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AN EXAMINATION OF THE CALIFORNIA AIR RESOURCES BOARD'S (CARB) IN-USE LOCOMOTIVE REGULATION

(118–64)

HEARING

BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

JULY 9, 2024

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CONTENTS

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U.S. House of Representatives
Washington, DC 20515

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JULY 3, 2024

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
FROM: Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE: Subcommittee Hearing on "*An Examination of the California Air Resources Board's (CARB) In-Use Locomotive Regulation*"

I. PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials of the Committee on Transportation and Infrastructure will meet on Tuesday, July 9, 2024, at 2:00 p.m. ET in 2167 Rayburn House Office Building to receive testimony at a hearing entitled, "*An Examination of the California Air Resources Board's (CARB) In-Use Locomotive Regulation*." The hearing will examine CARB's In-Use Locomotive Regulation. At the hearing, Members will receive testimony from Mr. Dillon Olvera, President of Modesto and Empire Traction Company testifying on behalf of the American Short Line and Regional Railroad Association; Mr. Roger Nober, Director of the George Washington Regulatory Studies Center and Professor of Practice at the Trachtenberg School of Public Policy & Public Administration, George Washington University; Mr. Ural Yal, Senior Vice President, Flatiron Construction, testifying on behalf of the Associated General Contractors of California; and Ms. Heather Arias, Chief, Transportation and Toxics Division of CARB.

II. BACKGROUND

CARB issued a regulation to reduce in-state locomotive emissions in April 2023.[1] The Clean Air Act (CAA), 42 U.S.C. § 7401, *et seq*., regulates air emissions from stationary and mobile sources.[2] The CAA authorizes the Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards (NAAQS)—which are limits in atmospheric concentrations of "criteria pollutants"—to protect public health and welfare and to regulate the emissions of hazardous air pollut-

[1] CARB, *Reducing Rail Emissions in California*, (April 27, 2023), *available at* https://ww2.arb.ca.gov/our-work/programs/reducing-rail-emissions-california#:~:text=On%20April%2027%2C%202023%2C%20CARB,on%20the%20Locomotive%20factsheet%20website.

[2] EPA, *Summary of the Clean Air Act*, (Sept. 6, 2023), *available at* https://www.epa.gov/laws-regulations/summary-clean-air-act#:~:text=(1970),from%20stationary%20and%20mobile%20sources (noting for the purposes of this hearing, the memorandum will focus on mobile sources, particularly the regulation of mobile sources from new motor vehicles and locomotives).

ants.[3] These are National standards applicable to all states and preempt state or local air regulations.[4]

Because California air quality standards preceded National standards in the CAA, CAA Section 209 expressly allows California to seek a waiver of Federal preemption for new non-road engines and vehicles provided its standards, in the aggregate, are at least as protective of public health and welfare as Federal standards, except for new locomotive engines in CAA Section 209(e)(1).[5] In addition, CAA Section 177 allows other states to adopt these standards without specific approval by EPA, provided such standards are identical to the approved state waiver.[6]

In seeking a waiver to enforce its own standards for non-road engines and vehicles, California must seek authorization from EPA.[7] EPA must then publish a notice for public hearing and comment in the Federal Register. Accordingly, California filed its formal request for authorization on November 7, 2023, and EPA hosted a virtual public meeting on the CARB regulation on March 20, 2024.[8] EPA also provided a broader public comment period as announced in the Federal Register on February 27, 2024, that closed on April 22, 2024.[9]

Under CAA Section 209(e)(2), EPA shall grant an authorization unless the EPA Administrator finds:

1) the CARB rule is arbitrary and capricious;
2) that California does not need such standards to meet compelling or extraordinary conditions; or
3) the proposed CARB standards and accompanying performance procedures are inconsistent with Section 209.

III. THE CARB IN-USE LOCOMOTIVE REGULATION

The CARB locomotive regulation ("CARB Rule" or "Regulation") seeks to reduce emissions from locomotives of three regulated pollutants: diesel particulate matter, oxides of nitrogen, and carbon dioxide.[10] The CARB Rule is primarily comprised of four parts: 1) the In-Use Operational Requirement, 2) the Idling Requirement, 3) the Spending Account, and 4) Registration, Reporting and Recordkeeping Requirements.[11] It also includes an Alternative Compliance Plan and Alternative Fleet Milestone Option that operators may voluntarily adopt as well as other compliance flexibilities such as potential extensions allowed for the unavailability of technologies.[12] The CARB Rule was finalized on April 27, 2023.

IN-USE OPERATIONAL REQUIREMENT

Starting in 2030, only locomotives with an original build date less than 23 years old can operate in California, unless they meet Tier 4 standards,[13] operate in a zero emissions (ZE) configuration, or if the primary engine has not exceeded the specified

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[3] *Id.* (Noting that while carbon dioxide emissions are classified as pollutants, they are not classified as criteria pollutants requiring NAAQS standards. However, two other criteria pollutants included in the CARB In-Use Locomotive Regulation—Nitrogen Oxides and Diesel Particulate Matter—have NAAQS limits).

[4] *See generally* 42 U.S.C.§ 7543(a) (noting for purposes of this hearing, the memorandum will focus on the regulation of mobile sources of regulated emissions. The general prohibition on states or political subdivisions enforcing individual emissions standards is codified at 42 U.S.C.§ 7543(a)).

[5] 42 U.S.C. § 7543(e)(2).

[6] Codified at 42 U.S.C. § 7543(e)(2)(B).

[7] 42 U.S.C. § 7543(b).

[8] EPA, *Vehicle Emissions California Waivers and Authorizations*, (last updated Apr. 26, 2024), *available at* https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations.

[9] California State Nonroad Engine Pollution Control Standards; In-Use Locomotive Regulation; Requests for Authorization; Opportunity for Public Hearing and Comment, 89 Fed. Reg. 39 (Feb. 27, 2024).

[10] CALIFORNIA AIR RESOURCES BOARD, *In the Matter of California's Request for Authorization Pursuant to Clean Air Act Section 209(e) for the In-Use Locomotive Regulation, Clean Air Act Section (3)(2)*, (Nov. 7, 2023), *available at* https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/authorizationsdoc.pdf, [*hereinafter* "CARB Authorization"].

[11] *Id.*

[12] *Id.*

[13] *See* Control of Emissions of Air Pollution From Locomotive Engines and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder, 73 Fed. Reg. 37,096 (June 30, 2008), *available at* https://www.govinfo.gov/content/pkg/FR-2008-06-30/pdf/R8-7999.pdf (generally describing Tier 4 standards and locomotives); *see also*, CARB Locomotive Factsheets, *available at* https://ww2.arb.ca.gov/our-work/programs/reducing-rail-emissions-california/locomotive-fact-sheets (noting less than five percent of locomotives operating in California meet the Tier 4 standard).

megawatt hour (MWh).[14] In addition, future switch, industrial, and passenger locomotives with original build dates of 2030 or later will need to operate in ZE configuration in California.[15] Starting in 2035, line-haul locomotives engines build dates of 2035 or newer will need to operate in ZE configuration in California.[16]

Furthermore, the Regulation requires CARB staff to evaluate, in 2027 and 2032, the status of ZE technologies, configurations, and supporting infrastructure for locomotives.[17] If these evaluations show the 2030 or 2035 ZE dates to be unfeasible, the staff may propose regulatory amendments.[18]

IDLING REQUIREMENT

For locomotives equipped with Automatic Engine Start/Stop (AESS) devices, CARB's idling requirements would require operators to shut down stationary locomotives after 30 minutes.[19] For the same reasons as allowed under Federal idling regulations, locomotives may only exceed this limit to prevent damage to the engine, maintain air pressure for brakes or auto start systems, recharge a locomotive battery, or perform necessary maintenance.[20] The Regulation also requires that operators of AESS maintain these devices, and requires operators to manually shut down a locomotive if the system is not operating properly.[21] Operators with AESS equipped locomotives are further required to report idling events that exceed 30 minutes as part of the regulations record keeping and reporting requirements.[22]

REGISTRATION, REPORTING AND RECORD KEEPING REQUIREMENTS

The Regulation requires registration, reporting and recordkeeping on locomotive operators for all locomotive activity in California.[23] Locomotive operators are required to register all locomotives operating within California by July 1, 2026.[24] Required registration information includes operator contact information, locomotive identifying information, and emissions information such as road number, engine tier, and build year.[25] Annual reporting requirements include all information necessary to establish compliance, as well as data on the quantity of locomotive emissions occurring in California, by operator.[26] In addition to idling reporting, these requirements are necessary to verify an operator's mandatory contributions to a mandatory spending account.[27]

SPENDING ACCOUNT

The CARB Rule requires railroads operating in California to deposit funds into a spending account to purchase, lease, or rent zero emissions locomotives and associated equipment and infrastructure.[28] The amount deposited in the account is calculated by estimating the locomotive's emissions in California and the health costs of those emissions.[29] The Regulation permits operators to offset spending account obligations through qualifying purchases using funds other than spending account funds.[30]

Initially, funds may be used for the purchase of, or the remanufacture of, existing locomotives to Tier 4 standard locomotives through the end of 2029.[31] The funds may also be used to purchase, lease, or rent ZE locomotives, rail equipment or the remanufacture of locomotives to ZE powered.[32]

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[14] CAL. CODE REGS. tit. 13, § 2478.5 (2022) [*hereinafter* "CARB Final Regulatory Order"], *available at* https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/fro2.pdf.
[15] *Id.*
[16] *Id.*
[17] CARB Authorization, *supra* note 10, at 6.
[18] *Id.*
[19] CARB Final Regulatory Order, *supra* note 13, at § 2478.9.
[20] 40 C.F.R. 1033.155(g) (2024).
[21] CARB Authorization, *supra* note 10, at 7.
[22] *Id.*
[23] CARB Final Regulatory order, *supra* note 14, at § 2478.10
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.* at §2478.11.
[28] CARB Final Regulatory Order, *supra* note 13, at § 2478.4.
[29] CARB Authorization, *supra* note 10, at 4.
[30] *Id.* at 5.
[31] CARB Final Regulatory Order, *supra* note 13, at § 2478.7.
[32] *Id.* at § 2478.4.

THE ALTERNATIVE COMPLIANCE PLAN AND THE ALTERNATIVE FLEET MILESTONE OPTION

The Alternative Compliance Plan (ACP) is a voluntary compliance pathway allowing regulated locomotive operators to comply with the spending account and/or In-Use Operational requirements using projects and activities that achieve equivalent levels of emissions reductions within three miles of locomotive activities.[33] Examples of such activities include the electrification of trucks and operating equipment in or around rail facilities that reduces emissions of Diesel Particulate Matter (DPM) and nitrogen oxides (NOx).[34] Operators may use this alternative as their pathway to compliance, or as a hybrid approach that combines partial direct compliance with reductions achieved through the ACP but must still comply with the idling record keeping and reporting requirements.[35]

The Alternative Fleet Milestone Option (AFMO) is primarily intended to provide a similar alternative compliance option for operators that wish to operate zero emissions locomotive technologies under a simplified milestone plan.[36] Under the AFMO, an operator must demonstrate that 50 percent of its operations are accomplished by Tier 4 or cleaner locomotives by 2030 and 100 percent by 2035; in 2042, 50 percent of operations need to operate in ZE configurations, and 100 percent ZE by 2047.[37]

IV. THE CARB RULE AND TRANSPORTATION BY LOCOMOTIVES

Stakeholders representing a variety of industries, local governments and labor have commented on the CARB Rule's economic impact on interstate freight rail transportation and investment.[38] According to CARB's analysis, the rule would create $86 billion in Nationwide compliance costs.[39] The analysis also estimated that the costs of the rule on smaller Class II and Class III operators could exceed annual operating profits.[40] In its risk analysis, CARB states that if these operators cannot pass on compliance costs to customers, or cannot receive regulatory relief, "it is possible some of these businesses would be eliminated."[41] These economic concerns for Class II and Class III operators were likewise expressed by the United States Small Business Administration Office of Advocacy.[42]

CARB's analysis also estimates $32.3 billion in anticipated health benefits primarily from reduced cardiopulmonary mortality, hospitalizations, emergency room visits and other respiratory illnesses, and $2.4 billion in avoided climate change impacts within the State of California.[43] These proposed benefit valuations and anticipated cost estimates represent CARB's own analysis.

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[33] CARB Authorization, *supra* note 10, at 6.
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.* at 7.
[38] *See* Letter from Dawn Rowe, Third District Supervisor, Chair, San Bernardino County Board of Supervisors to Karl Simon, Director, Transportation Climate Division, Office of Transportation and Air Quality, United States Environmental Protection Agency (Mar. 18, 2024); *see also* Letter from Jon Switalski, Executive Director, Rebuild SoCal Partnership to David Dickinson, Transportation Climate Division, Office of Transportation and Air Quality, United States Environmental Protection Agency (Mar. 25, 2024), *available at* https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0574-0074.
[39] CALIFORNIA AIR RESOURCES BOARD, PROPOSED IN-USE LOCOMOTIVE REGULATION: STANDARDIZED REGULATORY IMPACT ASSESSMENT at 88–90, (May 26, 2022), *available at* https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/appb.pdf [*hereinafter* "CARB Reg. Impact Analysis"].
[40] CARB Reg. Impact Analysis, *supra* note 39, at 15.
[41] *Id.* at 143.
[42] Letter from Major L. Clark, III, Deputy Chief Counsel and Nick Goldstein, Assistant Chief Counsel, United States Small Business Administration Office of Advocacy to David Dickinson, Transportation Climate Division, Office of Transportation and Air Quality, United States Environmental Protection Agency (Apr. 22, 2024) *available at* https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0574-0149.
[43] CARB Reg. Impact Analysis, *supra* note 39, at 47.

V. WITNESSES

- Mr. Dillon Olvera, President, Modesto and Empire Traction Company, testifying on behalf of the American Short Line and Regional Railroad Association
- Mr. Roger Nober, Director, The GW Regulatory Studies Center at The George Washington University
- Mr. Ural Yal, Senior Vice President, Flatiron Construction, testifying on behalf of the Associated General Contractors of California
- Ms. Heather Arias, Chief, Transportation and Toxics Division, California Air Resources Board

AN EXAMINATION OF THE CALIFORNIA AIR RESOURCES BOARD'S (CARB) IN-USE LOCOMOTIVE REGULATION

TUESDAY, JULY 9, 2024

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 2:12 p.m., in room 2167 Rayburn House Office Building, Hon. Troy E. Nehls (Chairman of the subcommittee) presiding.

Mr. NEHLS. The Subcommittee on Railroads, Pipelines, and Hazardous Materials will come to order. I ask unanimous consent that the chairman be authorized to declare a recess at any time during today's hearing.

Without objection, so ordered.

I also ask unanimous consent that the Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

And as a reminder, if Members wish to insert a document into the record, please also email it to DocumentsTI@mail.house.gov.

I now recognize myself for the purposes of an opening statement for 5 minutes.

OPENING STATEMENT OF HON. TROY E. NEHLS OF TEXAS, CHAIRMAN, SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

Mr. NEHLS. At almost 145,000 route-miles, the United States has one of the most efficient and comprehensive freight rail systems in the world. It is also one of the safest.

The benefits of this system aren't just measured in miles and tons of freight shipped, they can also be measured in other benefits, including reduced fuel consumption and associated emissions reductions. Rail is capable of transporting a ton of freight for more than 450 miles on only 1 gallon, that's right, just 1 gallon of diesel fuel.

Unfortunately, the Biden administration and the State of California remain intent on pushing an unwanted, radical Green New Deal agenda on the American people, regardless—regardless—of the cost and consequences to our economic and national security.

While this hearing has been called to discuss the California Air Resources Board's request for authorization for a State-based regulation, we should be very mindful that this proposed regulation is not just confined to California. It's national in both impact and intent.

According to CARB's own analysis, the rule would require both BNSF and Union Pacific to replace their entire fleet of locomotives nationwide to comply with the regulation, which will cost billions, with a B, billions of dollars, and will make freight transportation and the cost of goods drastically more expensive.

We are also concerned about the rule's impact on the short line operations, which Mr. Olvera will highlight for us in his testimony. As the United States rail transportation system is intrinsically linked and vital to the safe and efficient movement of freight and passengers in interstate commerce, other rail operators would also be forced, they would also be forced to adjust their own operations.

The importance of rail transportation is so great that Congress has enacted a number of statutes specifically designed to ensure the preservation of this most important mode of transportation. For example, railroads are the first American industry to be regulated under the Interstate Commerce Act of 1887.

Many of my colleagues who served in the last Congress are familiar with the Railroad Labor Act of 1927, which was designed to avoid the potential for economically crippling disruptions in interstate commerce caused by labor disputes.

Additionally, the Staggers Rail Act of 1980 was enacted to restore the economic health of the industry at a time when the railroads were at the verge of bankruptcy—bankruptcy—due to the stifling Government regulation: the very same type of economic burden CARB and the Biden administration is seeking to reimpose.

Further, the Interstate Commerce Committee Termination Act created the Surface Transportation Board and explicitly, quote, "preempts all State laws that may reasonably be said to have the effect of managing or governing rail transportation." That is the end quote.

Finally, there is the Clean Air Act itself, which clearly establishes the Federal Government acting as the sole regulator of emissions for new locomotives. Unfortunately, this CARB request for authorization is an attempt to circumvent the statutory and legal requirements of both the Clean Air Act and the Administrative Procedure Act.

Concerningly, falsely considering a matter of this scope as a waiver instead of an agency rule also denies it coverage under the Small Business Regulatory Efficiency Act and the Congressional Review Act.

Moreover, CARB's proposal would fail any meaningful cost-benefit analysis. It also fails to fully consider costs associated with the acquisition of still nonexistent—and I am going to repeat this point—nonexistent zero-emissions locomotives.

The cost of building out, much less permitting the necessary infrastructure, including energy infrastructure, is likewise enormous.

It is for these reasons that a broad coalition of railroads, shippers, and union organizations have come out in strong opposition to this rule. This regulation must be rejected by EPA and accom-

panied by a return to sanity in both Sacramento and right here in Washington, DC.

I look forward to hearing from today's witnesses about the challenges and opportunities for commuter rail service as well as best practices to improve service, realize efficiencies, and increase fare revenues.

[Mr. Nehls' prepared statement follows:]

Prepared Statement of Hon. Troy E. Nehls, a Representative in Congress from the State of Texas, and Chairman, Subcommittee on Railroads, Pipelines, and Hazardous Materials

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be rejected by EPA and accompanied by a return to sanity in both Sacramento and in Washington.

