

**STATEMENT SUBMITTED FOR THE RECORD**

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HEARING ON “CLEANER TRAINS: OPPORTUNITIES FOR REDUCING EMISSIONS FROM AMERICA’S RAIL  
NETWORK”**

**U.S. SENATE COMMITTEE ON ENVIRONMENT & PUBLIC WORKS  
SUBCOMMITTEE ON CLEAN AIR, CLIMATE, AND NUCLEAR SAFETY**

**JULY 26, 2023**

**INTRODUCTION**

As president of the American Short Line and Regional Railroad Association (ASLRRA), the trade association representing the nation’s more than 600 small Class II and III freight railroads (commonly known as short line railroads or short lines), and hundreds of industry suppliers, I submit this statement for inclusion in the record of this subcommittee’s hearing.

This testimony highlights the serious flaws in recent regulatory actions by the state of California’s Air Resources Board (CARB) related to locomotive emissions. Twenty-five small railroads in California will be immediately and severely harmed by the new In-Use Locomotive Regulation. These railroads are likely to be driven out of business by the unfunded costs of this mandate, causing a ripple effect throughout the state and region, due to the interconnected nature of the U.S. freight rail network. The regulation will negatively impact the freight supply chain and will cause significant harm to workers, California shippers and the public. The regulation also conflicts with multiple statutory areas where the federal government has well-established primacy.

**THE SHORT LINE FREIGHT RAIL INDUSTRY**

**Short line railroads and the national network.** Short lines have been in existence for well over a century and today play a critical role in the country’s freight supply chain. Short lines provide first-mile and last-mile freight rail service, touching one in five railcars on the system. They ensure that businesses in small towns and rural communities that would otherwise be cut off from the North American freight rail network have the access they need to the global supply chain.

Short lines are nearly all small, entrepreneurial businesses. The typical short line employs about 30 people, operates about 80 route miles, and earns about \$8 million in revenue per year.

The short line industry as we know it today is the product of the Staggers Act of 1980, which made the sale or long-term lease of light density lines from Class I railroads to local entrepreneurs possible and thankfully avoided the abandonment of those lines and ripping up of the track for scrap. However, those sold-off lines came with high hurdles to continuing business operations – decades of deferred maintenance and few customers along the lines. In other words, these lines were spun off as short lines for a reason. These lines needed significant investment from the moment they became short lines, and

that's still the case today, with these small businesses still using up to a third of their annual revenues for maintenance and improvements, making short line railroading one of the most capital-intensive industries in our nation.



Despite those challenges, the short line industry has emerged as a great American success story. Short lines have not only kept those marginal lines they inherited viable, but they have turned them into small thriving enterprises. The industry now manages one-third of the freight rail network and touches one-fifth of all carloads while still only accounting for 6% of the industry's total revenue. Short lines pride themselves on doing more with less and making it work.

**The country's short line freight rail industry is a vital part of the North American supply chain.** Short line railroads provide first- and last-mile rail service, and they are the face of railroading for thousands of customers who need to move and receive critical goods. Our members ship all commodities, and industries critical to our country's economic health, such as industrial, manufacturing, agricultural, energy, and chemical sectors are particularly reliant on short line service.

**Short lines are economic engines for localities, particularly in small-town and rural America.** Our members are critical links in the nation's freight supply chain and are vital engines of economic activity. Together, our members are tied to 478,000 jobs nationwide, \$26.1 billion in labor income and \$56.2

billion in economic value-add<sup>1</sup> – providing a service that 10,000 businesses nationwide rely upon to get goods and products to market. At the local level, the availability of rail service provided by short lines is often the tipping point for manufacturers and shippers deciding to locate in the area, driving new, well-paying jobs particularly in rural and small-town America.

**We live and work in the communities we serve.** Short lines are owned, managed, and staffed by individuals who are part of the fabric of their local communities. Because short lines run short distances, employees live and work in the communities they serve. Many short lines are family-run businesses — safety and service is personal to them.

