutants that are released in one jurisdiction and then transported or moved by winds and weather systems into another"—not emissions from vehicles that cross the border and travel throughout the other country.[38]

EPA has not identified any express policies that conflict with the HD I/M Regulation. *See* 90 Fed. Reg. at 41529. The Agency points out that consular vehicles may enjoy diplomatic immunity from civil enforcement or administrative jurisdiction. *See id.*; *see also* 22 U.S.C. § 254b ("With respect to a nonparty to the Vienna Convention, the mission, the members of the mission, their families, and diplomatic couriers shall enjoy the privileges and immunities specified in the Vienna Convention."); Vienna Convention of 1961, Art. 31, https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf ("A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction . . . ."). But the fact that the regulation may be unenforceable as against the rare consular heavy-duty vehicle does not mean that federal law prohibits California from carrying out the regulation.[39] EPA's failure to identify any express foreign policy that conflicts with California's regulation deprives stakeholders of an opportunity to comment on this threadbare rationale and renders any action relying on it arbitrary.

B. The HD I/M Regulation is not field preempted.

"[E]ven in the absence of any express federal policy, a state law still may be preempted under the foreign affairs doctrine if it intrudes on the field of foreign affairs without addressing a traditional state responsibility." *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067, 1072 (9th Cir. 2012). Neither prong of this test is satisfied here.

First, the HD I/M Regulation does not "intrude[] on the federal government's foreign affairs power," *id.* at 1076, considering the indicia that the Ninth Circuit found relevant in *Movsesian*. The regulation and accompanying statements of reasons do not express a "distinct political point of view on a specific matter of foreign policy." *Id.* This is not the situation where,

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[37] *See* EPA, Doc. EPA-906-B-21-001, Border 2025: United States - Mexico Environmental Program, https://www.epa.gov/sites/default/files/2021-05/documents/final_us_mx_border_2025_final_may_6.pdf; *see also* La Paz Agreement (1983), https://www.epa.gov/sites/default/files/2015-09/documents/lapazagreement.pdf.

[38] *See* Review and Assessment of the Canada-United States Air Quality Agreement, at 1 (2023), https://www.epa.gov/system/files/documents/2024-03/review-and-assessment-of-the-canada-us-aqa-508-compliance.pdf.

[39] If the Administration were truly concerned about enforceability of the HD I/M Regulation against consular vehicles, the President could remove diplomatic immunity in this regard in order to protect the United States' air quality. *See* 22 U.S.C. § 254c (authorizing presidential exceptions).

to take an example from *Movsesian*, the state policy imposes a "politically charged label," as with the term "genocide" referring to the killing of Armenians. *See id.* Indeed, the ISOR and FSOR do not even mention Mexico, Canada, or any other foreign country (apart from consultations with a variety of expert stakeholders as to regulatory design). In addition, applying the Rule would not "require a highly politicized inquiry into the conduct of a foreign nation." *Id.* Canada's and Mexico's requirements for inspection and maintenance of vehicles' air pollution controls are entirely irrelevant to implementation of the HD I/M Regulation; officials in California need not know anything about them to carry out the regulation's requirements. Nor has EPA offered any "concrete evidence that the President's power to speak and bargain effectively with other countries has actually been diminished" by the HD I/M Regulation. *Cf. United States v. California*, 2:19-cv-02142-WBS-EFB, Doc. 129, at 27 (filed July 17, 2020).

Second, the regulation addresses a traditional state responsibility. Air pollution is indisputably a matter of state concern that falls within the states' historic police powers. *See, e.g.*, *Pac. Merch. Shipping Ass'n v. Goldstene*, 639 F.3d 1154, 1167 (9th Cir. 2011) ("States have long sought to protect their own residents from the undisputedly harmful effects of air pollution and other forms of environmental harms."). And the "real purpose" of the HD I/M Regulation is to address air pollution in California—not to influence policy in other countries. *Movsesian*, 670 F.3d at 1075. The ISOR and FSOR plainly indicate that CARB's chief aim in adopting the program was to attain air quality standards.[40] *Cf. id.* (looking to legislative findings accompanying the statute at issue). Further, the regulation is generally applicable: it affects vehicles registered in the United States and in other countries alike. *See* Cal. Code Regs. tit. 13, § 2195(a); *cf. Movsesian*, 670 F.3d at 1075 (noting that the law in question "applies only to a certain class of insurance policies (those issued or in effect in Europe and Asia between 1875 and 1923) and specifies a certain class of people ('Armenian Genocide' victims and their heirs) as its intended beneficiaries"). The HD I/M Regulation plainly targets air pollution from trucks across-the-board and is securely located within an area of traditional state responsibility; it is not field preempted under the foreign affairs doctrine.