I look forward to hearing from today's witnesses about the challenges and opportunities for commuter rail services, as well as best practices to improve service, realize efficiencies, and increase fare revenues.

Mr. NEHLS. I now will recognize the chairman of the full committee—I will now recognize Ranking Member Larsen of the full committee for 5 minutes.

OPENING STATEMENT OF HON. RICK LARSEN OF WASHINGTON, RANKING MEMBER, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. LARSEN OF WASHINGTON. Thank you, Chair. You are getting ahead of yourself. I want to thank Chair Nehls and the committee for holding this hearing on railroad locomotive emissions, and I want to commend the chair on setting a date as well for a rail safety hearing.

Now that the NTSB has released its report after the Norfolk Southern derailment in East Palestine, Congress has to act on the NTSB's recommendations to enhance rail safety.

Today's hearing addresses how Congress can continue to support freight movement, grow our economy, and reduce emissions from the transportation network.

In Washington State, freight is key to long-term economic growth. Nearly one in two jobs statewide is freight dependent, with almost 40 percent of the State's wages generated by freight-dependent industries.

According to Washington State Department of Transportation, Washington State's multimodal freight system handles almost 600 million tons of cargo each year, which is valued at $677 billion.

In 2022, 15 percent of freight tonnage was moved by rail in my State, including through rail yards in Everett and Bellingham in my district.

So, while transportation, including freight rail, keeps the economy and supply chains moving, the sector continues to be the largest source of greenhouse gas emissions.

Transportation emissions are trending in the wrong direction. For example, U.S. greenhouse gas emissions increased 1.6 percent from 2022 to 2023.

According to my own State's Department of Ecology, diesel exhaust is one of the most harmful air pollutants. Diesel exhaust puts healthy people, including more than 4 million people who live and work near diesel emissions sources in my State, at risk for respiratory diseases and complicates health conditions for people with asthma, heart, and lung disease.

And some of this was running through my mind on Saturday when a diesel locomotive was parked just below my place in Everett, Washington, and spit out diesel emissions for 7 straight hours.

Thankfully, Washington State is a leader in reducing emissions in transportation. In 2020, Washington enacted its motor vehicle emissions standards law, which is helping increase the number of zero-emission vehicles on State roads.

Washington's ferry system, the largest in the country, yet also the largest source of transportation emissions statewide, is transitioning to a cleaner and greener passenger ferry fleet.

Washington's Maritime Blue initiative invests in a thriving, world-class, and sustainable maritime industry for the next 30 years. For example, my State's work on maritime batteries resulted in a brandnew Corvus Energy facility at the Port of Bellingham, which opened last year. Corvus' expansion in northwest Washington State illustrates a growing regional and global demand for hybrid power and zero-emission energy solutions to transportation needs.

Washington State expects to meet its emissions goals for 2030, but more needs to be done to reach our 2040 and 2050 goals for a cleaner and greener future.

Congress and the administration want to be partners in this.

Thanks to the BIL, communities in my district and in districts across the country are investing in a cleaner and greener future.

Last month, the USDOT awarded the Port of Bellingham a nearly $18 million RAISE grant to modernize a shipping terminal site, returning the site to a fully functioning multimodal terminal with more efficient loading and unloading of railcars on the terminal, an investment that will reduce emissions while keeping supply chains and the maritime economy moving in northwest Washington and on the west coast.

Congress has also invested more than $5 billion in Consolidated Rail Infrastructure and Safety Improvements, or CRISI, grants in the BIL. These grants can be used to purchase updated rail locomotives, and short line railroads can directly apply for grants rather than going through public agencies or entities.

The BIL also specifically allows recipients to use CRISI to rehabilitate, remanufacture, procure, or overhaul locomotives, provided that such activities result in a significant reduction in emissions.

The Federal Railroad Administration is currently reviewing applications for $2.4 billion in CRISI funds, an investment that can fund quite a few new locomotives in communities across the country.

So, I look forward to hearing from today's witnesses about how they are working to build a cleaner and greener freight rail network, and with that, I yield back the balance of my time.

[Mr. Larsen of Washington's prepared statement follows:]

Prepared Statement of Hon. Rick Larsen, a Representative in Congress from the State of Washington, and Ranking Member, Committee on Transportation and Infrastructure

Thank you, Chairman Nehls and Ranking Member Wilson, for holding this hearing on railroad locomotive emissions.

I also want to commend you, Chairman Nehls, on setting a date for a rail safety hearing.

Now that the National Transportation Safety Board (NTSB) has released its report after the Norfolk Southern derailment in East Palestine, Congress has to act on NTSB's recommendations to enhance rail safety.

Today's hearing addresses how Congress can continue to support freight movement, grow our economy and reduce emissions from the transportation network.

In Washington state, freight is key to long-term economic growth.

Nearly one in two jobs statewide is freight dependent, with almost 40 percent of the state's wages generated by freight-dependent industries.

According to WSDOT, Washington state's multimodal freight system handles almost 600 million tons of cargo each year, which is valued at $677 billion.

In 2022, 15 percent of freight tonnage was moved by rail in my state, including through rail yards in Everett and Bellingham in my district.

While transportation, including freight rail, keeps the economy and supply chains moving, the sector continues to be the largest source of greenhouse gas emissions.

Transportation emissions are trending in the wrong direction. For example, U.S. greenhouse gas emissions from transportation increased 1.6 percent from 2022 to 2023.

According to the Washington State Department of Ecology, diesel exhaust is one of the most harmful air pollutants.

Diesel exhaust puts healthy people, including more than four million people who live and work near diesel emission sources in my state, at risk for respiratory diseases and complicates health conditions for people with asthma, heart and lung disease.

Some of this was running through my mind on Saturday when a diesel locomotive was parked just below my place in Everett, WA and spit out diesel emissions for seven straight hours.

Thankfully, Washington state is a leader on reducing emissions in transportation.

In 2020, Washington enacted its Motor Vehicle Emission Standards law, which is helping to increase the number of zero-emission vehicles on state roads.

Washington's ferry system—the largest ferry system in the country, yet also the largest source of transportation emissions statewide—is transitioning to a cleaner and greener passenger ferry fleet.

Washington's "Maritime Blue" initiative invests in a thriving, world-class and sustainable maritime industry for the next 30 years and beyond.

For example, my state's work on maritime batteries resulted in a brand new Corvus Energy facility at the Port of Bellingham, which opened last year.

Corvus's expansion in Northwest Washington illustrates the growing regional and global demand for hybrid-power and zero-emission energy solutions to transportation needs.

Washington state expects to meet its emissions goals for 2030, but more must be done to reach our 2040 and 2050 goals for a cleaner and greener future.

Congress and the Administration want to be partners in this.

Thanks to the Bipartisan Infrastructure Law (BIL), communities in my district and in districts across the country are investing in a cleaner and greener future.

Last month, USDOT awarded the Port of Bellingham a nearly $18 million RAISE grant to modernize a shipping terminal site, returning the site to a fully functioning multimodal terminal with more efficient loading and unloading of railcars on the terminal—an investment that will reduce emissions while keeping supply chains and the maritime economy moving in Northwest Washington and on the West Coast.

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These grants can be used to purchase updated rail locomotives, and short line railroads can directly apply for grants rather than going through a public agency or entity.

The BIL also specifically allows recipients to use CRISI grants to rehabilitate, remanufacture, procure or overhaul locomotives, "provided that such activities result in a significant reduction in emissions."

The Federal Railroad Administration is currently reviewing applications for $2.4 billion in CRISI funds—an investment that can fund quite a few new locomotives in communities across the country.

I look forward to hearing from today's witnesses about how they are working to build a cleaner and greener freight rail network.

Mr. NEHLS. The gentleman now yields. I now recognize Ranking Member Wilson for 5 minutes for an opening.

OPENING STATEMENT OF HON. FREDERICA S. WILSON OF FLORIDA, RANKING MEMBER, SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

Ms. WILSON OF FLORIDA. Thank you. Thank you, Mr. Chairman, and thank you to our witnesses today.

For many, railroad tracks in this country have too often existed as a symbol of division, inequity, and a legacy of racial oppression. In the aftermath of slavery, and as a result of redlining, Black communities and other underserved communities formed settlements near rail lines. Even though these areas were polluted with hazardous locomotive emissions, which we now know are associated with disease and premature death, they settled there because they had nowhere else to go.

This is why, when I would ask some of my constituents, where do you live, where do you work, and where do you go to school, they often respond with, "across the tracks," which serves not just as an answer, but a statement of the persisting injustice and disproportionate burdens placed on so many communities of color.

The California Air Resources Board, or CARB, is working to limit harmful emissions from locomotives, including by requiring cleaner engines after 2030 and reducing the time locomotives spend idling. CARB estimates that these efforts would save $32 billion in health costs and prevent over 3,200 premature deaths in California.

This regulation seeks to steer the railroad industry towards doing its part to prevent the worst impacts of the climate crisis. Every year, extreme weather events strike with increasing frequency and severity as sea levels continue to rise. For the residents of my district who live in south Florida, these threats are not just concerning, they are existential. We have seen constant flooding in south Florida recently, and seas are projected to rise in Miami-Dade County by over a foot within the next 30 years, dramatically increasing flood risks further inland and threatening the homes and livelihoods of frontline communities.

Just last week, we had our first category 5 hurricane in the Caribbean, the earliest ever in hurricane season. It is now more important than ever that we protect California's right to implement Nation-leading regulations.

The industry's response to this regulation should not be to sue CARB. We have had national Tier 4 locomotive standards in place since 2015, which the industry seems to have avoided implementing for over 90 percent of its locomotives. The technology exists—what is missing is the investment, the will, and the commitment to ending the legacy of railroad communities suffocating under the deadly effects of air pollution. It is only this commitment that may begin to make the phrase "across the tracks" a phrase of the past.

In today's hearing, I look forward to learning what the railroad industry is doing to improve our air quality and the health of communities living near rail yards.

Mr. Chair, the United States Climate Alliance recently submitted a letter to EPA Administrator Regan, supporting the deployment of zero-emission technologies across all transportation modes, and Mr. Chairman, I would like to ask for unanimous consent to add this letter to the record.

Mr. NEHLS. Without objection.

[The information in on pages 77–78.]

Ms. WILSON OF FLORIDA. And I yield back.

[Ms. Wilson of Florida's prepared statement follows:]

Prepared Statement of Hon. Frederica S. Wilson, a Representative in Congress from the State of Florida, and Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials

Thank you, Chairman Nehls, and thank you to our witnesses today.

Railroad tracks in this country have too often existed as a symbol of division, inequity and a legacy of racial oppression. In the aftermath of slavery and as a result of redlining, Black communities and other underserved minorities formed settlements near rail lines. Even though these areas were polluted with hazardous locomotive emissions—which we now know are associated with diseases and premature death—they settled there because they had nowhere else to go.

That is why when I still hear my constituents respond to the questions: where do you live, where do you work and where do you go to school with "across the tracks," it serves, not just as an answer, but a statement of the persisting injustice and disproportionate burdens placed on so many communities of color.

CARB is working to limit harmful emissions from locomotives, including by requiring cleaner engines after 2030 and reducing the time locomotives spend idling. CARB estimates that these efforts would save $32 billion in health costs and prevent over 3,200 premature deaths in California.

This regulation seeks to steer the railroad industry towards doing its part to prevent the worst impacts of the climate crisis. Every year, extreme weather events strike with increasing frequency and severity as sea levels continue to rise. For the residents in my district living in Miami and southeast Florida, these threats are not just concerning; they are existential. Seas are projected to rise in Miami-Dade County by over a foot within the next 30 years, dramatically increasing flood risk further inland and threatening the homes and livelihoods of frontline communities.

Just last week, we had our first Category 5 hurricane in the Caribbean—the earliest ever in hurricane season. It is now more important than ever that we protect California's right to implement nation-leading regulations.

The industry's response to this regulation should not be to sue CARB. We have had national Tier 4 locomotive standards in place since 2015, which the industry seems to have avoided implementing for over 90 percent of its locomotives. The technology exists—what's missing is the investment, will, and commitment to ending the legacy of railyard communities suffocating under the deadly effects of air pollution. It is only this commitment that may begin to strip the phrase "across the tracks" of its sordid history.

In today's hearing, I look forward to learning what the railroad industry is doing to improve our air quality and the health of communities living near rail yards, and not more reasons why making progress is too hard. I yield back my time.

Mr. NEHLS. The gentlelady yields.

I ask unanimous consent to enter into the record the letters and statements for the record from the Associated Builders and Contractors, The Fertilizer Institute, the Association of American Railroads, the U.S. Chamber of Commerce, the Pelican Institute for Public Policy, the Taxpayers Protection Alliance, and a joint letter from the Private Railcar Food and Beverage Association as well as the National Industrial Transportation League, and a joint letter from the National Stone, Sand, and Gravel Association and the California Construction and Industrial Materials Association, these letters.

Without objection, so ordered.

[Hon. Nehls' submissions for the record are on pages 79–100.]

Mr. NEHLS. I would like to, again, welcome our witnesses and thank you, thank you all for being here today.

Briefly, I would like to take a moment to explain our lighting system to our witnesses. There are three lights in front of you. Green means go, obviously yellow means you are running out of time, and red means to please conclude your remarks.

I ask unanimous consent that the witnesses' full statements be included into the record.

Without objection, so ordered.

I also ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing.

Without objection, so ordered.

I also ask unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members and witnesses to be included in the record of today's hearing.

Without objection, so ordered.

And as your written testimony has been made part of the record, the subcommittee asks that you limit your oral remarks to 5 minutes.

With that, I will recognize Representative Duarte of California to introduce Mr. Dillon Olvera.

Mr. DUARTE. Well, thank you, Mr. Chairman, for holding this important hearing today, and thank you for inviting Mr. Dillon Olvera, one of my constituents, to testify on behalf of the American Short Line and Regional Railroad Association.

Mr. Olvera is the president and chief executive officer of Modesto and Empire Traction Company, also known as MET, a short line railroad operator situated in a bustling 2,000-acre industrial park known as the Beard Industrial District in Modesto, California.

That includes globally recognized companies such as E&J Gallo Winery, Del Monte Foods, Nestle, Frito-Lay, Plastipak, Graham Packaging, and our local Stanislaus Foods.

MET also maintains over 53 miles of track, helping integrate California's 13th Congressional District into the North American supply chain, including Mexico and Canada, through connections with BNSF and the Union Pacific Railroad.

Mr. Chairman, I will discuss it more when it is my time for questions, but I am very appreciative of Mr. Olvera being here today. He can speak with credible fluency as to the harmful, real-world implications of CARB's rule.

I yield back.

Mr. NEHLS. The gentleman yields. Thank you, Mr. Duarte.

With that, Mr. Olvera, you are recognized for 5 minutes for your testimony.

TESTIMONY OF DILLON OLVERA, PRESIDENT AND CHIEF EXECUTIVE OFFICER, MODESTO AND EMPIRE TRACTION COMPANY, ON BEHALF OF THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION; ROGER NOBER, DIRECTOR, GW REGULATORY STUDIES CENTER AND PROFESSOR OF PRACTICE AT THE TRACHTENBERG SCHOOL OF PUBLIC POLICY AND PUBLIC ADMINISTRATION, GEORGE WASHINGTON UNIVERSITY; URAL YAL, SENIOR VICE PRESIDENT—CORPORATE PRECONSTRUCTION GROUP, FLATIRON CONSTRUCTION, ON BEHALF OF THE ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA; AND HEATHER ARIAS, CHIEF, TRANSPORTATION AND TOXICS DIVISION, CALIFORNIA AIR RESOURCES BOARD

TESTIMONY OF DILLON OLVERA, PRESIDENT AND CHIEF EXECUTIVE OFFICER, MODESTO AND EMPIRE TRACTION COMPANY, ON BEHALF OF THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

Mr. OLVERA. Thank you, Congressman Duarte. Good afternoon. My name is Dillon Olvera, and I am the president and CEO of Modesto and Empire Traction Company, affectionately called the MET.

As a member of the American Short Line and Regional Railroad Association, I am pleased to represent our Nation's small freight railroad community.

The MET is a private, family-owned business, established in 1911. We have 50 employees and are a Class III short line railroad that provides rail service to approximately 30 customers in Modesto, California.

The Central Valley is home to some of the Nation's most important food and agricultural shippers, and our railroad provides the first and last mile of service to those customers. We are fortunate to connect to two Class I railroads: the Union Pacific and the BNSF.

California short lines move roughly 260,000 carloads of freight each year, and the MET represents 35,000 of these carloads. Each carload carries the equivalent of three to four trucks' worth of goods.

California's short lines operate approximately 200 locomotives, and our railroad represents 11 of those.

Most short lines equip their fleets with low-cost but reliable and easy-to-maintain, older, second-hand locomotives, acquired from larger Class I's.

This practical model is in compliance with Federal law, has been in place for decades, and allows short lines to survive.

Short line locomotives, over 23 years old, which would soon be banned under the CARB rule, are, in fact, the norm in the industry. These locomotives cost only a few hundred thousand dollars, while new Tier 4 locomotives cost a few million dollars each.

Railroads are already environmentally friendly. According to EPA data, the Nation's freight railroads account for less than 2 percent of transportation-related greenhouse gas emissions, and short lines make up only a tiny fraction of that 2 percent.

Our trucking competitors, meanwhile, account for 23 percent of transportation greenhouse gas emissions. The MET has already made great strides in reducing emissions, and we were an early adopter of clean locomotives.

Beginning in 2008, our company worked closely with California to apply for State grants. Nine of our eleven locomotives were upgraded from Tier 0 to Tier 3 due to this work.

There are three different grants in place today that have obligations that will be completed through 2032. The total cost of these upgrades was $12½ million, shared between California and the MET. These locomotives have many years of remaining useful life but would have to be scrapped and replaced with new locomotives per the CARB regulation.

This CARB regulation will also force the MET to contribute to a spending account while continuing to complete our grant obligation. This is an unreasonable ask to make of any small business.

Our current calculation for the spending account is over $1 million annually. A grant match in the spending account emission fees would represent a massive increase in our locomotive spend, compared to historical levels.

We also recently applied, and were awarded, CRISI grant funding to upgrade two switch-engine locomotives from Tier 0 to Tier 4. The total cost for this upgrade is approximately $5 million, again, to be split between the Federal Government and the MET.

As we have demonstrated, the MET, and short lines in general, are perfectly willing to work with CARB and other similar agencies to reduce emissions when they offer reasonable paths forward. But this rule is just not feasible for short lines.