**Short lines’ environmental stewardship is strong.** The rail industry is a sustainable, environmentally friendly mode of transportation. U.S. Environmental Protection Agency (EPA) data show freight railroads account for only 0.6% of total U.S. greenhouse gas emissions and only 2.1% of transportation-related sources. On average, U.S. freight railroads move one ton of freight 480 miles on a single gallon of diesel fuel, approximately four times as far as our over-the-road competition. Short line service alone keeps 31.8 million heavy trucks off highways and public roads, preventing costly wear and tear, relieving congestion, and reducing the still horrifying number of deadly motor vehicle crashes.

Short lines are committed to doing their part, by continuously seeking ways to reduce their environmental impact with the implementation of technology and operating practices that reduce emissions. For example, the ASLRRRA is currently partnering with the FRA and short line railroads to test locomotive emissions by studying fuel injectors and additives. Products like these that increase fuel economy may also yield emissions benefits. This is a two-year project that will give us a better understanding of how small railroads can utilize cost effective methods for reducing their impact on the environment.

**Short lines are small businesses with limited resources.** Efforts to regulate problems in the rail space can impose outsized burdens and demands on these railroads. It is crucial that any new regulatory requirements be practical, directly relevant to a safety benefit and realistic for a small business to implement.

A longstanding body of law, including the Regulatory Flexibility Act of 1980 (RFA), as modified by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires that agencies exercise utmost care and discretion in evaluating how regulations they promulgate affect small businesses. Congress should similarly heed the wisdom of these laws before crafting prescriptive updates to the current complex and highly technical regulatory framework. Many small railroads are unable to comply with costly “one size fits all” requirements that are written with larger entities in mind. Each small railroad has a unique operating environment that can differ dramatically from others in terms of scale, market, operating characteristics, capital needs, and price sensitivity of shippers served. Any action by Congress that ignores this fact could inflict extreme duress and economic harm on a critical piece of the supply chain.

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<sup>1</sup> The Section 45G Tax Credit and the Economic Contribution of the Short Line Railroad Industry, prepared by PWC for ASLRRRA (2018).

## **CARB AND THE IN-USE LOCOMOTIVE REGULATION**

The California Air Resources Board (CARB) was created in 1967 to unify statewide efforts to address severe air pollution. It is part of the California EPA, is the lead agency for climate change programs, and oversees all air pollution control efforts in California to attain and maintain health-based air quality standards.

### **CARB's Locomotive Emissions Activities**

CARB has worked to reduce emissions from locomotives operating in the state for over two decades by entering negotiated agreements with railroads. This includes two agreements: the 2005 Statewide Railyard Agreement and the 1998 Locomotive NOx Fleet Average Agreement in the South Coast Air Basin. The two Class I railroads operating in California – BNSF Railway, and the Union Pacific Railroad – were counterparties. In 2017, CARB petitioned<sup>2</sup> the EPA to adopt more stringent emission standards for locomotives through adoption of a new “Tier 5” standard in regulation that would establish lower limits for NOx, PM, HC and GHG emissions from locomotives. In their petition, CARB noted that the federal Clean Air Act (CAA) is “technology forcing” and expressed their sense that Tier 4 locomotive standards no longer reflected the best available technology, citing developments in after-treatments, diesel oxidation catalyst filters, hybrid electric locomotives and zero emission battery and fuel cell electric locomotives. In 2022, EPA responded to CARB’s petition committing to develop regulations to address emissions from the locomotive sector and to “...undertake a rulemaking process to reconsider our existing locomotive preemption regulations to ensure they don’t inappropriately limit California’s and other states’ authorities under the CAA to address their air quality issues.” The EPA response suggested that funding from the Inflation Reduction Act such as the Clean Ports Program, or through the Diesel Emissions Reduction Act, administered by the EPA, could provide resources to “...help accelerate the introduction of cleaner locomotives.” On its website, CARB suggests several potential resources for incentives for locomotive investments including the FRA’s CRISI grant program<sup>3</sup> and the state’s Carl Moyer Memorial Air Quality Standards Attainment Program.

