

**BEFORE THE
ENVIRONMENTAL PROTECTION AGENCY**

**EPA-HQ-OAR-2022-0985; FRM-8952-01-OAR
GREENHOUSE GAS EMISSIONS STANDARDS FOR HEAVY-DUTY
VEHICLES – PHASE 3**

**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”) (jointly, “the Associations”), on behalf of themselves and their member railroads, respectfully submit the following comments on EPA’s April 27, 2023, Notice of Proposed Rulemaking on “Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles – Phase 3” (EPA-HQ-OAR-2022-0985; FRL-8952-01-OAR) (“Proposed Rule”). More specifically, the Associations comment below on EPA’s proposal to revise its existing locomotive preemption regulation implementing Section 209(e) of the Clean Air Act.

AAR is a non-profit industry 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 approximately 500 short line and regional railroad members and hundreds of railroad supply company members in legislative

and regulatory matters.¹ Short lines operate 50,000 miles of track in 49 states, or approximately 30% of the national freight network.

Railroads are the most fuel-efficient way to move freight long distances over land. On average, railroads are three to four times more fuel efficient than trucks, with a single train removing several hundred trucks from the nation's congested highways.² This is important because the rail industry accounts for roughly 40% of U.S. long-distance freight volume – more than any other mode. Railroads are also critical to the national and global supply chains and are an integral part of the nation's transportation infrastructure, while representing only 1.7% of the nation's transportation-related greenhouse gas emissions.³

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

The freight rail industry is not a combination of discrete, unconnected railroads. Rather, it is a single interconnected system of six Class I railroads and hundreds of short line railroads that own and maintain over 160,000 route-miles of track throughout North America. In most areas of the United States where passenger railroads operate, they do so over track owned by the freight railroads.

¹ ASLRRRA is also filing supplemental comments in this docket to address concerns specific to small business railroads.

² Association of American Railroads, *Freight Railroads & Climate Change* (June 2023) (<https://www.aar.org/wp-content/uploads/2023/06/AAR-Climate-Change-2023-Report.pdf>).

³ *Id.*

It is not just the track that is connected: approximately 5 to 10% of the line-haul locomotives being operated by the six Class I railroads are owned or leased by another railroad, a practice known as “locomotive run-through interoperability.” This allows the railroads to maximize the efficiency of locomotive use in moving freight trains and reduces transportation time by eliminating the need to exchange locomotives when moving from one railroad’s line to another’s. As a result, it is common to see line-haul locomotives from railroads in the United States, Canada, and Mexico operating far from the owning railroad’s tracks. It would not be uncommon to see a CPKC or Norfolk Southern locomotive operating on track in California owned by BNSF or Union Pacific. The Class I freight railroads manage their operations with a focus on efficiency by pulling a single train across long distances and through many states, thereby reducing the idling and switching of locomotives. For example, it is a regular occurrence for trains to leave Chicago, Illinois, for a destination in California without a single change to the locomotive(s) pulling that train.

A key factor in maximizing locomotive interoperability is the minimization of technical and operational differences among locomotives in each railroads’ fleet. Increasingly, railroads not only operate each other’s locomotives but also perform routine maintenance on other carriers’ locomotives to minimize non-productive time involved in returning a locomotive to its owning railroad for maintenance.

It is for these precise reasons, and the overall interoperability of the North American rail network, that Congress has passed many laws making clear that railroad regulation must occur at the national level and preempting the regulation of the rail industry by state and local

jurisdictions.⁴ Congress recognized that if the rail network is going to function safely and efficiently while meeting the needs of the nation’s supply chain, railroads cannot be subject to a patchwork of different state and local regulations across the country. This is why, in Section 209 of the Clean Air Act, Congress expressly prohibited individual states from “adopt[ing] or attempt[ing] to enforce any standard or other requirement relating to the control of emissions” from “new locomotives or new engines used in locomotives.”⁵ While the regulation of non-new locomotives and locomotive engines was not categorically preempted by the statute, the law does require states to obtain waivers from EPA for such regulations. Notably, as EPA recognized in 1998 when it published its implementing regulations, and recognizes again now, the statute prohibits EPA from granting waivers to states seeking to regulate non-new locomotives or non-new locomotive engines in a manner that would significantly affect the design and manufacture of new locomotives or new locomotive engines.⁶

Although the Proposed Rule removes the *categorical* preemption of certain types of state regulations EPA has, to date, deemed likely to significantly affect the design and manufacture of new locomotives or new locomotive engines, EPA is still required to evaluate applications for waiver on a case-by-case basis against the same statutory limitation.⁷ And

⁴ See, e.g. *United Transp. Union v. Long Island R.R.*, 455 U.S. 678, 688 (1982) (“the Federal Government has determined that a uniform regulatory scheme is necessary to the operation of the national rail system.”).

⁵ 42 U.S.C. § 7543(e)(1)(B). The Clean Air Act is not the only federal statute that preempts state regulation of the rail industry. Congress has enacted multiple statutes that preempt attempts by state and local authorities to regulate railroad operations, including the Interstate Commerce Act, as amended by the ICC Termination Act of 1995 (“ICCTA”) and the Locomotive Inspection Act. 49 U.S.C. § 10501(b); 49 U.S.C. § 20701. Through these statutory schemes, Congress recognized that a patchwork of state and local regulations attempting to regulate different aspects of the rail industry is unworkable and would interfere with interstate commerce and the global supply chain.

⁶ 42 U.S.C. § 7543(e)(2); 88 Fed. Reg. 26096 (April 27, 2023).

⁷ 88 Fed. Reg. 26096 (April 27, 2023).

while EPA repeatedly notes “developments since 1998,” the same important realities that underlay EPA’s 1998 decision to create categories of preempted state regulations continue to apply. Clarity in the scope of preemption remains important. Locomotives remain very long-lived assets. Remanufactured engines continue to improve the emissions performance of locomotives. And it remains the fact that a locomotive may travel through 48 states, Canada, and Mexico, and conflicting state requirements can interfere with the national rail network in significant ways. This is the problem Congress specifically prevented through the inclusion of Section 209(e) in the Clean Air Act and the various other statutes that reserve regulation of the rail industry solely to the federal government. EPA’s pivot to a case-by-case approach to waiver requests will not obviate these critical considerations.

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The Associations appreciate this opportunity to comment on the Proposed Rule and welcome additional conversations with EPA on this topic.

Respectfully submitted,

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