The CARB regulation will cause a significant financial impact to the entire short line industry. Railroads are capital-intensive, and our margins are tight. A well-run short line frequently spends over 80 percent of revenue on operating expenses, and contract provisions and market competition will prevent us from raising prices to cover CARB's regulation costs.

If short lines are driven out of business due do CARB's unfeasible rule, that freight will move onto trucks, increase traffic congestion and freight costs, and businesses will have lost viable shipping options and move out of California or just vanish.

The EPA should deny CARB's authorization request. Not only does it mandate the use of locomotive technology that is not currently commercially available, CARB has also publicly acknowledged that the massive compliance costs will force short lines out of business.

This would have a catastrophic impact on our freight rail network, the U.S. supply chain, the environment, and highway safety.

Thank you, and I looking forward to our discussion today.

[Mr. Olvera's prepared statement follows:]

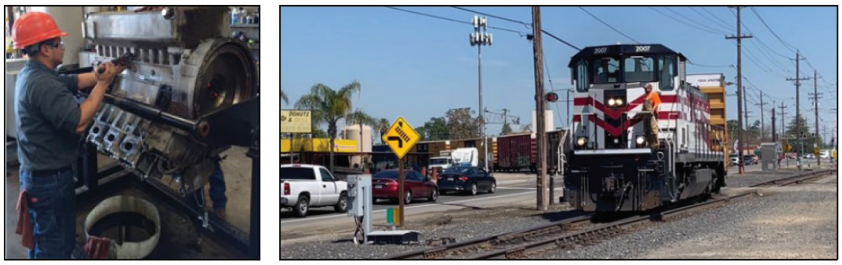
Prepared Statement of Dillon Olvera, President and Chief Executive Officer, Modesto and Empire Traction Company, on behalf of the American Short Line and Regional Railroad Association

INTRODUCTION

My name is Dillon Olvera, and I am the President and CEO of the Modesto and Empire Traction Company, affectionately called the MET. MET is a member of the American Short Line and Regional Railroad Association (ASLRRA), the trade association that represents the nation's more than 600 Class II and III freight railroads (commonly known as short line railroads or short lines) and hundreds of suppliers that support them. In this capacity I can speak to you on behalf of the ASLRRA, representing the interests of our nationwide small railroad industry. I appreciate the opportunity to appear before you today.

The MET is a private, family-owned business established in 1911. MET is a short line railroad with 53 miles of track that provides rail service to approximately 30 customers in Modesto, California, located in the Central Valley of the state and employs approximately 50 employees with stable jobs and benefits. MET meets the Small Business Administration's small business size standard. The Central Valley is home to some of the nation's largest food and agriculture shippers. Our railroad provides the first-mile and/or last-mile service to our customers. We are fortunate to have access to two Class I Railroads, connecting shippers on the MET to the Union Pacific Railroad and BNSF Railway.

Map of the MET network



MET employees at work on the railroad

We may not be household names, but short lines are critical in your communities and pivotal in making sure that goods and freight that your constituents rely upon can get to their homes and businesses in a safe, efficient, and reliable manner. Smart regulatory action by Congress in the early 1980s helped make this possible, sparking the growth of the short line industry and facilitating the freight rail service we proudly provide today. Now a new regulation in California threatens four decades of economic progress. The regulation is rooted in good intentions—reducing greenhouse gas emissions—but it is problematic in its application, a fundamental violation of federalism, interferes with interstate commerce, and is based on unrealistic assumptions. Moreover, it takes direct aim at our industry and the critical link in the supply chain we represent. The California Air Resources Board (CARB), the agency issuing the regulation, does get one thing right—it predicts the demise of

our industry due to the costs of its measure, noting "*it is possible some of these businesses would be eliminated*." [1] (Emphasis added.)

As one of "these businesses"—and on behalf of the families and communities and thousands of other U.S. businesses that rely on railroads like ours—I am here to sound the alarm. If small railroads begin to go bankrupt simply because they cannot afford to comply with the regulation, the effects will ripple across our supply chain, starting in California and stretching across the country. These will be felt in the form of higher costs for shippers and consumers and will be witnessed in the form of more trucks on our roads, greater congestion on our highways, more particulate matter in our environment—and, ironically, more greenhouse gas emissions in California and elsewhere.

We appreciate the subcommittee's interest in this matter and in providing an opportunity for our industry to speak about CARB's misguided measure. We also appreciate the leadership that Chairman Graves, Subcommittee Chair Nehls, and many on this panel, and others in Congress, have shown in giving voice to our concerns and urging a thoughtful approach to policymaking by the federal actors who have a rightful say in these matters. This includes the Environmental Protection Agency (EPA), which is currently deliberating over CARB's authorization request. While CARB fails to recognize the competing interests that must be balanced to achieve good policy outcomes, we remain confident that Congress and the federal government can be reasonable and level-headed in working with our industry to ensure that our shared goals—clean air, a thriving freight economy, and a world class supply chain system—are all achieved. I urge Congress to call on EPA to deny CARB's request to authorize their In-Use Locomotive Regulation, for the many reasons I cite in this testimony.

The Short Line Freight Rail Industry

Our industry is a great American success story. It was spurred to new life in the early 1980s when partial deregulatory action by Congress—the Staggers Act—allowed larger Class I railroads to spin off moribund, outdated rail lines no longer deemed business-worthy. Short line railroads acquired and revived these marginal lines, which were often in very poor condition. They invested mightily, ran scrappy and smart, knocked on every door they could find, and managed to turn them into thriving enterprises. They have preserved freight rail service for thousands of customers, all while working closely with Class I railroads to ensure the network's success. Our railroads can be seen here:

Short lines serve communities in every corner of the country

Today, short lines provide first-mile and last-mile freight rail service and are responsible for handling one in five railcars on the national rail system. They ensure that businesses in dense urban centers, small towns, and isolated rural communities in 49 states that would otherwise be cut off from the North American freight rail

[1] Proposed In-Use Locomotive Regulation: Standard Regulatory Impact Assessment (SRIA) at 143.

network have the access they need to domestic and global markets. While we provide a critical connection to all commodities, the manufacturing, industrial, agricultural, mining, energy, and chemical sectors are particularly reliant on short line service. For areas of rural and small-town America, we are typically the only connection to the national rail network. Indeed, our presence can be the tipping point for businesses to locate or expand in a region, driving new family-supporting jobs throughout the country in places that otherwise may struggle to attract investment.

Large, mega-corporations we are not. Most of our members are small businesses.[2] The typical short line employs about 30 people, operates about 80 route miles, and for those in California, makes about $1.3 million in revenue per year. While we operate approximately 30% of the national network (or 50,000 route miles) and handle about 20% of the freight cars in service, our members earn only about 6% of the total revenue earned by the country's freight railroads.

Nonetheless, our members have a big impact on economic outcomes. Short lines are critical links in the nation's freight supply chain, and are vital engines of economic activity, tied to 478,000 jobs nationwide, $26 billion in labor income and $56 billion in economic value-add.[3] Altogether, short lines ensure more than 10,000 critical businesses can get their goods and products to market.[4]

Our members provide these customers with a low-carbon freight logistics option that is more environmentally friendly than competing forms of transportation over land, preventing costly damage to pavement that would be borne by often cash-strapped state and local agencies. We are proud of how we relieve traffic congestion, cutting emissions of harmful pollutants while reducing deadly crashes. And we are proud of our reputation for providing attentive, tailored, "white glove" service to a variety of shippers, making the extra effort to ensure that rail service for any shipment size is the right logistics choice and our customers' critical goods get where they are going on time.

Short lines are still investing limited resources to revitalize outdated track

Even after decades of investment by short lines—often a third to 40% of their annual revenue, making short line railroading one of the most capital-intensive businesses in the country—the backlog of repairs still looms large. We estimate more than $12 billion is still needed to allow short lines to fully modernize and meet the country's freight needs. This estimate unfortunately is subject to rise due to the hard-hitting impact of inflation on construction costs and looming new mandates like CARB's In-Use Locomotive Regulation.

The Short Line Industry in California

California, as the nation's largest economy—and one of the world's as well—is no stranger to short lines and typifies our profile in many places. There are 25 short lines in my state. All are Class III operations, but some of these run (either by owning or leasing) over lengthy routes, for example the San Joaquin Valley Railroad at around 400 miles. The average California short line operates about 57 route miles. Short lines like Sierra Northern Railway and Mendocino Railway each have a few dozen employees. These small railroads move agricultural products, petroleum products, minerals, chemicals, plastics, lumber, and forest products—all critical to the well-being of residents in California and millions beyond the state's borders. Indeed, some short lines, like the Arizona & California Railroad, operate in both states represented in the railroad's name, or in the case of Central Oregon and Pacific Railroad, in California and its northern neighbor. These examples emphasize the interstate, integral nature of the short line freight rail economy. All short line railroads, whether interstate or intrastate, are considered by the STB to be integral parts of the freight rail network.

California short lines move roughly 260,000 carloads of freight in California each year, and the MET represents 35,000 of these carloads, almost 15%. Each carload carries the equivalent of 3–4 trucks worth of goods, meaning that short lines in California alone keep roughly one million trucks off the road. California short lines operate approximately 200 locomotives in the state, and our railroad has 11 of those locomotives.

Railroads are already the most environmentally friendly way to transport freight across the country. According to EPA data, the nation's freight railroads account for less than 2% of total transportation-related greenhouse gas emissions, and short

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[2] While some short lines are owned by larger companies, all must stand on their own financially, and properties that become permanently cash flow-negative are not viable.

[3] The Section 45G Tax Credit and the Economic Contribution of the Short Line Railroad Industry, prepared by PWC for ASLRRA (2018) (PWC Report).

[4] (PWC Report)

lines make up only a tiny fraction of that 2%. Our trucking competitors account for 23% of transportation-related greenhouse gas emissions.

CARB'S IN-USE LOCOMOTIVE REGULATION

The new regulation and its four key provisions

For many years, CARB recognized implicitly and explicitly that federal law prevented it from regulating the national freight rail network. But in 2022, the agency formally bucked what was a sound, reasonable and legally grounded position and launched the current regulatory regime. The short line industry and our stakeholders presented our significant economic concerns while CARB put together the measure. But our points did not seem to carry much weight in the face of CARB's single-minded aim of achieving an abrupt transition to zero greenhouse gas emissions. In 2023, CARB formally promulgated the in-use locomotive regulation, and it came into effect on January 1, 2024. Some compliance dates have already come due and many more will come due in the months and years ahead. These include:

1. A mandate to spend millions on new locomotives. The regulation's first key tenet requires railroads to set aside funds annually into a forced "spending account" that can only be used to acquire, lease, or rent certain new technologies approved by CARB, largely limited to low-emission and zero-emission locomotives. The amount of funds is related to the operators' emissions levels. Some short line operators might have to spend several millions of dollars annually to comply with this mandate, potentially exceeding the annual revenue of these companies, much less any profit. The fees levied on locomotive emissions are deliberately scaled to make operation of even locomotives that are fully compliant with EPA's emissions tiers up to Tier 3 prohibitively expensive and the operation of Tier 4 compliant locomotives very expensive—even though all these locomotives are compliant with federal law.
2. A requirement that currently useful locomotives stop operating in California. The regulation's second key tenet is operational in focus, mandating that by 2030, locomotives for switcher, industrial and passenger use cannot operate in California unless they are under 23 years old and meet the newest emissions criteria or are zero-emission. By 2035, all locomotives in line-haul use must meet these criteria. This means that locomotives purchased before 2007, which could have many decades of valuable, useful life left, will be banned in the state. Short line fleets largely consist of used locomotives acquired on the secondary market. It is rare to find a locomotive under a decade old on a short line property. Most are over 23 years old, some far over. Many short lines have *only* locomotives that are over 23 years old.
3. A limit on the length of time a railroad may remain stationary without turning off its engine. Locomotives with an "automatic engine start/stop" device must be "shut off no more than 30 minutes after the locomotive becomes stationary," in most instances. Railroads must track any idling over this duration, and report the cause, a substantial administrative burden.
4. A mandate for new recordkeeping. The fourth and final element requires railroads to report annually to the state specific emissions information and operating practices.

MET'S EXPERIENCE IN CALIFORNIA

The MET has already made great strides in reducing greenhouse gas emissions. In fact, the MET was an early adopter of clean locomotives. Beginning in 2008, our company worked closely with the state of California to apply for state grants. There are nine locomotives that were upgraded from Tier 0 to Tier 3 due to this work and California's investments. There are three different grants in place today that have obligations that will be completed between 2026 through 2032, which are as follows:

- Funding from the Diesel Emission Reduction Act program, which will be complete in 2026, and help invest in two locomotives;
- Funding from California's Carl Moyer program, which will be complete in 2028 and help invest in an additional two locomotives; and
- Funding from San Joaquin Valley Unified Air Pollution Control District, which will be complete in 2032 and help with investments for five locomotives.

The total cost of these upgrades is $12.5 million dollars. The cost of these upgrades was shared between the state of California and the MET. These locomotives have many years of remaining useful life, but they would all have to be scrapped and replaced with new locomotives per the CARB regulation. The useful life of a locomotive operated by a short line is typically 40+ years, however, the CARB regu-

lation calls for the elimination of all locomotives that have an age of 23 years or greater. This CARB regulation will also force the MET to contribute to a spending account while continuing to complete our grant obligation. This is an unreasonable ask for any small business to make. With the present fleet mix, our current calculation for the spending account is over $1.0 million dollars annually, which is an unsustainable percentage of revenue. This spending account creates a use-it-or-lose-it monetary incentive to force locomotive upgrades. As demonstrated by our previous work together, the MET, and short lines in general, are perfectly willing to work with CARB and other similar agencies to reduce emissions when they offer reasonable paths forward, particularly on help acquiring newer and cleaner locomotives. This regulation, however, is just not feasible for us.

The CARB regulation will cause a significant financial impact to the entire short line industry. Railroads are capital-intensive and well-run short line railroads frequently spend at least 80% of revenue on operating expenses and basic upkeep. Short lines are also frequently prevented by contract provisions and/or market competition from trucks from effectively raising prices to cover CARB regulation's costs.

MET genset locomotive and train operations

The MET recently applied for and was awarded CRISI grant funding to upgrade two SW1500 switch engine locomotives from tier 0 to tier 4. The total cost for these upgrades is approximately $5 million dollars, to be split between the federal government and the MET.

The CARB regulation's spending account "funding requirement" is charged on a sliding scale based on emissions that is calculated to make the operation of a locomotive that is EPA Tier 3-compliant, or less, prohibitively expensive. This practically forces the operator to upgrade to a Tier 4 or zero emission locomotive. In the case of MET, the cost to operate the recently upgraded Tier 3 locomotives under the new regulation would rapidly become prohibitive. For that reason, MET has submitted another application for CRISI funding to repower the 9 Tier 3 gensets to Tier 4. This dynamic displays the profound conflicts that have been created between prior state policy, present federal policy, and the In-Use Locomotive Regulation. Tier 3 locomotive engines that are quite low-emitting and were acquired with public assistance, and that are legal under today's EPA regulations, are forced to be scrapped with decades of useful life remaining, becoming "stranded assets."

Even with the entire MET fleet upgraded to Tier 4, the spending account requirement would still require MET to deposit hundreds of thousands of dollars each year into its account. The zero emission locomotives promoted as available today are, in our assessment, still in early development. They are not yet an economically or physically practical option that could reliably, effectively, and cost-effectively meet the operational requirements at our active railroad.

This forced diversion of funds, even considering support from state and federal sources, still reflects a massive increase from our historical baseline of locomotive capital expenditure and a pulling forward of decades of that investment. It is orders of magnitude greater than what was spent in the past. This forces tradeoffs in valuable investments that otherwise would have been made at the MET. One is investments in improved track condition, an important driver of safety that reduces derailment risk. Another is investment in public at-grade crossing protection. MET serves a busy industrial park with 50 crossings with varying degrees of protection. This diversion of funding occurs at the expense of investments to improve protection levels at crossings.

Finally, if short lines are driven out of business due to CARB's infeasible regulation, that freight will move onto trucks, increasing damage to roads, increasing traf-

fic congestion and freight cost, and impacting traffic safety. Businesses who have lost shipping options will move out of California or just vanish.

THE PROBLEMS PRESENTED BY CARB'S NEW REGULATION

There are a broad array of problems awaiting California and the nation's freight economy due to CARB's regulation. But the following five are those that our industry finds the most fundamental and concerning.

The regulation is preempted by federal law

The nation's rail industry has been around 200 years, and it is the poster child for interstate commerce. California's actions effectively regulate the national network and the interstate commerce it supports. It is logical that no state should be able to regulate the national rail network any more than it can regulate the national airspace and the interstate commerce that relies on our aviation system. Two centuries of jurisprudence interpreting the Commerce Clause as well as several federal statutes, among them the Interstate Commerce Commission Termination Act (ICCTA) and the Clean Air Act and the Locomotive Inspection Act, all clearly render CARB's regulation illegal. Freight trains and railcars are constantly moving between states on an integrated and interoperable network demonstrating every day the inherently national characteristic of the freight rail industry.

We understand the proper venue for our legal arguments is in court, and ASLRRA is engaged in ongoing litigation with CARB alongside the Association of American Railroads (AAR). We are confident in those proceedings, but we regret that litigation is necessary to stem regulatory activity that never should have been seriously contemplated in the first place. We also remain eager to work with Congress to advance legislative efforts and support federal administrative activity that asserts the rightful federal primacy over our country's freight rail network.

The regulation mandates technology that does not exist in a viable form and at scale, and that may not for years to come

CARB's regulation is replete with faulty assumptions about current technological capabilities, the direction they are going, and the scale and timing of new developments.

The regulation requires that over the next decade, railroads acquire and use locomotive technology that is low-emission, and eventually, zero-emission. While an admirable goal, this requires the locomotive manufacturing industry to make massive leaps in development in just a few short years. To go from the current situation, in which there are not proven commercially viable zero-emission freight locomotives or adequate manufacturing capacity in North America, to one in which there are thousands running throughout California and many other states from which goods and freight might move into and out of California is impossible based on realistic commercial testing and manufacturing timelines.