### **The 2023 In-Use Locomotive Regulation**

On April 27, 2023, CARB approved the In-Use Locomotive Regulation<sup>4</sup>, which it promulgated “...in the absence of federal actions to address harmful emissions from locomotives...” with the objective to “...transition locomotive operations to zero emissions.”

Here are some highlights from the rule.

- Starting in 2024, locomotive operators will be required to set-aside funds based on the emissions created by their locomotives in California. The higher the emissions, the more funds must be set

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<sup>2</sup> CARB. Petition For Rulemaking Seeking the Amendment of The Locomotive Emission Standards For Newly Built Locomotives and Locomotive Engines and Lower Emission Standards for Remanufactured Locomotives and Locomotive Engines. April 13, 2017. [https://ww2.arb.ca.gov/sites/default/files/2020-07/final\\_locomotive\\_petition\\_and\\_cover\\_letter\\_4\\_3\\_17.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-07/final_locomotive_petition_and_cover_letter_4_3_17.pdf)

<sup>3</sup> The Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program authorized at 49 U.S.C. 22907

<sup>4</sup> In-Use Locomotive Regulation. Title 13, California Code of Regulations, Chapter 9, Article 8, Sections 2478 through 2478.17. Resolved on April 27, 2023 as R-23-12 and submitted to the California Office of Administrative Law on June 9, 2023. <https://ww2.arb.ca.gov/rulemaking/2022/locomotive>

aside. These “spending accounts” may only be used for: purchase, lease or rent of EPA Tier 4-compliant or zero emissions (ZE) locomotives or to rebuild locomotives to these standards; infrastructure associated with ZE; or, to pilot or demonstrate ZE locomotives or rail equipment technologies.

- Locomotives with automatic shutoff devices will not be permitted to idle for longer than 30 minutes.
- All locomotives operating in the state will be required to register with CARB, and reporting includes an annual administrative payment.
- Locomotive activity, emission levels and idling data will be required to be reported annually.
- Starting in 2030, only locomotives less than 23 years old may be used in California and none that are not Tier 4 compliant or ZE. Switcher locomotives with an original engine build date of 2030 and beyond will be required to operate in a ZE configuration to be lawful in California.

This regulation is severely flawed in numerous respects. It directly conflicts with numerous federal laws. It is impractical and key assumptions made by CARB about economic impacts, current technological capabilities and direction, scale and timing of technology development are unsound. The impact on the short line railroad industry in California would be particularly severe as it mandates relatively massive capital expenditures by small businesses on locomotive fleet replacements in a much shorter timeline than is feasible. The regulatory impact analysis associated with the rule failed to adequately consider the impact on small businesses. Finally, the unintended consequences of implementing this rule are likely to thwart the stated objectives of the regulation.

### **THE CARB RULE IS UNSOUND FOR MANY CRITICAL REASONS**

#### **1. The regulation is preempted by federal law.**

CARB is rulemaking in an area where it clearly lacks legal authority and is unequivocally preempted from rulemaking by federal law. It is ASLRRRA’s assessment that this regulation violates (at least) three statutes: The Interstate Commerce Commission Termination Act (ICCTA) of 1995, the Clean Air Act, and the Locomotive Inspection Act.

**First, ICCTA.** The ICCTA preempts state or local laws that unreasonably interfere with interstate commerce or unreasonably burden or interfere with rail transportation. The Ninth Circuit has held that ICCTA “plainly” preempts local environmental regulations targeting railroads, such as rules imposing reporting requirements related to emissions and restricting the idling time allowed for locomotives.

**Second, the Clean Air Act.** Congress granted the EPA exclusive authority to regulate emissions from new locomotives under the CAA. This state regulation violates that federal authority. Specifically, the CAA requires EPA to “promulgate regulations containing standards applicable to emissions from new locomotives and new engines used in locomotives.” 42 U.S.C. § 7547(a)(5). § 209(e)(1) of the CAA provides that “[n]o State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from ... [n]ew locomotives or new engines used in locomotives.” 42 U.S.C. § 7543(e)(1). Section 209(e)(2) also requires that a state first

receive an express waiver from EPA before adopting or attempting to enforce “standards and other requirements relating to the control of emissions” from nonroad vehicles or engines, including non-new locomotives or engines operating beyond their useful life.

