

**BEFORE THE
CALIFORNIA AIR RESOURCES BOARD**

**ADDITIONAL PROPOSED MODIFICATIONS AND DOCUMENTS FOR
THE IN-USE LOCOMOTIVE REGULATION**

**COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS
AND THE AMERICAN SHORT LINE AND REGIONAL RAILROAD
ASSOCIATION**

The Association of American Railroads (“AAR”) and the American Short Line and Regional Railroad Association (“ASLRRA”) (collectively “the Associations”), on behalf of themselves and their member railroads, respectfully submit the following comments on the California Air Resources Board’s (“CARB”) August 8, 2023, Additional Proposed Modifications and Documents for the In-Use Locomotive Regulation (“Second Modified Rule”).

AAR is a non-profit trade association whose membership includes freight railroads that operate 83 percent of the line haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States. AAR also represents passenger railroads that operate intercity passenger trains and provide commuter rail service.

ASLRRA is a non-profit trade association representing the interests of approximately 500 short line and regional railroad members and 500 railroad supply company members in legislative and regulatory matters. Short lines operate 50,000 miles of track in 49 states, or approximately 30% of the national freight network.

The Associations' members own (or lease) and operate locomotives within the state of California and are part of the national freight and passenger rail network. The Associations and their members therefore have a significant interest in this proceeding.

The Associations have filed several comments, and provided testimony, throughout the rulemaking process and incorporate those comments and testimony herein.

I. Introduction

Throughout this regulatory initiative, CARB has articulated its desire to pursue an undeniably important objective: improving air quality in California. The railroads support this goal – a fact which is apparent in longstanding and ongoing efforts already undertaken and underway by the Associations' members to both upgrade locomotive fleets and to explore and test new technologies to reduce emissions from rail operations. Today, numerous railroads are participating in demonstration programs for alternative fuel line-haul and switcher locomotives that hold great promise. But the railroads are testing these locomotives. Alternative fuel locomotives are not commercially viable today, nor will they be in the short term. Significant research and testing in terms of safety, reliability, and functionality still needs to be done before these locomotives can begin to replace diesel-powered locomotives. This reality is well-known to CARB and cannot be wished or regulated away.

II. The Second Modified Rule Remains Completely Unworkable and Is Preempted by Federal Law.

After many months of proceedings, including exhaustive comments by industry about the unrealistic nature of what CARB staff were proposing, the Board approved their recommendation to adopt the In-Use Locomotive regulation on April 27, 2023. Staff sent the regulation to the Office of Administrative Law on June 12, 2023. The Associations filed suit

challenging the legality of the regulation on June 16, 2023, and filed a motion to enjoin CARB from enforcing the regulation on June 19, 2023. In apparent response to the Associations' legal challenge, CARB staff then withdrew the regulation in July, and proceeded to propose the changes now open for comment in the Second Modified Rule.

Facing the likelihood that its over-reaching and unrealistic rule would very promptly be enjoined, CARB has attempted to postpone that reckoning by delaying the regulation's effective date as well as the timing of implementation for several of its provisions. However, the proposed changes do not meaningfully address the serious substantive problems with the rule, nor do they grapple with CARB's fundamental lack of authority to control railroad operations. Moreover, even aside from its legal deficiencies, this rule is bad policy that would work at cross purposes with CARB's stated goal of advancing goods movement decarbonization. Rail is already the most efficient and environmentally friendly way to move people and freight over land. One train can carry the freight of hundreds of trucks and freight railroads are 3-4 times more fuel efficient on average than trucks. And for years, the rail industry worked collaboratively – and successfully -- with CARB to reduce locomotive emissions in California. But CARB decided to forego the proven path of collaboration in favor of regulations that lack legal authority and display a willful disregard for technological realities -- and federal law. CARB evidently still intends to move forward in this manner, even as it has been forced to retreat from its original timeline.