Locomotives are massive, complex machines designed to haul heavy, voluminous amounts of freight. These are not 4,000-pound Tesla EVs moving a few bags of groceries around the neighborhood. The locomotives in use today must be capable of hauling hundreds if not thousands or tens of thousands of tons (i.e., trains generally weigh well into the *millions* of pounds) of stone, grain, chemicals and other heavy goods and commodities in demanding weather conditions such as the high heat in the San Joaquin Valley, or through California's Sierra Nevada mountains in the depths of winter, for hours on end. As impressive as advances have been in battery technology in recent years, they pale in comparison to the advances that would be necessary to outfit a locomotive to ensure it can reliably move strings of massive railcars. The most efficient batteries in use today would need to demonstrate a greater than tenfold increase in capacity to achieve CARB's aims—and a swift ability to recharge that is not possible with today's technology. As much as our industry would like to see that happen, there is no path forward yet for that technology to be achieved—just writing it into a state regulation does not make it so.

The same applies to other new technologies, like alternative fuels, hydrogen, and hydrogen fuel cells. These efforts, while moving quickly and with our full support and participation, are still in a nascent stage—nowhere near the readiness necessary to justify scrapping years of investments in diesel engines and stranding tens of thousands of perfectly functional locomotives.

The regulation ignores how short lines acquire and use locomotives and the fundamental short line business model

Just as CARB-mandated technology remains many years away from the market, it is farther still from any secondary market where our members could realistically afford to acquire the technology and incorporate it into their operations.

The rail industry engages in a practice known as "cascading," where used locomotives from Class I railroads are sold to short lines, as the Class I's locomotive models are replaced with newer motive power. A locomotive that has reached its practical end of life in Class I service can have decades of use left in the less punishing short line operating environment. This has been a bedrock principle of railroad operating economics from the advent of interstate railroading. It is an economic win-win that benefits all involved in rail: the Class Is, the short lines, and the shippers that depend upon efficient, cost-effective, and safe rail transportation as an alternative to higher-cost truck transportation.

California's ban on any locomotive older than 23 years old beginning in 2030 is a completely unworkable proposal for short line railroads that regularly rely on 30-, 40- and 50-year-old locomotives, which are fully compliant with federal law, to keep sometimes barely marginal railroads viable. Departing from that economic model and requiring smaller railroads to purchase dramatically more expensive locomotives would lead to the ruin of many short lines. The difference in capital costs for short lines between acquiring new versus used locomotives is not a few percentage points, it is an order of magnitude. The nature of short lines, that these costs must be spread over the fewer cars that short lines typically handle on a per mile basis, renders this path completely non-viable.

The regulation ignores the operational complexities created by mandating new technology

CARB's approach fails to recognize the levels of complexity that come with upgrading locomotives to progressive tiers. With each tier, maintenance intervals are shorter, maintenance activities are more elaborate, repairs become more costly and are borne by operators who are still building familiarity with their new technology.

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—it will disproportionately impact smaller operators of locomotives with small maintenance shops.

The regulation evades any effort to recognize how it will uniquely affect small businesses

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 federal agencies exercise utmost care and discretion in evaluating how regulations they promulgate affect small businesses. While not bound by these laws, CARB has clearly ignored their wisdom in creating a prescriptive, costly, and complex new regulatory framework. Many small railroads are unable to comply with "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. It is no wonder that the U.S. Small Business Administration's (SBA) Office of Advocacy has formally weighed in on CARB's authorization request to EPA, noting its harms and how it "will disproportionately impact small businesses in the locomotive sector as well as small entities who depend on the locomotive sector."[5]

THE BROAD HARM THE REGULATION WILL BRING

California short lines will face massive new costs with some forced to shutter

As noted above, CARB's regulation imposes new costs that come in the form of massive, mandated capital expenditures on locomotive fleet replacements and upgrades, and on an infeasible timetable.

A Class III railroad in California, as CARB notes in their regulatory analysis, can have cost of compliance with the new regulation as high as 42% of annual revenue for a short line.[6] 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

[5] See April 22, 2024 letter from U.S. Small Business Administration to U.S. EPA.

[6] CARB Standardized Regulatory Impact Assessment (SRIA) at 95; ASLRRA notes this estimate may be low.

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 the former; but with whiplash speed, to comply with CARB's regulation, short lines must jettison their time-tested economic model and focus on new, lavishly more expensive machinery than they need.

We estimate that between $335 to $427 million will be required to upgrade the short line freight locomotive fleet currently operating in California. We believe our state's short lines operate 172 locomotives that would need to be replaced. This cost over and above the normal cost is due to the difference in investment between repowering locomotives versus purchasing completely new locomotives. The cost would be even higher if zero-emission locomotives were required, because, for battery-electric powered locomotives, there is a high probability that small rail operations now using one or two diesel locomotives would require two or three battery locomotives, due to the recharging periods for the batteries requiring more time than simply refueling a diesel-electric locomotive. A small railroad would be required to provide back-up locomotives in case of an issue with the new zero-emission technology that takes it out of service. Unlike a larger railroad that to a degree may be able to reshuffle its locomotive assignments to cover for individual locomotive failures, small railroads do not have that ability and will be required to build in a back-up plan to provide service continuity to their customers.

CARB makes unrealistic assumptions that short lines can pass on these new, mandated compliance costs to their customers. Many short line shippers are small to medium sized businesses themselves and most operate in sectors with razor-thin profit margins and intense competitive pressures; there is nothing to "pass on" that customers will not feel acutely as well. When short line customers are met with new higher rail shipping costs, they will be forced to turn to other means, like trucking, in response. A downward spiral would then commence, with many short lines seeing costs soar, customers flee or be forced to shutter, revenue nosedive, and bankruptcy or abandonment of lines as the end state.

CARB has included two provisions in the regulation ostensibly to reduce the burden on small businesses: the Alternative Compliance Plan (ACP) and the Small Business Hardship Extension. Both measures enable regulated railroads to delay compliance with some elements of the regulation for periods of time, but they entail substantial reporting burdens and neither addresses the basic challenge, that under the regulation, inevitably, and on approximately the same terminal timeline, short line railroads will be forced to make a massive investment in Tier 4 locomotives—or zero-emission locomotives, if ever practical and available—that will be many times the motive power investments that would have been expected to support their operations under the legal framework prior to the ruling. The costs imposed by the regulation will remain as insurmountable for small businesses under the Alternative Compliance Plan and with the Small Business Hardship Extensions structure as they would under normal compliance. In the case of the ACP, the locomotive operator must have control over non-locomotive assets that emit, and which can be controlled to attain equivalent emissions reductions. Few if any short lines have such assets.

For those railroads that do remain in business, safety will suffer, as they will be forced to shelve critical upgrades and maintenance, investing less in addressing the leading cause of derailments on short lines: outdated rail and track. CARB's mandates will supplant those needs, jeopardizing the railroads' operations. Sensible environmental upgrades will be halted, too, as intermediate EPA tier improvements that could result in significant reductions in emissions, like our investments in Tier 3 locomotives, would effectively be disincentivized by CARB in favor of maximalist targets.

With short lines gone, the state's supply chain and economy will suffer, and residents will encounter new health and safety hazards

Short lines represent about a third of California's rail network. With the new regulation placing those businesses on the brink and pushing some into bankruptcy, California's supply chain is in for a torrent of trouble.

Businesses will still have goods and freight to ship to market, but with fewer options available, customers will have to increasingly move products via large trucks and commercial motor vehicles. This can be four to five times more expensive than shipping by rail. With the trucking industry taking freight that previously moved by rail, the pressure upon short lines could continue further through "modal diversion." Even short lines that initially weather CARB's regulation will find a freight marketplace where they are slowly supplanted by trucking. With few short lines left, California could see companies flee the state in search of locations with better rail and shipping options.

Aware of this cascade of new costs and limited options for shipping their products, it is not surprising that 25 national and 50 state agriculture groups—from California and throughout the country—are on record opposing this regulation, deeming it a "significant danger to U.S. agriculture and the broader U.S. supply chain."[7] The agriculture industry is joined by hundreds of other business groups, manufacturers, energy firms, defense groups and even the National Association of Counties. Like us, these groups all rightly predict the elimination of shipping options and the increased costs that will come with whatever shipping options remain—costs that will be passed on eventually to consumers, your constituents.

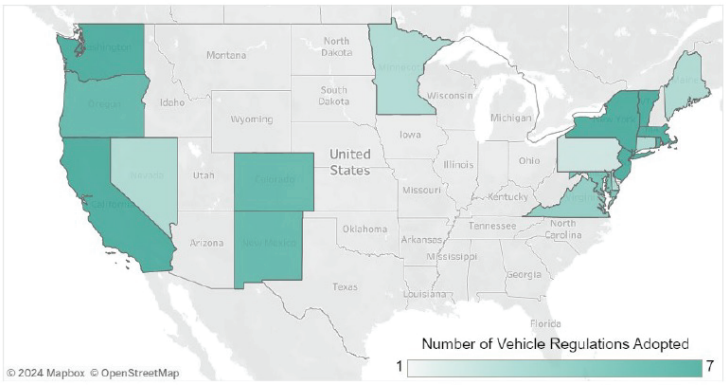
If the sticker shock of higher shipping costs were not enough, Californians could quickly see a staggering number of additional trucks on their roads. We estimate short lines ship about 260,000 carloads per year that could in large measure be forced onto roadways in California, and each rail carload is the equivalent of 3 to 4 trucks. One short line predicts the loss of just its rail traffic alone will put as many as 100,000 more trucks on California's roads per year.

With more trucks dominating California's public roadways, the state's residents will be greeted with more greenhouse gas emissions in the near term, as even CARB's ambitious regulatory timeline, assuming it survives judicial scrutiny, only suggests that the truck fleet will reach zero emissions in 2045. Moreover, Californians will breathe in particulate matter, also known as particle pollution, generated from billions of microscopic pieces of shredded tires that will be generated from all the trucks newly traversing their towns and communities, on roadways they share with big trucks. Heavier trucks—many weighing in at 80,000 pounds—will shorten the lifespan of public roads and bridges throughout the state. Finally, the greatest concern is one of safety. More trucks on roadways invite the risk of more crashes and collisions with passenger vehicles.

Even a completely electrified trucking industry would still produce many of these new harms. Regardless of any possible rapid adoption of electric trucks in California, these vehicles will still generate particulate matter emissions from tire wear, and electric trucks will still impose wear and tear on pavement and bridges. Their safety threat is not mitigated in any way by their fuel source, rather, it may only be compounded as trucks grow heavier to accommodate massive battery packs. Electric trucks are considerably heavier than diesel trucks, reducing the payload. So yet even more electric trucks (or heavier trucks) will be required to absorb the modal diversion resulting in more road damage and safety concerns.

The impacts will ripple out nationwide

Due to the integrated, interconnected nature of the freight rail network and the freight economy, other states will experience these impacts. Should EPA authorize this regulation, other states that could move quickly to replicate it, which would threaten short lines around the nation. The map below illustrates states that have adopted some or all of California's criteria pollutant vehicle emissions standards under section 177 of the Clean Air Act.



CAA section 177 states

[7] See, e.g., letters from U.S. Chamber of Commerce, National Association of Manufacturers and hundreds of agriculture and industrial groups. Docket at https://www.regulations.gov/document/EPA-HQ-OAR-2023-0574-0001/comment

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 the CARB regulation. States that are favorable to additional emissions mandates could be willing to take the California defense of this regulation at face value and proceed promptly to adoption.

As we speak, EPA is considering CARB's authorization request. The effect of the spread of the CARB regulation would be to build a disconnected patchwork of state regimes for locomotive emissions that would prevent the movement of locomotives across state borders, even when on the same railroad, creating geographically captive fleets. 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, and, regardless, all railroads and rail customers depend on the smooth flow of interstate commerce. Such a potential propagation of the CARB regulation, 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.

WHAT CONGRESS CAN DO

Call on EPA to deny CARB's request

The Clean Air Act requires EPA, following certain administrative procedures, to authorize California to adopt and enforce standards relating to the control of emissions from non-road engines and vehicles otherwise not prohibited under the Clean Air Act if California determines that its standards will be at least as protective of public health and welfare as applicable federal standards. EPA is required to reject such standards, however, if they are (1) arbitrary and capricious; (2) unnecessary to meet compelling and extraordinary conditions; or (3) inconsistent with certain provisions in the Clean Air Act.

We firmly believe CARB's In-Use Locomotive Regulation fails this standard, and, along with the Class I railroads and thousands of affected stakeholders, we are actively engaged with EPA conveying the clarity of our case and urging the agency to reject California's request. We are appreciative of all on this panel and in Congress who have formally asked for a denial of the request. Your efforts could help sideline this new regulatory effort. EPA's review is ongoing. By calling on the EPA to deny CARB's request, you are asserting proper federal primacy over the national freight network, in general rejecting an unworkable and inefficient patchwork of state-by-state rail regulations and stopping this infeasible counter-productive California regulation from becoming the de facto new national regulation.

Continue to partner with our industry to advance emissions-reducing technology

An additional problem with CARB's mandate is that there is nowhere near enough public or private sector funding to allow short line railroads to quickly and comprehensively adopt even currently existing technology that could lead to lower emissions across all in-service locomotives. CARB has also drastically overstated federal and state funding opportunities that short lines could avail themselves of in efforts to comply; by our estimate, federal and state programs are hundreds of millions of dollars short of what would be necessary just for locomotive operations in California.

Nonetheless, there are important resources that can continue to help our industry move in the direction we all want to go—a rail network that has an even smaller emissions footprint than it has today and is an even more attractive option for the surface transportation of freight. These efforts include the USDOT's CRISI program (noted above), which can provide funding for short lines to upgrade locomotives for emissions purposes, and the other R&D efforts and demonstration projects noted above. Under the Infrastructure Investment and Jobs Act (IIJA), Congress has the authority to appropriate up to a billion dollars each year to CRISI for the next two fiscal years. Full funding will help further that aim, as well as other safety and reliability goals. We also urge support for the EPA's Clean Ports program and its Diesel Emissions Reduction Act program. We continue to support varied R&D efforts with federal agencies with jurisdiction of these matters, including efforts with US DOT and DOE to research alternative fuels, battery electric locomotives and hydrogen fuel cells. For example, we support DOE's Decarbonization of Off-Road, Rail, Marine, and Aviation Technologies (DORMA) program. We urge Congress to strongly support this and similar efforts in Fiscal Year 2025.

Railroads, however, cannot be held responsible for ensuring dramatic advances in industries far outside of our control, such as those manufacturing battery power solutions. We support, and urge Congress to support, efforts at the DOE and the

USDOT, aimed at the basic research and development necessary to advance the industries and technologies that will be necessary for rail and other hard-to-decarbonize industries to use to dramatically reduce our environmental footprint, such as batteries, hydrogen, and renewable diesel fuels.

Support the rail industry

Compared to the other options, rail is the more sustainable way to move goods and freight over land, a more cost-effective option for all manner of businesses, and a proven way to improve safety on public roads. By supporting this industry, you do great service to your constituents—and simultaneously help advance the goal we share with CARB: achieving cleaner air. There are a multitude of ways we encourage you to support freight rail: advancing efforts like CRISI to ensure short lines can stay safe, reliable and efficient; avoiding excessive subsidization of less-environmentally friendly shipping alternatives like trucking by allowing heavier trucks or allowing the trucking industry to avoid paying its fair share for use of the highway system; and ensuring that federal and state regulations make good sense and meet a true need.

CLOSING

The EPA should deny CARB's authorization request for its In-Use Locomotive Regulation. Not only does it mandate the use of locomotives with technology not currently commercially available, but CARB has also publicly acknowledged that the massive compliance costs may be too much for some short line railroads in California to bear—they would be forced to cease operating because of their inability to comply with an impossible regulation. This would have serious, negative impacts on the freight rail network, the U.S. supply chain, the environment, and highway safety. This regulation will have noticeable impact to your constituents in elevated pricing of goods, and loss of jobs because of the shuttering of railroads and shippers unable to obtain efficient transportation options.

Mr. NEHLS. Thank you, Mr. Olvera.

I now recognize Mr. Nober for 5 minutes for your testimony. Yes, sir.

TESTIMONY OF ROGER NOBER, DIRECTOR, GW REGULATORY STUDIES CENTER AND PROFESSOR OF PRACTICE AT THE TRACHTENBERG SCHOOL OF PUBLIC POLICY AND PUBLIC ADMINISTRATION, GEORGE WASHINGTON UNIVERSITY

Mr. NOBER. Good morning, subcommittee Chairman Nehls, Ranking Member Wilson, full committee Ranking Member Larsen, and members of the subcommittee. My name is Roger Nober, and I am honored to be back testifying on the important topic of today's hearing: an examination of issues related to CARB's in-use locomotive regulations.

Earlier this week, I submitted my full written testimony and will not repeat it now. But today, I would like to draw on my background, my experiences on this committee as the lead staffer on the Interstate Commerce Commission Termination Act of 1995, as well as subsequently chairing the Surface Transportation Board, and then as an executive vice president of BNSF Railway, and focus on three main points for my written testimony:

First, provide you all with a brief history of the Interstate Commerce Act preemption provisions; second, explain why I believe the CARB regulations, whether or not authorized by EPA under section 209 of the Clean Air Act, are preempted by the Interstate Commerce Act; and third, review effective nonpreempted alternatives for lowering locomotive emissions and improving air quality in California today.

So, let's turn to the Interstate Commerce Act preemption. Section 10501 of the Interstate Commerce Act broadly preempts both State

and Federal laws or regulations that affect rates, classifications, rules, practices, route services, and the facilities of such carriers.

This provision was intentionally written to be extremely broad and reflects the bipartisan desire of committee members to ensure that railroads were exclusively regulated in those areas at the Federal level.

Importantly, the section preempted other Federal laws as well. Over the past 30 years, section 10501 has been read broadly, although not literally.

State and local laws that might be preempted from applying to railroads, like sanitation codes and environmental reviews, have been found to still apply to them.

But State efforts to regulate railroad operations through creative actions, such as those we are reviewing today, have been disallowed.

When another Federal law is thought to conflict with section 10501, the STB or courts will attempt to harmonize the laws or regulations. If they cannot be harmonized, then the conflicting Federal law will be preempted.

All right. So, turning to the CARB in-use locomotive rules, in my view, the CARB regulations are unequivocally preempted by section 10501. I come to this conclusion when considering the following:

The plain language of section 10501 and its clear and unambiguous intent;

The fact that CARB has petitioned the EPA to open a Tier 5 locomotive rulemaking, and while the EPA has not yet done so, it is still studying the issue;

The broad intent and scope of the CARB regulations and that they effectively apply to equipment entering California and not just equipment local to California;

The practical infeasibility of creating a California-only locomotive fleet means that the CARB regulations would become de facto national standards;

There is the technical and commercial infeasibility of zero-emissions technology in the CARB regulation's timelines, and the uncertainty created by two progress evaluations;

The attempt by CARB to influence equipment manufacture through definition of "in-use" and the reality that conforming locomotives do not yet feasibly exist;

The economic impact of and the penalty-like nature of spending;

And as Mr. Olvera just mentioned, the impossibility of small railroads' compliance with these requirements.