**Third, the Locomotive Inspection Act.** This law governs the regulation of locomotive equipment. Specifically, the Locomotive Inspection Act provides that “[a] railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts and appurtenances—(1) are in proper condition and safe to operate without unnecessary danger of personal injury; (2) have been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter; and (3) can withstand every test prescribed by the Secretary under this chapter.” 49 U.S.C. § 20701. This law has been upheld through challenges including *Law v. Gen. Motors Corp.*, 114 F.3d 908, 910 (9th Cir. 1997); also *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 631 (2012) (holding that Congress “occup[ie]d the entire field of regulating locomotive equipment”—a field that “extends to the design, the construction and the material of every part of the locomotive and tender and of all appurtenances”) (quoting *Napier v. Atl. Coast Line R.R. Co.*, 272 U.S. 605, 611 (1926)).

Based on the fundamental conflicts with these three well-established areas of federal statute, ASLRRRA has joined the Association of American Railroads in a federal lawsuit against CARB, filed in the U.S. District Court for the Eastern District of California.

The Committee should consider that the State of California, in coordination with the Administration, has deliberately taken actions that fundamentally challenge the long-established authority of Congress in this important area of interstate commerce. Regulation of railroad locomotive emissions belongs at the federal level, performed within the parameters of federal law, and conducted through a formal federal rulemaking process that carefully weighs the costs and benefits of agency action across stakeholder groups. This process includes protections and consideration under law taken to protect the interests of small businesses, including through the RFA and SBREFA.

## **2. The regulation imposes an unfunded and extremely burdensome mandate on small railroads.**

Based on CARB’s own regulatory impact analysis, the cost of implementation of the rule for California’s small railroads could be well over half-a-billion dollars. The regulation does not provide any dedicated resources to assist regulated entities with costs of compliance. Rather, locomotive operators are mandated to place their own monies into a segregated trust fund that may only be used to acquire and upgrade locomotives to the standards set by the regulation. The cost to rebuild a locomotive to Tier 4 standards, or to acquire a new Tier 4 compliant locomotive, is millions of dollars more than the cost to acquire or rebuild to lower tier levels. At short lines and smaller operators, such intermediate EPA tier improvements could result in significant reductions in emissions for these fleets, but these are precluded by the regulation. Class II and III railroads are small entities who have based their long-term financial strategies and planning around the low costs to acquire used motive power and to periodically rebuild these locomotives for very long-term lifespans of more than 50 years. The normal periodic rebuilding of this equipment will generally result in significant emissions reductions, though not to the maximalist levels mandated by the CARB rule. Many short lines will fundamentally be unable to shoulder

the costs of the mandate and will exit the freight railroading business. Their shippers will be forced to divert to truck service or to find a new rail-served location. Others will be forced to defer important regular capital expenditures, including investments in safety and capacity, and attempt to pass the balance of the costs of the rule to shippers. This will increase logistics costs for their shippers as well as drive some portion of their traffic onto trucks on local roads and highways.

### **3. The ability of federal and local funding programs to mitigate CA this massive unfunded mandate is unclear.**

CARB has suggested that short lines can simply obtain funding from existing resources like FRA's CRISI, EPA's DERA and California's Carl Moyer grant programs to upgrade or replace the more than 160 short line locomotives in California.

**First, FRA's CRISI program historically has not provided anywhere near the level of resources for locomotives that would be necessary to help address this massive unfunded mandate.** Since 2017 the CRISI program has awarded more than \$1.3 billion in competitive funding for all eligible purposes. Of those awards, only two included funding for motive power rebuilds or acquisitions as elements of projects where most investment was in fixed assets. In 2020, an \$8.5m award for the Henderson (TX) Overton Branch Rail Line Rehab and Train Siding Improvement Project, included funding for at least one locomotive, and, in 2018, an \$8.8 million award to the South Carolina Piedmont Freight Rail Service Improvement Program included funding to acquire three locomotives. If as much as half those award amounts went to motive power purposes, that is less than 0.7% of CRISI awards since the program began.