VI. EPA must approve California's HD I/M Regulation as part of its SIP.

EPA must approve California's SIP submission to effectuate the CAA's purposes, meet specific statutory requirements, and abide by the cooperative-federalism scheme established in the Act. EPA is *required* to approve a state's submission that satisfies the statute's prerequisites. 42 U.S.C. § 7410(k)(3). It is the states that have the primary role in determining how to attain the NAAQS. *Train v. Nat. Res. Def. Council*, 421 U.S. 60, 79 (1975). EPA's proposed approach of

[40] *See* ISOR at ES-1 to ES-2 ("To achieve federal air quality standards and improve public health in these regions as well as across the State, it is critical to substantially further reduce NOx and PM emissions from on-road heavy-duty vehicles beyond what CARB's current programs are already doing."); FSOR at 2-5 (comparing alternatives based on emission reductions).

disapproving a state program that, notably, has not been challenged on any of the claims EPA now asserts subverts the statutory scheme.

The HD I/M Regulation is an essential component of California's statutorily mandated efforts to attain national air quality standards and a valid exercise of the state's police power to protect public health. Indeed, the state relies on the policy to meet several CAA requirements, including attainment of national ambient air quality standards.[41] Disapproving the present SIP submission would undermine statutory objectives and, potentially, hinder numerous efforts that California has made to meet federal air quality standards.

VII. Conclusion

EPA's proposed partial disapproval of California's SIP submission, which would add the HD I/M Regulation to the state's plan for meeting federal air quality standards, is legally flawed, violative of the federalism principles foundational to the Clean Air Act, and a gratuitous attack on a proper exercise of state authority to control harmful air pollution. The HD I/M Regulation is vital to address a very real air pollution problem harming Californians' health, and EPA must permit California to incorporate it into the state's federally enforceable plan. The state has relied on emission reductions from the regulation in formulating broader strategies to reduce air pollution to healthy levels, as required by the CAA. Yet EPA now levels vague attacks on this routine submission—attacks that far miss the mark. For the reasons discussed here, the program comports with the Constitution and other federal law; EPA lacks authority to demand that states resolve undefined and theoretical legal arguments in their submissions under CAA section 110; and the proposed disapproval is ungrounded in fact and law, rendering it arbitrary and capricious and unlawful. What's more, the notice is so nebulous and speculative that it raises the question whether EPA is attempting to test or ratify various theories that the Administration has advanced elsewhere to interfere with state-level efforts to address pollution, rendering the proposal pretextual. *Cf. Dep't of Commerce v. New York*, 588 U.S. 752, 784 (2019) ("[T]he evidence tells a

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[41] *See, e.g.*, CARB, 2022 State Strategy for the State Implementation Plan, at 55 (Sept. 2022), https://ww2.arb.ca.gov/sites/default/files/2022-08/2022_State_SIP_Strategy.pdf. The 2022 State SIP forms the basis for statewide pollution control plans. *See, e.g.*, CARB Review of the Sacramento Regional 2015 NAAQS 8-Hour Ozone Attainment and Reasonable Further Progress Plan (Oct. 26 2023), https://ww2.arb.ca.gov/sites/default/files/2023-09/CARB%20Staff%20Report%20-%202023%20Sac%20Ozone%20SIP.pdf, at 13.
Every post-2022 ozone SIP California has sent to EPA (South Coast, San Joaquin Valley, Ventura, Sacramento Metro, Eastern Kern, Western Mojave, and Coachella Valley) relies—sometimes implicitly, sometimes explicitly—on the NOx and PM reductions from the Clean Truck Check rule that EPA is now proposing to partially disapprove. Pulling those reductions out of the emission inventory would open sizeable attainment/reasonable further progress gaps in each plan.

story that does not match the explanation the [Agency] gave for [its] decision."). EPA must abandon this ill-conceived gambit and promptly approve California's submission in all respects.

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