I also believe that were EPA to grant CARB section 209 petition, the CARB regulations could not be harmonized with the Interstate Commerce Act and would be preempted.

As a matter of statutory construction, section 10501 is the later enactment of law, that section 209(e) is more specific is not important here. A later enacted, broad, preemption provision need not list every statute that it might apply to.

So, what are the alternatives? CARB, in its testimony, has indicated that the legal prohibitions give locomotives a, quote, "free pass," and conclude that railroads need to do their part to improve air quality in California—and I absolutely agree. Locomotive emis-

sions should be reduced but not on a national—on a national and not on a State basis.

Going forward, the best step long term would be an EPA Tier 5 regulation. CARB, as I said, has sought such a rulemaking as recently as 2017, and EPA has not refused to do so.

While a Tier 5 rulemaking might be slow and laborious, EPA would also consider the national implications of such a rule and imbalance improving emissions profiles with mode and route shifts that nationally might increase overall emissions exposure to more people.

In the short term, CARB and local air quality districts in California could also negotiate voluntary agreements with railroads. These agencies, for decades, understood the value of voluntary agreements to reduce locomotive emissions, and they have produced real benefits to California residents, and I believe that they could again.

In conclusion, I believe that these regulations are legally preempted and substantively the wrong way to reduce locomotive emissions. I ask the committee not to lose sight of the larger picture, which is that rail is the most environmentally friendly mode of surface transportation.

As a result, locomotive emissions regulation should not let the perfect, which is adopting unavailable zero-emissions technology by a date certain and penalizing those who don't, be the enemy of the outstanding, which is moving as much freight on rail as possible, using the most efficient rail equipment commercially feasible.

So, thank you again for inviting me to testify this afternoon, and I look forward to any questions you might have.

[Mr. Nober's prepared statement follows:]

Prepared Statement of Roger Nober, Director, GW Regulatory Studies Center and Professor of Practice at the Trachtenberg School of Public Policy and Public Administration, George Washington University

Good afternoon, Chairman Nehls, Ranking Member Wilson and members of the Subcommittee.

My name is Roger Nober, and I am here to present testimony on legal and practical concerns with the adoption of regulations promulgated by the California Air Resources Board (CARB) (hereafter the CARB regulations) and CARB's subsequent petition to the United States Environmental Protection Agency (EPA) to allow CARB to regulate locomotive emissions when such locomotives are in use in the State of California.

MY BACKGROUND

I am currently the Director of the GW Regulatory Studies Center housed in the Trachtenberg School of Public Policy and Public Administration at the George Washington University and a Professor of Practice at the Trachtenberg School. I have been in this position since the start of 2024. I testify today in this capacity only.[1]

Prior to joining the GW Regulatory Studies Center, I had over 30 years' professional experience in transportation, focusing on legal issues, legislation, policy and operations. From the beginning of 2007 until I retired at the end of 2022, I was the Executive Vice President for Law and Corporate Affairs at BNSF Railway Company,

[1] The George Washington University Regulatory Studies Center works to improve regulatory policy through research, education, and outreach. This statement reflects my own views and does not represent an official position of the GW Regulatory Studies Center or the George Washington University.

the nation's largest freight railroad. At BNSF, I was a Board Member of BNSF LLC and led the legal, environmental, communications, compliance, State government affairs and regulatory functions. Among my duties, my teams worked with State and local air resource agencies in California (and numerous other states) on issues ranging from locomotive emissions to permitting of new intermodal facilities. I also was a consultant for BNSF following my retirement during calendar year 2023.

Prior to joining BNSF, I served as the Chairman of the United States Surface Transportation Board (STB) from 2002 to 2006. I was confirmed by the Senate in November of 2002 and appointed by President Bush as Chairman when I was administered the oath of office. I served as STB Chairman until my departure in January of 2006. During my time as Chairman, I had the unusual circumstance of being the only Board Member for 54 weeks in 2003 and 2004. After leaving the STB I was a partner at Steptoe & Johnson in Washington DC for the balance of 2006. Prior to being confirmed as an STB Member, from June of 2001 until November of 2002 I served at the Department of Transportation, where I was the Counselor to Deputy Secretary Michael P. Jackson and the Aviation Policy Assistant to Secretary Norman Y. Mineta.

Prior to joining the Department of Transportation, I was a staff member to the Republican Members of this Committee serving in a variety of roles from 1993 until 2001. I began as a Minority Counsel on the Subcommittee on Surface Transportation in the 103rd Congress (when the full Committee was known as the Public Works and Infrastructure Committee) under Ranking Member Bud Shuster. In 1995, at the start of the 104th Congress, I became the Majority Counsel for the Subcommittee on Highways and Transit of the renamed Transportation and Infrastructure Committee, which had also gained jurisdiction over freight and intercity railroads from the Energy and Commerce Committee in a 1995 House Committee reorganization under then Chairman Shuster. I subsequently became the Full Committee Chief Counsel and in that role was involved in the passage of numerous significant pieces of legislation. Most importantly for this hearing, in 1995 I was the lead House staffer on the Interstate Commerce Commission Termination Act of 1995 (ICCTA), the legislation to terminate the Interstate Commerce Commission (ICC), create the STB and significantly revise the Interstate Commerce Act (ICA) with respect to interstate rail carriers and motor carriers.

I have been an adjunct professor of law at Texas A&M University and Southern Methodist University Law Schools teaching Administrative Law, and I am teaching a course on Administrative Law at the Trachtenberg School in the Fall of 2024. I am a Member of the Advisory Boards at the Texas A&M Transportation Institute, the Northwestern University Transportation Center and the Board of Directors of the Eno Center for Transportation.

BACKGROUND TO TODAY'S HEARING

As the Members of the Committee are aware, in April of 2017 CARB petitioned the EPA to open a so-called Tier 5 locomotive rulemaking—in other words asking EPA to revise locomotive emissions standards to make them more stringent. In November of 2022, the EPA responded by promising to create a working group to examine how best to address emissions from locomotives and initiate a rulemaking to examine federal preemption of State regulations governing locomotive emissions. In April of 2023, CARB adopted its in use locomotive standards (significantly revised in September 2023). In November of 2023, CARB petitioned the EPA under section 209(e) of the Clean Air Act to delegate to CARB the regulation of locomotives when in the State of California so that CARB had the legal authority to put those standards into effect under the federal Clean Air Act law (hereafter the CARB petition).

CARB and numerous commentators have discussed the many practical and technical issues in the CARB regulations in depth and I will not repeat that analysis here. I also submitted comments to EPA regarding CARB petition and would like to include those by reference here as well. https://regulatorystudies.columbian.gwu.edu/carb-regulating-use-locomotives.

In these comments, I focus on the application of the ICA to most significant portions of the CARB regulations, the legal conflict that EPA's granting of the CARB petition would create under the ICA and then review alternative approaches for lowering locomotive emissions in California.

CARB IN USE LOCOMOTIVE REGULATION AND PETITION TO EPA

In sum, the CARB regulations have the following components:

- A prohibition as of 2030 on the operation of locomotives older than 23 years old in the State of California, meaning any locomotive originally manufactured before 2007 unless that locomotive is in zero emissions configuration.

- Imposition of charges on certain locomotives that operate in California which do not meet zero emissions standards set forth in the regulations beginning on January 1, 2025 with the first deposits due July 1, 2026;
- A direction that those charges be deposited into a "spending account" that the payors can only use to purchase certain specified types of locomotives or zero emissions infrastructure support facilities;
- Mandates that (i) yard and switch locomotives manufactured after 2030 must operate in zero emissions configuration and (ii) road locomotives manufactured after 2035 must operate in zero emissions configuration in California;
- Setting of additional locomotive idling requirements; and
- Imposition of statewide locomotive registration and reporting requirements.

While CARB has relied upon its own findings that conforming locomotives will be available by the specified dates, CARB also appears to recognize that the technological feasibility of zero emissions linehaul locomotives is uncertain, and the CARB regulations include a provision to conduct "progress assessments" in 2027 and 2032. The results of those assessments could lead to extending the deadlines in the regulations.

The CARB petition to EPA is to delegate to California the authority to adopt the CARB regulations and regulate locomotives in California pursuant to section 209(e) of the Clean Air Act. The CARB regulations are ostensibly limited in application to California alone, but the CARB petition recognizes the potential effects of the CARB regulations on locomotive manufacturers, interstate movement of goods, and the regulatory requirements of other states. Seen as a whole, I believe these actions reveal CARB's apparent intent to create a technology-forcing set of requirements to hasten zero emission locomotive development and deployment, not just in California, but nationally.

Interstate Commerce Act Preemption

Based on my experiences on the Transportation and Infrastructure Committee, as Chairman of the Surface Transportation Board and as an Executive Vice President at BNSF Railway and now as a regulatory scholar, I believe that the CARB regulations that are the subject of the CARB petition are unambiguously preempted by Section 10501 of the ICA, 49 USC 10501. In this section I would like to explain why I believe this is so by first recounting the history of section 10501 and what I believe the Committee's intent was in enacting it, and then examining its application to the CARB petition and CARB regulations.

1. Background

A foundational principle of interstate commerce is the need for uniformity in operations across the fifty states. In my 31 years of experience, maintaining national uniformity through preemption of State regulation has been a longstanding bi-partisan priority of this Committee. The reasons are straightforward. Most commerce, on waterways, in surface transportation or in air cargo is interstate in nature. National rules for economic, safety and operational regulation facilitate our national system of freight movements. State regulation creates an unworkable and inefficient patchwork of rules and requirements.

As the Members of this Committee are well aware, most freight and passenger transportation economic regulations were eliminated or modified in the late 1970s and early 1980s. Those deregulatory efforts have brought American consumers and business tremendous value in the decades since; it is no exaggeration to state that America's freight transportation is the envy of the world and a significant competitive advantage for the American economy. Maintaining national economic, operating and safety standards through preemption of State regulation of interstate commerce remained core to those deregulatory efforts. When I joined the Minority staff of the Public Works and Transportation Committee in 1993, there were only a few remnants of State regulation left in transportation, but one inadvertent vestige was causing competitive harm and needed to be addressed.

By 1993, Federal aviation laws had clearly preempted State regulation of intrastate movements of *air carriers*, but the ICA, which governed movements subject to the jurisdiction of the ICC, still permitted States to economically regulate intrastate movements of *motor carriers of property* that were not part of an interstate movement. The practical effect of this discrepancy was a difference in regulation at the State level between FedEx, which originated as an air carrier but by the 1990s owned significant trucking assets, and UPS, which originated as a motor carrier but by the 1990s owned thousands of aircraft. While UPS and FedEx had very similar businesses, since FedEx was authorized as an air carrier and UPS as a motor car-

rier, States were preempted from regulating intrastate movements by FedEx but could regulate the same movements by UPS.

In 1994 Congress closed that inadvertent regulatory loophole by passing H.R. 2739, the Federal Aviation Administration Authorization Act of 1994 (PL 103–305). While ostensibly legislation to reauthorize aviation programs, it is best known as one of the final surface transportation deregulation legislative acts. Section 601 of that act amended 49 USC 14501 (then codified at 49 USC 11501) to create a new subsection (h), which broadly preempted State regulation of *prices, routes and services* (emphasis added) of intrastate movements of motor carriers of property.

A complication arose to this effort. In H.R. 2739, Congress intended to model the preemption provision it was enacting of State motor carriers of property on the broad preemption of State regulation of air carriers in 49 USC 41713, which as passed preempted State regulation of air carrier *rates, routes and services* (emphasis added). The rates, routes and services clause of section 41713 had been broadly interpreted by Courts, including the Supreme Court. However, in drafting section 601 of the FAA Authorization Act, the Committee discovered that the critical language of section 41713 preemption, *rates*, routes and services had been amended in a technical corrections act by the Law Revision Council to a different (the current) formulation, *prices*, routes and services. The Conference Report on H.R. 2735 clarified Congress' intent that the different language of the two provisions had the same meaning and force of law.

2. ICC Termination Act of 1995

In the 1994 midterm elections, Republicans became the majority party in both the House and Senate in the 104th Congress and a legislative priority of the new majorities was the elimination of the ICC. While eliminating federal agencies was a provision of the so-called "Contract for America," efforts to specifically eliminate the ICC predated it. In the Democratic led 103rd Congress, there had been a bipartisan effort among several members of the House (led by the unusual bi-partisan coalition of Congressmen Frank, DeLay and Kasich) to eliminate the ICC, but those efforts lacked leadership support. Another consequence of the 1994 midterm election was a reorganization of Committees in the House in the 104th Congress, where the Public Works and Transportation Committee was renamed the Committee on Transportation and Infrastructure and was, as indicated above, given jurisdiction over railroads from the Energy and Commerce Committee (as well as Coast Guard and Merchant Marine from the Resources Committee). Thus in 1995 this Committee began the bipartisan task of eliminating the ICC, which involved revising the entire ICA and creating the STB.

In the yearlong process of drafting and passing the ICCTA, this Committee and the Senate Commerce Committee very deliberately revised and expanded the ICA preemption provision in 49 USC 10501(b) to be as broad as possible, both because of their fundamental belief in the importance of preemption of State regulation of interstate commerce, and to avoid a repeat of the Committees' 1994 experience with the scope and then-changed language of the aviation (and modeled thereafter trucking) preemption provisions, which had just happened a few months prior.

In pertinent part, section 10501(b)(1) as enacted reads:

> (b) The jurisdiction of the Board over—
> (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services and the facilities of such carriers . . .
>
> * * *
>
> is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to the regulation of rail transportation *are exclusive and preempt the remedies provided under Federal or State law*. (emphasis added)

As indicated above, section 10501 as enacted was purposely broadened from prior preemption provisions both in reaction to the issues raised in 1994 and to forestall any need to modify and clarify the provision in the future. Notably for this hearing, the revised section 10501 specifically preempted other remedies that could be applicable to rail carriers under other *federal* laws and not just State laws.

Over time, section 10501 has been recognized to be extremely broad, and as a result applied using a rule of reason (since read literally it would preempt every other law potentially even health and safety laws such as building codes!). In my experience, the pertinent analysis is for the STB or a reviewing Court to examine the intent and effect of the other State or federal law, evaluate whether that law would

be subject to 10501 and determine whether the intent and effect of such law or regulation is contrary to 10501. Importantly when the effect of section 10501 is evaluated with respect to another federal law, the STB and Courts evaluate the two laws to see if they are in conflict, and before determining the other federal law is preempted, attempt to harmonize the statutes (or regulation promulgated thereunder).

THE CARB REGULATIONS ARE PREEMPTED BY THE INTERSTATE COMMERCE ACT

In my view, the CARB regulations are unequivocally preempted by section 10501 of the ICA. I come to this conclusion when considering the following:

- The plain language of section 10501 and its clear and unambiguous intent to prevent State regulation of rail carriers operating in interstate commerce;
- The fact that CARB has petitioned the EPA to open a Tier 5 locomotive standard proceeding, and while EPA chose not to open such a proceeding, it is studying the issue;
- The broad intent and scope of the CARB regulations and that they explicitly apply to equipment entering California as part of an interstate movement and not just equipment local to California;
- The practical infeasibility of creating a California-only locomotive fleet for movements in interstate commerce means the CARB regulations' standards would become *de facto* national standards;
- The attempt by CARB to influence equipment manufacture through the CARB regulations' definition of in use;
- The infeasibility of zero emissions technology in the timeframes anticipated by the CARB regulations and the uncertainty created by the two progress evaluations.
- The economic impact of, and the penalty-like nature of the spending account provisions proposed; and
- The impossibility of small railroads' compliance with the requirements.

Similarly, when examining the CARB petition to the EPA, I do not see how the CARB regulations could take effect in a manner that would not conflict with the plain wording and longstanding intent and application of the ICA and as a result would be facially preempted. I also believe that, were the EPA to grant the CARB petition under 209(e) and delegate to California the ability to regulate locomotives in use in California, the CARB regulations could not be harmonized with the ICA and would be preempted.

Importantly, as a matter of statutory construction, section 10501 is the later enactment of federal law. The amendments to the Clean Air Act cited by CARB as the underlying authority for their petition to EPA *predate* the ICCTA. This means that when Congress passed the ICCTA and its included preemption provision, Congress was aware of the cited provisions of the Clean Air Act when it preempted "remedies provided under federal . . . law" 49 USC 10501.

THE EPA IS THE PROPER AGENCY TO SET LOCOMOTIVE EMISSIONS STANDARDS FOR A NATIONAL SYSTEM

While I understand that many Members of the Committee may believe that locomotive emissions can and should be further curtailed, particularly in California, there are effective and importantly, non-preempted ways for the EPA and CARB to do so—EPA can open a Tier 5 locomotive rulemaking and CARB can continue its efforts to reach voluntary agreements with freight railroads operating in California.

First, EPA is the proper agency to set locomotive standards at a national level consistent with the needs of an interoperable national system. Even with the preemption provisions of the ICA, the EPA has had the ability to set national locomotive emissions standards and has undertaken a number of rulemakings in the past to do so. The most current emissions standards, Tier 4, were set by the EPA. As has been indicated many times in comments to EPA in their proceeding on CARB's request, CARB did petition the EPA to open a Tier 5 proceeding to set new standards and while EPA has not opened such a proceeding, it still has the ability to do so. While such a proceeding may take time, the fact that it would be time consuming to consider national implications of its standard setting illustrates the complex and evolving nature of locomotive manufacture and technological limits.

Second, CARB could return to a cooperative posture with the freight rail industry and make real improvements in air quality for its citizens through voluntary agreements, which have been highly effective in reducing locomotive emissions in California. In the past, California State and local air quality agencies had accepted that they did not have the legal authority to set locomotive emissions standards and sought to work cooperatively with railroads. When a local California air quality

agency, the South Coast Air Quality Management District (SCAQMD), did adopt locomotive idling restrictions some years ago they were ruled to be preempted. CARB negotiated voluntary locomotive fleet agreements with the major western freight railroads, Union Pacific and BNSF Railway, which produced real local benefits to California residents and at the same time allowed the freight railroads to effectively operate national networks. Emissions in California have improved significantly as a result of those agreements and could again.

REGULATORY PROCESS CONCERNS WITH CARB PROPOSAL

In addition to the substantive concerns raised above regarding the conflict of the CARB regulations with the ICA, I would also highlight several reasons why I am concerned about this situation as a matter of regulatory policy.