Congress used the Infrastructure Investment and Jobs Act (IIJA) to emphasize CRISI eligibility for motive power emissions reductions projects, and the FRA has released some additional program guidance on the topic. CRISI is also unique among federal grant programs in that private Class II and III railroads may apply for and receive grants directly without public intermediaries. But history has not shown CRISI to have been a significant source of funding for locomotive emission reductions, nor does it seem that this program can be a relevant source of funding in the immediate future:

- The assumption that CRISI can resolve the resource challenge this regulation presents to California short lines must consider that the applications are highly competitive. Last year's much larger funding amount, over a billion dollars under the first year of the IIJA, has reportedly been oversubscribed by eight times.
- CRISI eligibility is broad. Applications for locomotive projects must compete with many other merit-worthy project types with significant public benefits, including for track and bridge investments, at-grade crossing improvements, signaling and communications, railyards and stations, research and development and workforce training. Both intercity passenger and freight projects are eligible for CRISI funds. It is unrealistic to expect a disproportionate number of short line freight locomotive awards sufficient to address the scale of the challenge, relative to these other project types.
- One of FRA's award objectives is geographic equity. Because of this, a disproportionate number of project awards to the state of California sufficient to address the massive unfunded mandate is unlikely, even over several cycles.

- Applications for funding through CRISI are complicated and often very challenging to prepare for small businesses.
- When short lines do win, awards may not be obligated for as long as 15 months. This means that the lead time to reach a point at which expenditures on locomotive projects may begin can be as long as 30 months from the closing of the previous cycle. FRA intends to combine CRISI resources from FY's 2023 and 2024 into a single competition, so the lag time to expenditure of awards for the subsequent FY 2025 cycle will be even longer.

**Second, California's state funding is woefully inadequate.** Since inception, the Carl Moyer Program has awarded \$93.8 million for projects involving locomotives. This is an average of only \$4 million per year spread across all locomotive types in California: passenger and freight, switching and line haul, and public and privately held equipment. ASLRRA is aware of some Moyer awards to California short lines, but we do not have a clear picture of the total assistance extended to short lines for locomotive emission improvement projects. We have requested this data from CARB.

**Finally, EPA's DERA program will not help much, if at all.** The funding provided by the DERA program has been suggested as an option for the California short lines subject to this rule. According to award data, California has received \$120 million out of \$661 million of all DERA funding since 2008. But of this, only \$23 million was awarded to all types of locomotive projects, a cash flow of approximately \$1.6 million per year.

Administrators of funding programs must also consider in their guidance and award decision-making the workforce development needs, fleet scaling and equipment sustainment costs likely to be incurred by short lines and small operators being forced to upgrade to Tier 4 compliant locomotives.

**4. The regulation fails to recognize the economics of short line motive power acquisition, operation, and maintenance and the excessive costs that will now be imposed on short lines**

Lower tier locomotives predominate in the fleets of smaller operators not by choice but economic necessity. These are capital-intensive and low margin small businesses. CARB itself noted that an average Class III railroad in the state has yearly revenue of approximately \$1.3 million, with cost of compliance with their new regulation as high as 42% of annual revenue for a short line. A new cost of that magnitude is untenable for a short line – or any business. For more than a decade the spread in cost between an older, lower-tier used locomotive in good condition and a brand-new unit has been dramatic - from a few hundred thousand dollars for used equipment contrasted with over \$4 million for a small-order purchase of a new Tier 4-compliant locomotive. The long-term financial planning of short lines has been constructed around assumptions of a generally low cost of motive power acquisition on the secondary market with periodic rebuilds enabling those locomotives to remain in service indefinitely. The CARB regulation is constructed as a fiscally coercive mechanism with no accompanying provision of resources to support the costs of compliance. It upends core capital and operating budget assumption and plans for the 25 short lines in the state as well as numerous industrial track operations. CARB itself stated that "...it is possible some of these businesses would be eliminated" due to the massive compliance costs. The costs to the public of loss of some or all these important short line links in the freight supply chain and local and regional economies — 33% of California's railroad network —

must be considered more thoroughly before the damage begins to accumulate from implementation of this rule.