CARB's Second Modified Rule would cost railroads that operate within the state billions of dollars annually. The fees would apply to short line railroads that provide critical first- and last-mile service on lower density branch lines and are capital-intensive, low-margin small

businesses.¹ CARB has conceded the costs of implementing the rule would bankrupt some short lines and has failed to acknowledge the impacts of the elimination of short line rail service to California, including eliminating an efficient means to market, rising costs of products, and a modal shift to trucks with possible safety, infrastructure, and environmental impacts. It is hard to see how this rule advances the best interests of Californians, but it is not hard to see how it will set back progress towards reduction of greenhouse gases in the state.

III. The Second Modified Rule Raises Significant Substantive Questions That Require Clarification.

CARB's hastily introduced changes to the rule have introduced additional ambiguity. The below provisions in the Second Modified Rule require additional clarification:

Topic	Regulatory Section	Clarification Requested
Spending Account		
	2478.4(b)	Please fully explain the availability, both in duration and grant amount, of Carl Moyer state grant funding for Tier 4 or better locomotives with this change. CARB staff previously has been extremely clear that the Carl Moyer program will begin declining availability on enactment of the new in-use locomotive regulations. Does CARB now expect that Carl Moyer funds will remain fully available, and if so, what is the basis for CARB's change in position?
		Please explain exactly how the Carl Moyer Program will be impacted by these new regulations.
In-Use Operational Requirements.		
	2479.5(a)(2)(C)	Please explain how this would apply if a Tier 4 locomotive is required before January 1, 2030 then shortly after acquisition EPA creates a new Tier level. For example, if a Tier 4 locomotive is acquired on

¹ ASLRRA will provide additional details regarding CARB's mischaracterization of the availability of public funds for the acquisition of locomotives in supplemental comments.

		<p>January 1, 2025 and on January 1, 2026 EPA institutes a new, cleaner emission standard for railroad locomotives, what is the final date this Tier 4 locomotive can be used in California?</p> <p>For the purpose of the (a) (2) section of the new proposed in-use locomotive regulations, is the “U.S. EPA Locomotive exhaust emissions standard” specific only to diesel-electric propelled locomotives?</p> <p>For the purpose of the (a) (2) section of the new proposed in-use locomotive regulations, what is the start date for application of a stricter “U.S. EPA Locomotive exhaust emissions standard”: the date the new standard is published in the Federal Register, the date the first locomotive meeting this new standard is commercially available, or something else?</p>
	2479.5(b)(1)	With the inclusion of the status “safety” in the considerations associated with CARB staff assessment of “the status of ... infrastructure improvements that may be needed to support ZE locomotives”, why were “reliability”, “availability” and “cost effectiveness” not also included?
Reporting and Recordkeeping Requirements.		
	2478.11(a)(6)	What other requirements “under this Locomotive Regulation” would require “a specific report” be required before July 1, 2026?
	2478.5; 2478.11(d)(1)	Is it correct that this data collection requirement actually pre-dates the implementation of these regulations, based on operations in California of a Tier 4 locomotive before the regulations go into effect and the 2030 start date for this provision?
Alternative Compliance Plan.		
	2479.7(b)(2)(C), (b)(3)(B)	Please explain how this is reconciled to 2479.5 (a) (2) (C).

IV. Conclusion

Providing additional time to comply with a rule that is not consistent with and violates federal law does not render the law defensible, nor does it increase the likelihood that implementation of the rule would in fact be effective in reducing locomotive emissions. If permitted to go into effect, this rule will put short line railroads out of business, will force more freight to move over California highways, and will do nothing to speed the development of commercially viable zero emission line-haul locomotives – a goal the railroads had long been working collaboratively with the state to advance.

Respectfully submitted,

Brian T. Burgess
GOODWIN PROCTER LLP
1900 N Street, NW
Washington, DC 20036
(202)346-4000

Kathryn D. Kirmayer
Theresa L. Romanosky
Association of American Railroads
425 Third Street, SW
Washington, DC 20024
(202)639-2100

Sarah G. Yurasko
American Short Line and Regional Railroad
Association
50 F Street NW Suite 500
Washington, DC 20001
(202)628-4500