First, the CARB regulations are *technology forcing*, as they require railroads to adopt technology that does not yet commercially exist, by a future date certain with the aim of spurring technology innovation and adoption. While it may be well-meaning, as a general matter adopting technology forcing regulation raises the question of whether an agency is improperly requiring the adoption of equipment which is neither technologically nor economically feasible. CARB tries to preemptively address this reality by including periodic, future "progress reviews" to evaluate the state of zero emissions technology. Looked at another way, CARB effectively acknowledges the current infeasibility of the equipment it is requiring. Yet this kind of process—legally requiring the deployment of technology that is not yet available and providing for a discretionary waiver of that requirement if meeting the requirement by the adoption date become infeasible—is the wrong way to encourage the adoption of new technology. Rather than focusing on realistic and tangible improvements, this type of regulation encourages strong opposition and in my opinion is a deterrent to the adoption of new technology.

Second, CARB is, obviously, a *California State agency*, and in adopting regulations CARB is only required to evaluate effects *in the State of California*, even when, as here, the clear impact of its action is nationwide. EPA, by contrast, is a national regulatory agency and must consider the *nationwide* effects of its actions and evaluate and respond to all comments. Considering the full effects of regulatory actions is the proper way to regulate national industries.

Finally, if adopted and enforced, the CARB regulations would likely *increase* emissions and pollutants in other jurisdictions by diverting cargo to other locations and through mode shift to trucks. Neither is in the national interest but could in theory meet California's desired goals. National policymakers should not let California regulators take steps to reduce emissions in California by increasing them elsewhere without consideration of those effects.

CONCLUSION

For the reasons I have discussed in this testimony, I believe the CARB regulations and CARB proposal are preempted by section 10501 of the ICA. While recognizing that decreasing emissions from locomotives is a laudable goal, I ask the Committee to remember that there are better and more effective ways to do so than improperly delegating the ability to regulate locomotive emissions standards to one state.

I look forward to answering any questions you might have.

Mr. NEHLS. Thank you, Mr. Nober.

Mr. Yal, you are recognized for 5 minutes, sir.

TESTIMONY OF URAL YAL, SENIOR VICE PRESIDENT—CORPORATE PRECONSTRUCTION GROUP, FLATIRON CONSTRUCTION, ON BEHALF OF THE ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA

Mr. YAL. Thank you. Chairman Nehls, Ranking Member Wilson, and members of the subcommittee, thank you for inviting me to testify on this important topic. My name is Ural Yal. I am a senior vice president at Flatiron Construction and a vice president of the highway and transportation division at AGC, Associated General Contractors of California.

With nearly 900 members specializing in all facets of construction, at AGC of California, we believe the construction industry is vital to the success of California, and we are passionate about shaping policy, improving our State's infrastructure, and developing our workforce.

My firm, Flatiron Construction, is a national infrastructure contractor founded in Colorado in 1947, and we have been operating in California since 1989.

With more than 3,500 craft and professional employees—1,100 of those are in California—we work for public and private clients to deliver essential infrastructure. Our yearly revenues exceed $2½ billion, and more than $1 billion is generated in California.

We have worked with passenger and freight rail operators throughout our history with notable projects such as a 68-mile segment of California high-speed rail, Redlands Passenger Rail Project in San Bernardino County, North Coast Corridor Program in San Diego that serves joint Amtrak and BNSF lines, intermodal facility improvements, rail operation and safety improvements such as grade separations and double-tracking on passenger and freight rail lines across California and several other States.

As a contractor that self-performs the majority of our work with our own craft workforce, and with rail and transit construction being a major part of our business, maintaining investments in infrastructure spending is very important to us.

A more environmentally friendly Nation starts with our State and Federal agency partners' ability to build while maintaining jobs, ensuring stable material pricing, meeting effective transportation needs, and securing the funding required to build the projects our communities need.

The construction industry not only creates jobs, but also drives economic growth by developing the infrastructure necessary for a sustainable future.

While AGC of California supports the goal of a more environmentally friendly State, the California Air Resources Board in-use locomotive regulation, if granted, will have significant adverse effects on infrastructure development, construction supply chain, and job creation.

One reason for this adverse effect is available funding. The proposed spending account and useful life requirements within CARB's in-use locomotive regulation present significant financial and operational challenges for our agency partners and operators.

These requirements are designed to accelerate the transition to zero-emission locomotives by mandating substantial financial contributions from operators into a spending account, and limiting the operational life of existing locomotives.

While we support the intent to reduce emissions, these measures impose undue burdens on our transportation agencies, and by extension, the communities they serve.

We are concerned that this regulation will have unintended consequences and jeopardize planned infrastructure projects and construction jobs.

Another aspect of this regulation is the potential impacts on construction costs. The costs of construction have gone up, including

the cost of construction materials, construction labor, and transportation of materials.

Since February 2020, the average cost of construction materials has increased by 39 percent, a rate that is nearly twice as high as the rate of consumer inflation, with notable increases of over 60 percent or more in diesel and steel mill products.

The CARB in-use locomotive regulation would further increase these costs and the costs to rebuild the Nation's infrastructure, further diminishing what can be built with available funding.

The majority of AGC of California members rely on sustained infrastructure funding to keep and develop our workforce and sustain our businesses.

Given the already strained funding and infrastructure due to supply chain and inflationary pressures, resulting in the recent downscaling of projects due to lack of funding, CARB's in-use locomotive regulation will result in further impacts to our industry.

Thank you for allowing me to testify today, and I am happy to answer any questions you may have.

[Mr. Yal's prepared statement follows:]

Prepared Statement of Ural Yal, Senior Vice President—Corporate Preconstruction Group, Flatiron Construction, on behalf of the Associated General Contractors of California

INTRODUCTION

Chairman Nehls, Ranking Member Wilson, and members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials, thank you for inviting me to testify on this vitally important topic. My name is Ural Yal, Senior Vice President of the Corporate Preconstruction Group at Flatiron Construction, and an active member of the Associated General Contractors (AGC) of California. I currently sit on the Executive Committee at AGC as the Vice President of Highway & Transportation. Since 1920, AGC of California has been a member driven organization (501c6) with around 900 members specializing in commercial construction. We believe the construction industry is vital to the success of California. Together, our members actively create opportunities to build and strengthen our state. We are passionate about shaping policy, improving industry relationships, and developing our workforce.

AGC members are the contractors that built California's current infrastructure. They are also the contractors maintaining our existing infrastructure and building the next generation for the state. This includes passenger rail systems, freight rail, affordable, and mixed income housing developments, air and seaports, roads, bridges, transit systems, and more.

Flatiron is a leading infrastructure contractor with operations across the United States and Canada. We were in founded in Colorado in 1947 and have been operating in California since 1989. With more than 3,500 craft and professional employees—1,100 of those employees are in California—we collaborate with public and private clients to deliver essential infrastructure. Our revenues exceed $2.5b, of which more than $1B is generated in California. We are ranked top 10 by Engineering News-Record in transportation and heavy civil construction in the US. Our focus market segments are rail and transit systems, aviation, highways, bridges, water and wastewater treatment facilities, resiliency and flood protection, dams and reservoirs, and sustainable mobility. With a focus on safety and quality, Flatiron builds long-term, collaborative relationships with clients, construction partners and communities. Our skilled craft employees and on-site leaders bring vital expertise and experience to each project. Our industry-leading engineers create innovative solutions to complex issues. And, beyond delivering essential infrastructure projects, Flatiron people demonstrate a commitment to sustainability, to our clients and the communities where we live and work.

We have worked with passenger and freight rail operators throughout our history, with notable projects such as a 68-mile segment of California High-Speed Rail, Red-

lands Passenger Rail in San Bernardino County in California, North Coast Corridor program in San Diego that serves joint Amtrak and BNSF lines, intermodal facility improvements for BNSF, numerous safety improvements such as grade separations and double tracking on passenger and freight rail lines across California and several other states.

As a contractor that self-performs majority of our work with our own craft workforce and with rail and transit construction being a major part of our business, maintaining investments in infrastructure spending in this field very important to us.

The construction industry is vital to our nation's economy, providing the foundation upon which our communities are built and thrive. A more environmentally friendly nation starts with our state and federal agency partners' ability to build it while maintaining the jobs our communities need, ensuring stable material pricing, meeting effective transportation needs, and securing the funding required to support the communities our agency partners develop and build for. The construction industry not only creates jobs but also drives economic growth by developing the infrastructure necessary for a sustainable future.

While AGC of California supports the goal of a more environmentally friendly state, the California Air Resources Board's (CARB) In Use Locomotive Regulation, if granted, will have significant adverse effects on infrastructure development, the construction supply chain, and job creation.

CARB's regulation would require railroads, beginning in 2030, from operating locomotives in California that are more than 23 years beyond their original manufacture date. In addition, beginning in 2030 for industrial, switch, and passenger locomotives and 2035 for line-haul locomotives, newly purchased locomotives operated in California would need to be zero-emission. The railroads have made significant investments in developing battery electric and hydrogen fuel cell locomotives, however commercially viable zero-emission locomotives are unavailable.

California has a total of twelve ports and about forty percent of container freight moves through California ports.[1] According to Union Pacific, 52% of rail traffic is bulk commodities for things like agriculture and energy products, construction materials, chemicals, equipment, metals, minerals, among other things.[2] And according to the Association of American Railroads, rail accounts 40 percent of long-distance freight by ton-mile.[3] The ability to transport construction materials and other freight by rail is vital to the economy of California and the nation and would be hindered by the CARB regulation.

Construction Costs have Increased

The costs of construction have gone up, including the cost of construction materials, construction labor, and transport of materials. The CARB In Use Locomotive Regulation would further increase these costs and the cost to rebuild the nation's infrastructure.

Construction Material Prices

At Flatiron Construction, and more broadly within the construction industry, managing inflation defined 2023 and a lot of 2024. Since February 2020, the average cost of construction materials has increased by 39%; nearly twice as high as the rate of consumer inflation, which was 21% during that same period (See Appendix Table 1). More specifically, some construction markets, like highway construction, have seen an increase of 68% since December 2020, according to the Federal Highway Administration's (FHWA) National Highway Construction Cost Index (NHCCI).[4] These figures also reflect significant cost increases for specific construction materials from February 2020 to May 2024 (See Appendix Table 2), which include a:

- 63% increase in the price of diesel;
- 60% increase in the price of steel mill products;
- 49% increase in the price of gypsum (used in a lot of building materials); and
- 38% increase in the price of cement.[5]

The price of fuel, especially diesel, has driven up costs for the construction industry and project costs nationwide. Higher diesel costs mean construction companies must pay more to operate equipment, deliver materials to jobsites, and haul away

[1] The California Legislature's Nonpartisan Fiscal and Policy Advisor, Overview of California's Ports
[2] Union Pacific, How Much Freight Ships by Rail In the US?
[3] Association of American Railroads, Data Center
[4] National Highway Construction Cost Index, Q4 2020 to Q4 2023
[5] Bureau of Labor Statistics, Producer Price Indexes

dirt, debris, and equipment. Likewise, construction workers themselves feel the pain of higher commuting costs—particularly for jobs in rural areas where workers often have long commutes.

Construction Labor Costs

The Bureau of Labor Statistics released numbers in April 2024 that showed that there were still 338,000 job openings in construction despite 353,000 new hires reported throughout the month. In other words, the industry cannot find enough people to hire. This has resulted in dramatic increases in labor costs. The average hourly earnings in construction increased 20% from $29.64 an hour in December 2020 to $35.45 an hour in May 2024. This increase, outpacing growth in the private sector.[6]

Transporting Construction Materials

Construction material prices have increased and as a result of the increased cost of diesel, so have the costs to transport them. The CARB regulation would only exacerbate the problem.

While railroads account for a smaller portion of freight movement by weight and value, it is significant because these shipments reduce what would otherwise be increased congestion on our roadways. In addition, according to the Association of American Railroads, on average railroads are three to four times more fuel efficient than trucks.[7] Railroads account for about 0.5% of total U.S. greenhouse gas emissions and just 1.7% of greenhouse gas emissions in the transportation sector.[8]

CARB Regulation will Jeopardize Planned Infrastructure Projects

The proposed Spending Account and Useful-Life Requirement within CARB's In-Use Locomotive Regulation present significant financial and operational challenges for our agency partners. These requirements are designed to accelerate the transition to zero-emission locomotives by mandating substantial financial contributions from operators into a spending account and limiting the operational life of existing locomotives. While the intent to reduce emissions is commendable, these measures impose undue burdens on our transportation agencies and, by extension, the communities they serve. We are concerned that this regulation will have unintended consequences and jeopardize planned infrastructure projects and construction jobs.

Barstow International Gateway Project

Burlington Northern Santa Fe Railway (BNSF) Railway's Barstow International Gateway is a transformative infrastructure project designed to enhance the efficiency and capacity of freight rail operations in California. This state-of-the-art, master-planned rail facility represents an investment of over $1.5 billion and spans approximately 4,500 acres on the west side of Barstow. The facility will include a rail yard, an intermodal facility, and warehouses for transloading freight from international containers to domestic containers. The facility is designed to improve cargo velocity and reduce congestion both at the ports and on the highways. By allowing for the direct transfer of containers from ships at the Ports of Los Angeles and Long Beach to trains, the project will help reduce truck traffic and freeway congestion in the Los Angeles Basin and the Inland Empire. The use of clean-energy powered cargo-handling equipment at the facility will also contribute to improving the region's air quality.[9]

The Spending Account (Section 2478.4(a)–(e)) mandates that locomotive operators deposit significant sums annually based on the tier of their locomotives. Katie Farmer, CEO of BNSF spoke at the North American Rail Shippers Conference and said, "We estimate that that payment for us, and I know that it would be similar for the Union Pacific, would be around $800 million a year."[10]

The path forward, if the EPA were to grant a waiver, would be unclear and in question for BNSF.[11]

Furthermore, in a comment made by California's Office of Business and Economic Development on the BNSF Barstow Project, "The significance of BNSF's investment to improve the supply chain here in California cannot be overstated. Rail plays a

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[6] Bureau of Labor Statistics, Current Employment Statistics Survey
[7] Association of American Railroads, Freight Rail Facts and Figures
[8] Association of American Railroads, Data Center
[9] BNSF Railway, BNSF to Build New Integrated Rail Complex in Barstow to Increase Supply Chain Efficiency Nationwide
[10] Trains.com, California locomotive emission rules threaten BNSF's proposed Barstow terminal
[11] Progressiverailroading.com, Rail industry to Congress: California's locomotive rule is a state reg with national consequences

critical role in moving goods safely and efficiently, while reducing emissions due to congestion in many of our high-traffic corridors," said Trelynd Bradley, Deputy Director of Sustainable Freight and Supply Chain Development at the Governor's Office of Business and Economic Development. He added, "Projects like BNSF's will work to strengthen our inland local economies, such as that of Barstow in San Bernardino County. We look forward to continuing to work with projects like these, as well as others, to drive transformative investments that will enhance and elevate California's supply chain ecosystem for a more efficient and resilient tomorrow." [12]

California clearly and publicly supports infrastructure development that improves upon the movement of goods specifically referring to BNSF Railway's Barstow International Gateway Project. Trelynd Bradley also stated the positive impact "Rail plays a critical role in moving goods safely and efficiently, while *reducing emissions* due to congestion in many of our high-traffic corridors" again, stated by California's Office of Business and Economic Development. However, the CARB regulation works to dismantle such efforts.

The Barstow Project would Create Jobs and have Positive Economic Impacts

The Barstow International Gateway is poised to create significant economic benefits for the region and beyond. The project is expected to generate approximately 20,000 direct and indirect jobs, a substantial boost to the local economy of Barstow, where the population is around 25,231. The jobs impacted by this regulation would span beyond my company and the construction industry and also jeopardize jobs in operations, and ancillary services, providing much-needed employment opportunities in the high desert region. Those jobs and many others are threatened by CARB's In-Use Locomotive Regulation.

The CARB Regulation would Contradict State Priorities

Furthermore, the Los Angeles County Metropolitan Transportation Authority (LA Metro), Ventura County Transportation Commission (VCTC), San Bernardino County Transportation Authority (SBCTA), National Railroad Passenger Corporation (Amtrak), Orange County Transportation Authority (OCTA) Southern California Regional Rail Authority (Metrolink) and Peninsula Corridor Joint Powers Board (Caltrain) accounting for the majority of passenger rail in California have expressed the severe financial burden that would be a result of such accounts. According to CalTrain "This would mean encumbering tens of millions of dollars into a Spending Account that would be unavailable for rail operations, state of good repair improvements, or leveraging federal investment in rolling stock and capital projects, despite existing plans to replace 75 percent of our fleet with ZEV EMUs. Caltrain does not have flexible funds that could account for this level of financial disruption and would be forced to impact operating budgets, reduce service, or in the worst case, shut down entirely. This requirement in creating a new financial liability could impact the agency's credit rating, which would be problematic for the financing that may be needed simply to comply with the regulation and continue to run service. There is no funding attached to this regulation and thus, passenger rail agencies will have no assistance or recourse to comply." [13]

The world is anticipating the LA28 Olympic Games which officials have advertised as 'car-free' games.[14] This regulation itself contradicts the State of California's goals to reduce Vehicle Miles Traveled (VMT) if our agency partners ability to utilize funds for maintenance, operations, and expansion of rail prior to the Olympics is significantly reduced. While the goals of the Spending Account and Useful-Life Requirement within CARB's In-Use Locomotive Regulation are aimed at promoting environmental sustainability, the adverse effects on agency partners are substantial.

CONCLUSION

In conclusion, while the goals of CARB's In-Use Locomotive Regulation to reduce emissions and promote environmental sustainability are commendable, the proposed Spending Account and Useful-Life Requirements present significant challenges that cannot be overlooked. These measures impose undue financial and operational burdens on our transportation agencies, complicating compliance with existing federal standards and diverting critical funds from essential infrastructure projects.

While construction materials are shipped by virtually every mode of transportation, constraining the rail industry's ability to operate in the state of California

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[12] BNSF Railway, BNSF to Build New Integrated Rail Complex in Barstow to Increase Supply Chain Efficiency Nationwide

[13] California Air Resource Board, Caltrain letter

[14] Los Angeles Times, L.A. buses helped eliminate 1984 Olympic traffic. Can they repeat for 2028?

could have ripple effects across the country. In addition, AGC is concerned about other states following suit and mandating zero emission locomotives like how they followed California's vehicle emission standards.[15]

The construction industry, which is pivotal to rebuilding our nation's infrastructure, stands to be severely impacted. The burden and uncertainty of the CARB regulation could disrupt supply chains, delay construction projects, and jeopardize construction jobs. This, in turn, undermines the ability of the construction industry and its agency partners to build and maintain the infrastructure that supports our communities.