CARB has included two provisions in the rule ostensibly to reduce the burden on small businesses: the Alternative Compliance Plan and the Small Business Hardship Extension. Both measures enable regulated railroads to delay compliance with some elements of the rule for periods of time, but they entail substantial reporting burdens. Neither addresses the basic challenge, that under the rule, inevitably, and on approximately the same terminal timeline, short line railroads will be forced to make a massive investment in Tier 4 locomotives – or ZE locomotives, if ever practical and available – that will be many times the motive power investments that would have been expected to need to support their operations under the legal framework prior to the ruling. The costs imposed by the Regulation will remain insurmountable for small businesses, under the Alternative Compliance Plan, and with the Small Business Hardship Extensions, as they would under normal compliance.

#### **5. The regulation makes unreasonable assumptions about costs and feasibility of implementation and present and future technologies.**

Comments made during the CARB regulatory process by industrial locomotive operators bring to light a very important concern with the requirement to implement the highest-tier locomotives: relative performance. Compliance with each EPA tier introduces mechanical complexity to a locomotive. Maintenance intervals are more frequent, maintenance activities more elaborate, repairs more costly and operators have not observed the expected improvements in reliability as they have moved from lower to higher tiers. The latest Tier 4 compliant locomotives — also the newest on the market — are dramatically more complex machines than the lower tier locomotives commonly found at short lines, in terms of the engines, electronic controls and monitoring systems. The step from Tier 3 to Tier 4 is notable for these impacts. Locomotive maintenance personnel require substantial additional training, more consumables and spares must be kept on hand, and fleets may even have to be sized differently to address lower-than-expected availability levels. CARB does not seem to have fully considered the effect of this dynamic, one that can disproportionately impact smaller operators of locomotives. The CARB approach eliminates the potential for significant evolutionary emissions reductions by small operators through lower-level-tier-to-tier improvements. Rather, it presents one mandate for the use of only the most costly, complex, and newest locomotives.

#### **6. The regulation will cause environmental harm due to modal diversion from rail to truck and increasing emissions.**

Despite our shared environmental goals, the short line railroad industry strongly disagrees with the means proposed in CARB's Proposed Rule to purportedly achieve a reduction in locomotive emissions. Rather, we expect the rule to be counterproductive in terms of reducing emissions generated by short line railroads serving their shippers. The cost to comply with the proposed regulatory requirements would cripple and threaten to render many short line railroads financially insolvent. Under CARB's rule, much of the freight carried by short line railroads will continue to be shipped through California even as the short lines themselves are forced to cease operations given their inability to meet the financial burdens imposed by the rule. This will inevitably result in a modal shift of freight traffic from rail to its competing mode of truck transportation. This will lead to an increase in road congestion and wear on public highways, micro plastic pollution from shredded tires, and accidents, injuries, and fatalities, to the

detriment of the residents of California. One short line railroad has commented that their efforts to pass through of costs compliance with the rule into freight rail tariffs could put as many as 100,000 trucks on California roads each year, just at their operation. Most small railroads are likely to shut down and all their shippers will be forced to switch to truck transportation. Even in a vision of rapid adoption of electric trucks in California, these vehicles still generate emissions in the form of substantial PM from tire wear, and that is without considering the emissions of the generation mix used by electric power providers in any given scenario, nor the substantial emissions footprint associated with manufacturing of EVs.

**7. The regulation is likely to be copied by other states, having nationally negative impacts to transportation.**

Regulatory actions in California historically have not remained constrained within the borders of the state. The CAA provides a specific exemption for California to preempt federal law for motor vehicle emission standards. Under certain circumstances other states are allowed to adopt California motor vehicle emission standards. The map below illustrates states that have adopted California’s criteria pollutant vehicle emissions standards under section 177 of the CAA. The dark shaded states adopted the standards between 1990 and 2023, the light shaded states have committed to do so by 2026.