I thank the Committee for the opportunity to testify today and look forward to answering any questions that members may have.

APPENDIX

Table 1

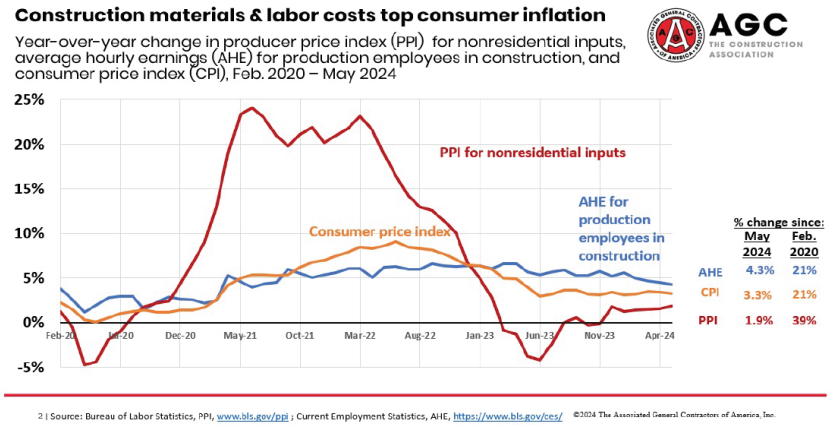
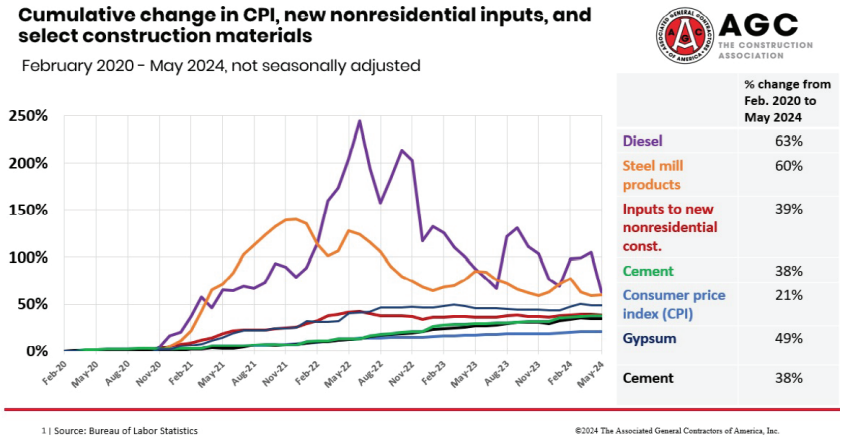


Table 2



[15] California Air Resource Board, States that have Adopted California's Vehicle Regulations

Mr. NEHLS. Thank you, Mr. Yal.

Ms. Arias, you are recognized for 5 minutes.

TESTIMONY OF HEATHER ARIAS, CHIEF, TRANSPORTATION AND TOXICS DIVISION, CALIFORNIA AIR RESOURCES BOARD

Ms. ARIAS. Good afternoon and thank you for having me today. Chair Randolph asked that I pass along her apologies for not being able to attend.

I am Heather Arias, the Transportation and Toxics Division chief. My team is the team that developed the locomotive rule that we are discussing today.

I also have teams who have developed and are implementing regulations for engines all across California's transportation system, but today, we are focused on the locomotive regulation.

Locomotives are one of the largest sources of criteria pollutants in California. Ninety percent of California railroads are within 1 mile of vulnerable residential communities already highly impacted by nitrogen oxide, or NOx, and toxic diesel particulate matter, of which there is no known safe level of exposure.

Reduction of the pollution caused by locomotives operating in the State is critical for California to meet its Clean Air Act obligations. Locomotives represent 31 percent of the NOx reductions needed in California's State Implementation Plan Strategy to meet attainment under the Clean Air Act for highly polluted air basins such as South Coast and San Joaquin.

Locomotives are not entitled to a free pass, and like other regulated industries, railroads operating in California must reduce emissions that are harming Californians.

Railroad operations in California continue to use, and are increasing use of, some of the oldest and most polluting engines in California.

Although Tier 4 engines have been available since 2015, railroads have continued to operate locomotives in California with emission control technologies over 20 years old, technologies that produce over 80 percent more emissions than the current U.S. EPA Tier 4 emission standard.

Even worse, railroads continue to operate locomotives in California that are up to 50 years old with no emission controls at all, and in the past several years, the average emissions of their locomotive fleets operating in California have gotten worse—not better.

California has been taking robust steps, pursuant to the Clean Air Act, to reduce emissions from other mobile sources, including heavy-duty trucks, passenger cars, off-road equipment, ships docked in California's ports, and more. Locomotives are increasingly the outlier. Today, when comparing the transportation of the same number of shipping containers, locomotives produce more NOx and toxic diesel particulate matter than trucks operating in the State, and soon, locomotives will produce more greenhouse gas emissions than trucks on a per-shipping-container basis.

In 2023, the California Air Resources Board, or CARB, adopted a locomotive regulation that is estimated to result in $32 billion in health savings to Californians by preventing 3,200 premature deaths and 1,500 emergency room visits and hospitalizations. The

reg would also decrease cancer risk from exposure to locomotive emissions by up to 90 percent.

CARB's locomotive regulation follows California's expressly preserved authority under the Clean Air Act to regulate emissions from locomotives operating in the State. It does not set emission standards on new locomotives, nor does it mandate the purchase or use of zero-emission locomotives.

Operators may continue to operate Tier 4 locomotives for decades to come, and because nearly every locomotive operating today runs on fully electric motors and can be powered using a fuel source other than its diesel generators, operators may continue using their existing locomotives by configuring them to run on zero-emission power sources.

The regulation allows ample time for emission-control technologies to continue to advance and for market efficiencies to put downward pressure on prices.

It is important to note that zero-emission rail transportation is nothing new. Electrified rail is more than 100 years old, and we once had electrified tracks throughout the Nation, coast to coast.

Advances in battery and hydrogen fuel technology have given railroads more options than 100 years ago. It is saddening and disappointing that railroads remain some of the top polluters in the State given all the tools available to them to do better.

California's passenger vehicles, heavy-duty trucks, oceangoing vessels, and heavy off-road equipment, among other emission sectors, are all doing their part. All we ask is that the railroads do their part, too, so Californians can have clean air to breathe. Thank you.

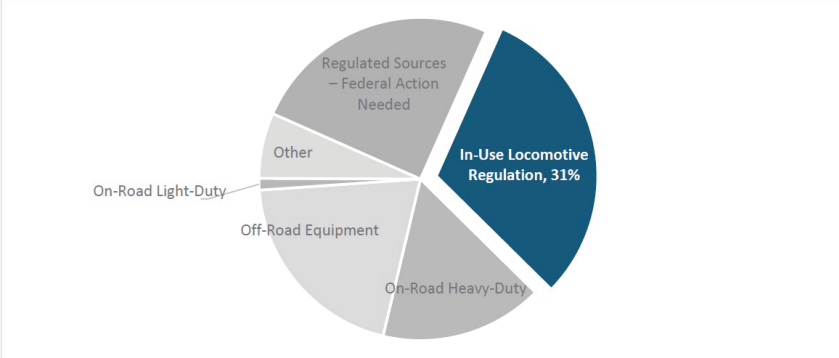
[Ms. Arias' prepared statement follows:]

Prepared Statement of Heather Arias, Chief, Transportation and Toxics Division, California Air Resources Board

BACKGROUND

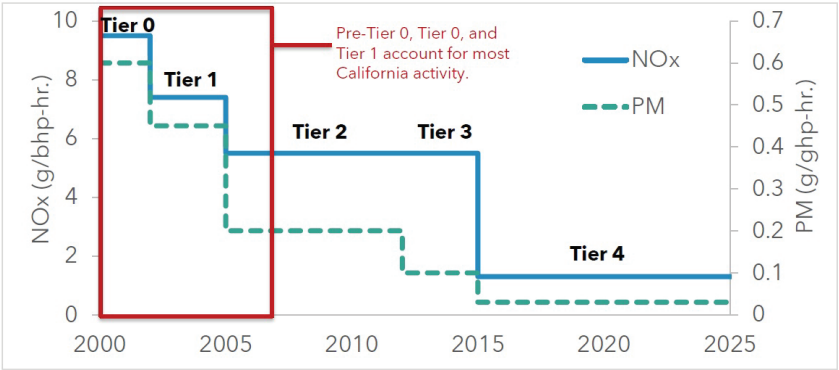
Locomotives are one of the largest sources of criteria pollutants in California. Ninety percent of California's railyards are within one mile of vulnerable residential communities already highly impacted by nitrogen oxide (NOx) and toxic diesel particulate matter—of which there is no known safe level of exposure. Reduction of the pollution caused by locomotives operating in the State is critical for California to meet its Clean Air Act obligations. Locomotives represent 31% of the NOx reductions needed in California's State Implementation Plan Strategy to meet attainment under the Clean Air Act for highly polluted air basins such as South Coast and San Joaquin Valley. Locomotives are not entitled to a free pass, and, like other regulated industries, railroads operating in California must reduce emissions that are harming Californians.

Table 1: Statewide Expected Emissions Reductions by 2037 from Proposed SIP Measures [1]



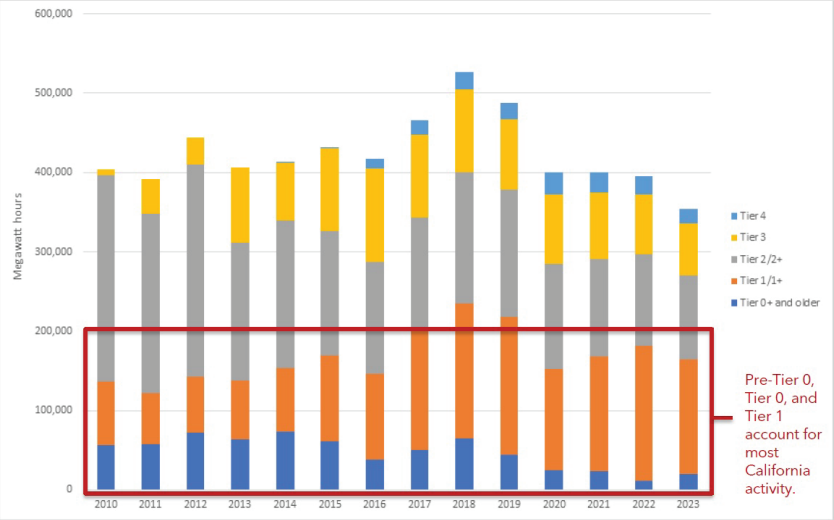
Railroad operators in California continue to use—and are increasing use of—some of the oldest and most polluting engines in California. Although Tier 4 locomotives have been available since 2015, railroads have continued to operate locomotives in California with emissions control technology over 20 years old—technology that produces over 80% more emissions than the current U.S. EPA Tier 4 emission standard. Even worse, railroads continue to operate locomotives in California that are up to 50 years old with no emission controls at all. And in the past several years, the average emissions of their locomotive fleets operating in California have been getting worse—not better.

Figure 1: Locomotive Emissions per Tier



[1] CARB, 2022 State SIP Strategy, September 22, 2022, https://ww2.arb.ca.gov/sites/default/files/2022-08/2022__State__SIP__Strategy.pdf.

Figure 2: Locomotive Activity in the South Coast Air Basin by Tier



California has been taking robust steps pursuant to the Clean Air Act to reduce emissions from other mobile sources—including heavy duty trucks, passenger cars, off-road equipment, ships docked in California ports, and more. Locomotives are increasingly the outlier. Today, when comparing the transportation of the same number of shipping containers, locomotives produce more NOx and toxic diesel particulate matter than trucks operating in the State.[1] And soon, locomotives will produce more greenhouse gas emissions than trucks on a per-shipping container basis.

Figure 3: Truck vs. Train NOx Emissions

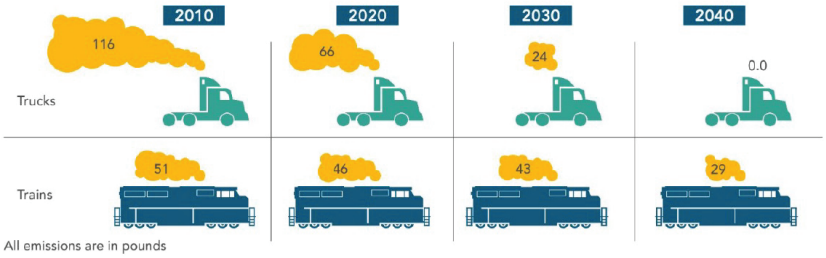


Figure 4: Truck vs. Train PM Emissions

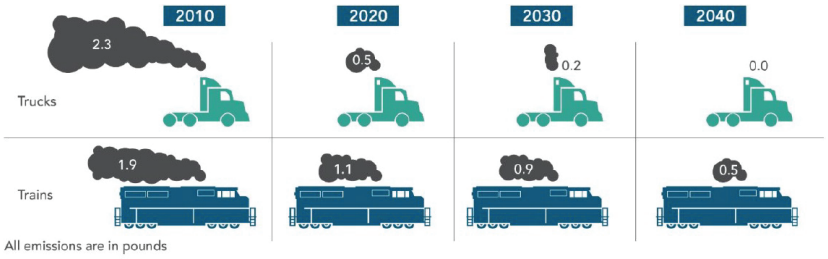
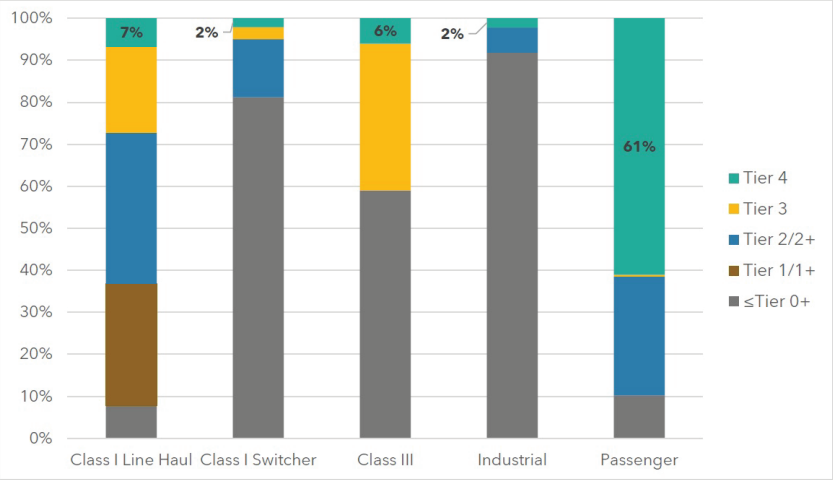


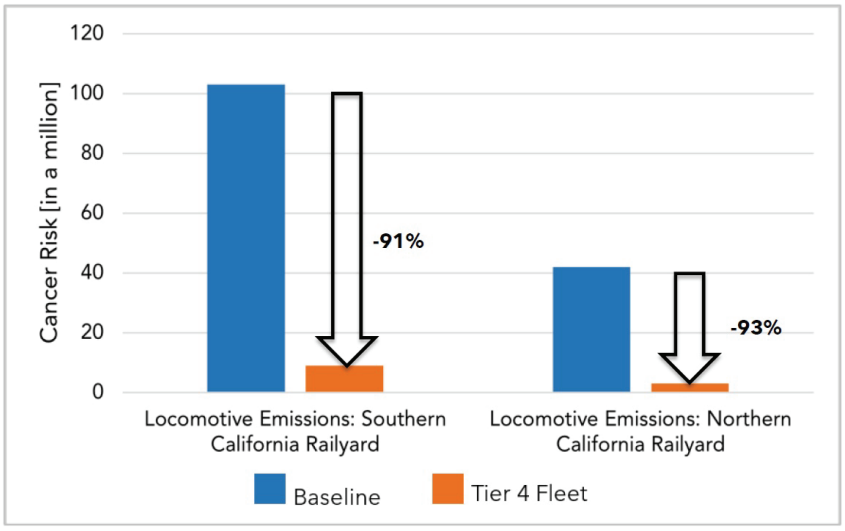
Figure 5: 2024 California Locomotive Activity by Tier



IN-USE LOCOMOTIVE REGULATION

In 2023, the California Air Resources Board (CARB) adopted a Locomotive Regulation that is estimated to result in $32 billion in health savings to Californians by preventing 3,200 premature deaths and 1,500 emergency room visits and hospitalizations. The regulation would also decrease cancer risk from exposure to locomotive emissions by up to 90%.

Figure 6: Cancer Risk Near Railyards [2]



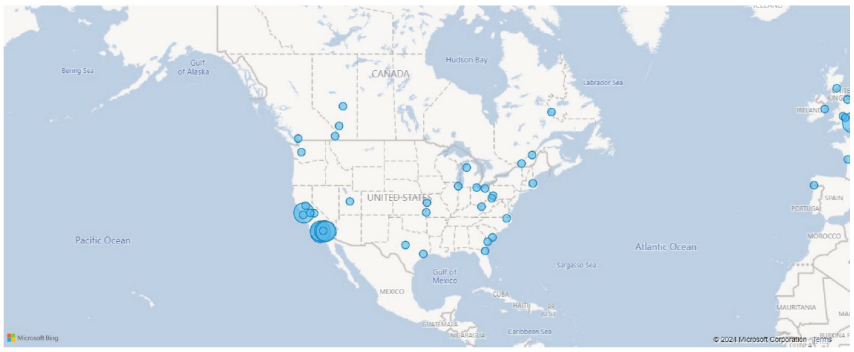
CARB's Locomotive Regulation follows California's expressly preserved authority under the Clean Air Act to regulate emissions from locomotives operating in the

[2] CARB, Initial Statement of Reasons, Appendix H: Health Analyses for the Proposed In-Use Locomotive Regulation, https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/apph.pdf.

State. It does not set emission standards on new locomotives. Nor does it mandate the purchase or use of zero emission locomotives. Operators may continue to operate Tier 4 locomotives for decades to come. And because nearly every locomotive operating today runs on fully electric motors and could be powered using a fuel source other than its diesel generators, operators may continue using their existing locomotives by configuring them to run on a zero-emission power source. The regulation allows ample time for emission control technologies to continue to advance and for market efficiencies to put downward pressure on prices.