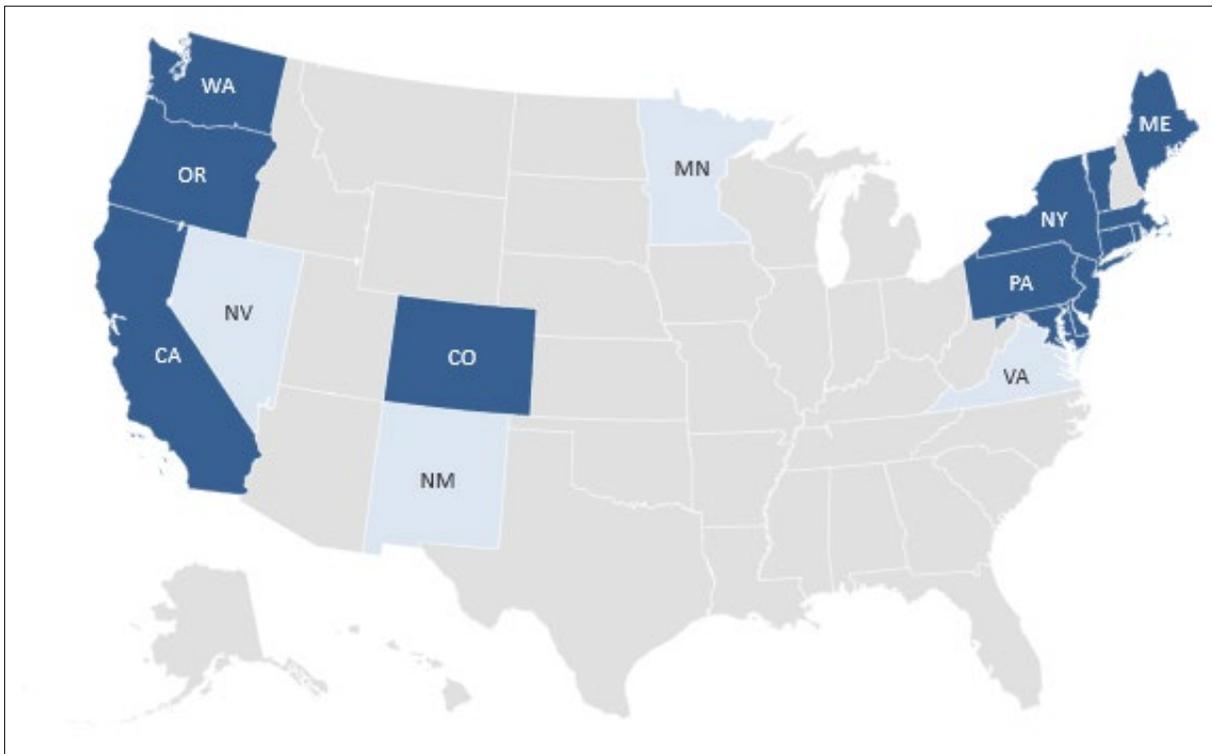


Figure 1: Adoption of California Criteria Pollutant Vehicle Emissions Standards 1990 - 2026

Considering this demonstrated past propagation of California requirements for emissions standards, it is reasonable to expect numerous other states to consider enacting new regulations on locomotive emissions modeled on this CARB rule. California does not consider its regulation to be federally preempted, although we fundamentally disagree. States that are politically favorable to additional

emissions regulation could be willing to take the California defense of this regulation at face value and proceed promptly with adoption of carbon-copy rules following California's lead. EPA has taken steps to create a loophole in federal preemption of locomotive emissions measures to facilitate national propagation of the CARB rule. On April 27<sup>th</sup> the EPA released their notice of proposed rulemaking (NPRM) on Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles. That NPRM seeks to revise agency rules to "...[ensure] that states are not impeded from adopting programs as allowed by the CAA to address the contribution of air pollutant emissions from non-new locomotives and engines to their air quality issues."<sup>5</sup>

The effect of spread of the CARB rule would be to build a disconnected patchwork of state regimes for locomotive emissions that would prevent the movement of locomotives across borders, even when on the same railroad, creating geographically captive fleets, and prevent the common practice of exchanging power motive power between systems when the movement crosses a border with a state regulatory disparity. This would impact Class I railroad operations fundamentally, but also Class II and III railroads as many small railroads also have lines that cross state borders. Such a potential propagation of the CARB rule, following the scale and pattern illustrated above, would dramatically multiply the financial burden projected for California short lines across hundreds of small railroads and thousands of locomotives. This would create chaos in the movement of rail freight around the nation, raise costs for shippers, worsen customer service and supply chain fluidity, likely put a significant number of short lines out of business, and divert hundreds of thousands of rail carloads to truck. A scenario such as this would de facto have seen a handful of states through coordinated action effectively usurp the responsibility and authority of the federal government and Congress.

### **SHORT LINES AND THE CARB IN-USE LOCOMOTIVE REGULATION: WHAT CONGRESS CAN DO**

#### **Maintain federal primacy and pre-emption on rail regulation.**

State regulation of freight railroading threatens to undermine the efficiency of the world's premier freight rail network. The interconnected nature of the rail network seems to be the most clear and obvious case of interstate commerce that one could imagine – we urge Congress to not let its federal role in rail be usurped by the states, which would create an unworkable and inefficient patchwork of rail regulation and lead to more future supply chain instability. The California locomotive rule for instance would simply ban any locomotive older than 23 years old beginning in 2030 – a completely unworkable proposal for a short line industry that regularly relies on 40- and 50-year-old locomotives to keep our sometimes barely marginal railroads viable. Absent a decision from the courts upholding the federal primacy in this area of law, Congress should act to assert, protect, and preserve the federal government's necessary authority over this sector of the economy.

#### **Assess grant funding resourcing to help small businesses shoulder the financial burden of the regulation.**

Congress, through this committee, and other committees with jurisdiction over locomotive emissions and freight rail, can evaluate the true feasibility of available grant program funding to meaningfully

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<sup>5</sup> Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3, 88 Fed. Reg. 26092. (April 27, 2023) Section X: Preemption of State Standards and Requirements for New Locomotives or New Engines Used in Locomotives.

mitigate the massive burden this regulation imposes on small businesses, including through dialogue with funding agencies and the impacted railroads. This evaluation of practicality and adequacy of resources should consider the massive scale of locomotive acquisitions required under the short CARB timeline, any supply chain challenges in the locomotive manufacturing industry that could hamper production, and the changes in total cost of ownership for the operators of the mandated new locomotive types, including workforce training needs.

### **CONCLUSION**

ASLRRA's short line members are the critical connection between shippers in small towns and rural areas across the country and the Class I railroads. We are an important driver of economic growth in California, as many of the industries that are most reliant on small railroads are critical in California including agriculture, energy, and manufacturing – particularly in California's rural areas. If the California rule spreads to other states, you can expect the same deterioration of small railroad operations and the jobs it supports, a less fluid supply chain, a detrimental impact to the public as freight moves from rail to truck, and a much larger bill for road infrastructure maintenance burdening states and localities. Congress can help us, and the small communities we serve across rural and small-town America, to grow and flourish, or stagnate and fail.

The CARB rule is unlawful, impractical and would impose a terrible burden on small businesses and the shippers they serve. We appreciate the committee's close attention to the items we have noted in our statement, and we welcome future opportunities to work together to craft good public policy around emissions that is measured, reasonable, evolutionary, properly resourced, and that takes into careful account the full measure of potential impacts on all stakeholders. ASLRRA appreciates the attention of the subcommittee to this issue and looks forward to continuing to build on rail's enormous environmental benefits and work with Congress to advance realistic and reasonable ways to further reduce emissions in the rail sector.