It is important to note that zero-emission rail transportation is nothing new. Electrified rail is more than 100 years old, and we once had electrified tracks throughout the nation, coast to coast. Advances in battery and hydrogen fuel cell technology have given railroads more options than 100 years ago. It is embarrassing and inexcusable that railroads remain some of the top polluters in the state given all of the tools available to them to do better.

Figure 7: ZE Rail Dashboard—North America ZE Rail Projects [3]



CONCLUSION

California's passenger vehicles, heavy-duty trucks, ocean-going vessels, and heavy off-road equipment, among other emissions sectors, are all doing their part. It is past time that the railroads did their part to clean up the air we breathe.

Mr. NEHLS. Thank you all for your testimony. We will now turn to questions for the panel. I recognize myself for 5 minutes.

Mr. Olvera, according to CARB's own analysis, short line and regional railroads won't be able to comply with the cost of the regulation and would cease to operate. I think short lines operate on routes that Class I's, pretty much they abandoned them, right? They abandoned them.

So, did CARB consider the unique business structure of short lines?

Mr. OLVERA. So, many short lines in the State of California have very small operations. They operate on very thin margins and don't have the financial wherewithal to invest in Tier 4, and ultimately zero-emission locomotives, even with State and Federal funding.

Our railroad consists of 11 locomotives, 9 of which we proactively signed up for clean air locomotives back in 2008, invested millions of dollars, along with the State of California.

But now, well before the useful lives of those locomotives are over, we are being asked to scrap them and upgrade to more expen-

[3] The Zero Emission Rail Project Dashboard was developed to view freight and passenger rail projects that utilize different zero-emission technologies in one central location. It also serves to demonstrate the growing number of ZE locomotive projects both in North America and internationally https://ww2.arb.ca.gov/applications/zero-emission-rail-project-dashboard.

sive Tier 4 locomotives and put money into a spending account in the tune of about $1 million annually.

Those types of financial requirements really don't fit the financial model of my short line or any others.

Mr. NEHLS. Very well. Thank you.

Mr. Nober, is it more accurate to describe this proposed rule as one that regulates new locomotive engines and emission controls, and not just the use of locomotives?

Mr. NOBER. I think the regulation as technically written really apply—it says it only applies to in-use, but I think that that is a—it is twisting the definition a little bit of "in-use" because you can't use anything that hasn't been manufactured.

Mr. NEHLS. Sure.

Mr. NOBER. So, I would say that the clear goal is to incent and to create and to force manufacturers to be able to produce locomotives that can meet these emissions standards, or become zero-emissions standards.

Mr. NEHLS. Sure, yes.

Mr. NOBER. So, it is, as a practical matter, regulating manufacturer.

Mr. NEHLS. Sure. On the question of locomotive use, the Interstate Commerce Commission Termination Act and the various Surface Transportation Board decisions and court rulings have found that State in other attempts to regulate railroad operations are preempted by Federal law.

And as former Chairman of the STB, should EPA follow the STB's recommendations and conduct its preemptive analysis and consider interpreting and applying CAA narrowly so as to avoid conflict with the ICCTA?

Mr. NOBER. I mean, clearly in the first blush, and I don't think it is 100 percent clear, whether the STB alone in a court, or the STB and the EPA alone could apply harmonization analysis.

But the EPA certainly has the ability to look at the two statutes and decide whether one is in conflict with another, and we certainly would—I would, if they asked me, I would advocate that they do that.

Mr. NEHLS. Sure. Finally, in pursuing the regulation of locomotives via a waiver, EPA avoids statutes like the Congressional Review Act or the empaneling a small business advocacy panel under the Small Business Regulatory Enforcement Fairness Act.

Shouldn't a proposal of this consequence, at a minimum, be conducted as an Administrative Procedure Act rule so the CRA and the SBREFA apply?

Mr. NOBER. Well, as now a scholar of regulatory process, I strongly believe that significant actions like this should be done under the most Administrative Procedure Act process, which, in this case, would be to either do a full rulemaking, which would have notice and comment.

Now, they did open a proceeding, and people did comment, including many folks who are in the audience and myself, but the legal obligation to consider those comments and then to, again, have it be subject to the Congressional Review Act and cost-benefit analysis and many of the other portions of it, would be different if it were a full rulemaking.

So, the more that it is a rulemaking, the more process there is and the stronger outcome it will be.

Mr. NEHLS. Very well.

And, Mr. Yal, California AGC is a member of the Rebuild SoCal Partnership, which represents 2,750 contractors and over 90,000 union workers. This group wrote in opposition to the CARB rule for many of the reasons you stated in your testimony, sir.

Would it be fair to say that the CARB rule jeopardizes the Barstow Gateway Project in San Bernardino County?

Mr. YAL. Yes, that is correct. That is a very large project that is planned by BNSF in that area. It is a big economic engine. It is one of the biggest mega projects in the area, and it is jeopardized by this.

Mr. NEHLS. Yes. And that is not what we should be doing here.

I want to thank you all. I yield back the balance.

I now recognize Ranking Member Wilson for 5 minutes.

Ms. WILSON OF FLORIDA. Thank you, Mr. Chair.

Ms. Arias, communities living near railroads and rail lines, which are most often historically underserved communities, are routinely exposed to high levels of air pollution and emissions stemming from the burning of diesel fuels.

In just your State, CARB estimates that reducing locomotive emissions would prevent 3,200 premature deaths and save $32 billion in healthcare costs.

What are the steps that railroads could immediately make to reduce emissions in these communities?

Ms. ARIAS. Thank you, ma'am. Yes, we are currently working with the rail lines. In fact, I want to actually applaud the Class III lines because they are taking immediate steps by, as mentioned earlier, applying for funds.

They are coming forward. There are 200 Class III engines in our State. Thirty of those engines are currently under applications for State or Federal funds. So, that is a great step to make progress immediately.

There are other things that could be done as far as maximizing use of the newer engines. There are things like ensuring that the engines idle the least amount as possible. There are things like working to utilize cleaner technology in the other equipment that is at the railroads. So, there are things that can be done now.

We have also ensured that there are different pathways in the regs so that if any one of the industries have a different idea that may actually incentivize cleaner technologies sooner, they can come to us and work with us on an alternative compliance plan and get credit earlier, which allows for other opportunities later.

Ms. WILSON OF FLORIDA. Can you tell us, or synthesize for us, how important it is to reduce emissions from locomotives?

Ms. ARIAS. Yes, ma'am. Thank you. As far as locomotives are concerned in California, the Clean Air Act, as I mentioned earlier, does have requirements for attainment across the State. The locomotives are one-third of our emissions necessary to meet that final—sorry—Federal requirement.

Outside of that, our State has also identified diesel as a toxics air contaminant in the late 1990s. The diesel engines that are run-

ning throughout the State are contaminating the nearby neighborhoods.

If this rule were to go into place, we would see a 90-percent reduction from the current diesel exposure to those communities.

Ms. WILSON OF FLORIDA. Thank you. Diesel emissions are known to create higher health risks, childhood asthma, and cancer. Tier 4 locomotives have 90 percent lower particulate matter emissions and 80 percent lower nitrogen oxide emissions than a Tier 2 locomotive. How many Tier 4 locomotives do Class I railroads operate?

Ms. ARIAS. Great question, ma'am. We only have data from UP and BNSF regarding locomotives that come into the South Coast air basin. We do not know what their total national fleet is.

They have mentioned that they have a lot of Tier 4s. They have said many of them are parked. We have asked multiple times how many they have, and we do not have that data.

Ms. WILSON OF FLORIDA. Well, can you tell us if railroads will be in compliance with this regulation if they operate Tier 4 locomotives or remanufacture existing locomotives to Tier 4 standards?

Ms. ARIAS. If they operated Tier 4 locomotives, they would certainly make a huge dent in their requirement. Ultimately, over many decades, the goal is to transition to zero-emission operations.

What could be done even today is a reconfiguration of their existing engines, so they wouldn't necessarily have to change the engine to a Tier 4. So, for example, if they are operating a Tier 1 or Tier 2, some of the much older engines that we discussed, they could reconfigure that engine, because the locomotive you see that is going down the line is actually all electric.

There is a smaller diesel generator on that train that is providing the power. They can reconfigure that to allow for zero-emission operation. There are tender cars or catenary that can do that. That can make that engine a hybrid engine, similar to what you have seen in cars for many, many years.

That hybrid engine could operate in zero-emission operations in our State, and even in other communities to remove or eliminate the diesel health exposure issue. That can happen today. Those technologies are available today. They are for sale today.

Ms. WILSON OF FLORIDA. Wow, thank you. I yield back.

Mr. NEHLS. The gentlelady yields.

I now recognize Mr. Rouzer for 5 minutes.

Mr. ROUZER. Thank you, Mr. Chairman.

Mr. Nober, the California Air Resources Board claims railroads should do their part when it comes to emissions reductions, which sounds like a pretty subjective mission statement to me.

Your testimony points out that if such regulations are necessary, then EPA should open a proceeding. Can you talk about why that is important, and what the fundamental difference is between agency rulemaking and the waiver process?

Mr. NOBER. Well, a waiver process is, strictly speaking, what is called an adjudication. So, it is CARB coming in and asking for the agency to take an action with respect to that request.

So, CARB is standing as if there were any other applicant for something, and parties go to agencies and ask for waivers of rules all the time.

A notice-and-comment rulemaking is doing a rule of general applicability, and that is one that is published in the Federal Register—now this was, too—you open a docket, the agency has an obligation to put out a Notice of Proposed Rulemaking.

They then have to take comments. They have to respond to every comment. The rule has to then, since it is EPA, it would have—if it is a major rule, would have to go to OMB. It would have to have a cost-benefit analysis, and most importantly, I think a rule would be able to evaluate national impacts.

So, the issue that I would have as a matter of practice here, is that CARB, as a California State agency, its legal obligation—and I may be wrong, Ms. Arias may correct me here, but is to look at impacts in the State of California.

And EPA—let's say that the effect of this was to create mode shift so that ships would go farther and go to Houston or Savannah, and that more is going on truck, and that more cargo that is now going by rail through southern California is going in other places, that might increase diesel emissions to people in other parts of the country—EPA in a rulemaking would have to look at that. And in a waiver proceeding, those kinds of questions would be discretionary. It wouldn't automatically have to look at them.

Mr. ROUZER. So, it is a much more thorough process?

Mr. NOBER. Absolutely. And it certainly can be more time-consuming than a waiver process, without a doubt. And probably most stakeholders would be frustrated with the amount of time that most agencies took to do rules, but there is a plus and a minus to that.

Now, a Tier 5, a new national locomotive standard would probably take a significant amount of time longer because they would have to study different technologies, different feasibilities, and make a national assessment on overall, you know, the ability to roll them out, and locomotives are difficult—I have seen—one of the reasons probably there aren't that many Tier 4 locomotives is that they performed poorly in the beginning when they first came out.

Only one manufacturer has ever been able to even produce Tier 4 locomotives. There are two locomotive manufacturers, and one of them was never able to produce a Tier 4 locomotive. And the ones that have performed very poorly for many years, and so, those become disincentives, I think, to carriers perhaps investing more in them.

Mr. ROUZER. All right.

Mr. Yal, I am moving on slightly. What kind of supply chain disruptions is this going to cause, and what about the effect on inflation, how is this going to affect shippers?

Mr. YAL. A lot of construction materials certainly come through rail, and any disruption into rail transportation traffic is going to impact our supply chain, both on the length of the projects because of delay times in getting the materials, as well as the cost of the materials due to the increased cost in transportation.

What happens if there are disruptions in rail traffic is that starts to shift towards truck traffic, which then has also impacts on costs, the timeliness, and honestly, there is a lot of shortage in the trucking industry currently already that we are experiencing that is just going to overload the system and cause more impacts to us.

Mr. ROUZER. Thank you.

Ms. Arias, I can't help but ask this question. I was in California a couple years ago, and the smoke from the forest fires, I mean, you could hardly see from one end to the other. Not a very pleasant environment to be in.

I understand more than 1 million acres of forest in California have burned in recent years. Is this a focus of your agency at all?

It just seems to me like you got a lot of carbon hitting the atmosphere, and if there were a few preventive measures that were put in place, you could prevent a lot of those forest fires from happening.

I think if you looked at all the carbon from forest fires versus everything else, it wouldn't even be close.

Any thought to that or any studies or any work on that front?

Ms. ARIAS. Yes, sir. Thank you for the question. As a matter of fact, absolutely, the State is looking at all of the emissions, including forest fires. It has been such an important issue that our legislators have also been very involved and lots of different actions have been passed.

We are happy to follow up with you, if that would be helpful, to provide a list of actions that the State has done, but absolutely, a very critical reduction strategy as all of this is. We have to make sure that we get reductions across the board.

Mr. ROUZER. Mr. Chairman, my time is expired.

Mr. NEHLS. The gentleman yields.

I now recognize Mr. Moulton for 5 minutes.

Mr. MOULTON. Thank you very much, Mr. Chairman.

Mr. Olvera, I once worked for a smaller railroad than yours. Now, I wasn't running the books. I was running engines and on a track crew, so, I can't speak exactly to the numbers, but it seemed like the railway was barely scraping by, with of course hardly any help from the Government in stark contrast to the trucking industry, which runs on roads and highways entirely subsidized by the American taxpayer.

Now, you said that your railroad buys used locomotives, most of which don't meet these standards. What effect would buying brandnew Tier 4 or zero-emission locomotives have on your business?

Mr. OLVERA. Sure. New Tier 4 locomotives cost millions of dollars apiece. Most short lines operate on locomotives that cost a few hundred thousand dollars apiece.

My railroad actually purchased Tier 3 locomotives that were about $1½ million apiece back in 2008 and have an extensive amount of useful life left.

To be forced in a very abrupt timeline to scrap those Tier 3s and move to Tier 4s, with Federal and/or State funding, would require about $1 million from our railroad for each locomotive.

And with that, if we were able to comply, other safety-type projects, such as track enhancement and crossing enhancement, would have to be deferred in order to meet that standard. It would be very difficult to comply with.

Mr. MOULTON. I am actually amazed your railroad would still be able to stay in business because there are a lot of railroads that simply wouldn't be in business if that were the case.

You noted in your testimony that California's short lines move about 260,000 carloads of freight annually. Each carload carries the equivalent of three to four trucks' worth of goods.

So, this means that short lines in California alone keep about 1 million trucks annually off the highway. Is that right? Is that the right number?

Mr. OLVERA. Yes, that is correct. So, 1 rail carload typically equates to 3 or 4 truck carloads, and so, 260,000 times 3 to 4 would be that number, north of 1 million.

A lot of the short lines, just on an individual basis in the State of California, move thousands of carloads. My railroad moves 35,000 carloads annually. If those carloads were to be switched on truck and on our roads, that would result in about 120,000 trucks annually on the roads versus on rail.

Mr. MOULTON. And will that increase emissions?

Mr. OLVERA. Absolutely. Through congestion—traffic congestion and current gas house emission percentages, trucks today emit 23 percent of greenhouse gas emissions while railroads emit in total, 2 percent. And short lines actually are a small fraction of the 2 percent, so, emissions would immediately be impacted.

Mr. MOULTON. The CARB report actually predicts the fall of the short line industry because of the prohibitive costs of the proposed regulation, noting it is possible some of these businesses would be eliminated.

Cost burdens, from the rule, on small business operators could range from 42 percent to 208 percent of their annual revenues.

You can't run a business when your costs go up 208 percent of your annual revenues.

Ms. Arias, Europe is well ahead of the United States on climate policy as I am sure you well know, and their transportation policy is focused on mode shift. What does "mode shift" mean in this context?

Ms. ARIAS. Yes, we are not interested in shifting the freight from rail to trucks. We absolutely understand the necessity to have both modes in our State. We do have the largest ports in the Nation. We are also a huge producer of agricultural products for the Nation. We must have all modes of freight to be able to move all of that and——

Mr. MOULTON [interrupting]. OK. But if you care about emissions——

Ms. ARIAS [interposing]. Yes, sir.

Mr. MOULTON [continuing]. As Europe does——

Ms. ARIAS [interposing]. Yes.

Mr. MOULTON [continuing]. You should know what their policy is with mode shift, and their mode shift policy is very deliberately to get trucks off the highways and move those freight moves to rail, because it is more efficient, because it produces fewer emissions.

So, Europe, which is ahead of us on climate policy—and, look, I am a Democrat. I care about climate policy. I believe in the science. I want to reduce emissions.

But if your rule shifts more traffic from rail to trucks, it will do the opposite of your intention. It will actually raise emissions, which is why Europe has a policy explicitly in the opposite direction.

So, let's come up with a policy that shifts traffic off of trucks onto the railroads. It will not only be better for emissions, it will be better for public safety because accident rates, deaths from accidents on rail are much smaller than by truck. That is the policy that we need.

California's going to spend about $30 billion this year subsidizing highways. If you came up with a policy to electrify railroads, you might have a winner.

But this seems like a loser to me.

Mr. Chairman, I yield back.

Mr. NEHLS. The gentleman yields.

I now recognize Mr. LaMalfa for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman. Thank you for this hearing.

Ms. Arias, when you talk about, early on in your conversation, that within 1 mile of the tracks is 90 percent of the emissions, don't we have to acknowledge when towns are first built and settled? They were either along the coast, with ports, they were along rivers. And with the advent of railroads across the country, towns located right next to the railroad because in any case, they want major sources of transportation to move freight, people, et cetera.

And so, kind of implied with what you're saying is that maybe all towns need to be at least a mile away from railroad tracks to not have emissions, and then you have to acknowledge, too, that sometimes the rails were there, sometimes the airport was there first, that property is cheaper next to those because it is not as desirable. And so, they move homes into those areas only because they are cheap and people with lower incomes can afford to move into them.

So, whose fault is it really that people live near these areas: developers or people that choose to buy homes in these areas? You have to look at that on the other side.

So, Ms. Arias, when CARB fully acknowledges that people are going to go out of business, especially short line railroads, which are an important integral part of what the long lines can't do and what we don't—what Mr. Moulton was even talking about, do we want to shift this to trucks?

How can you, in good faith, develop a policy that you fully acknowledge is going to put an important sector out of business, and at the end of the day, drive up emissions? How does that work?

Ms. ARIAS. Thank you for the question, sir.

As it relates to the analysis that we have in our report, that report does not take into account any sort of the incentive programs or other opportunities we might be able to work with the Class III railroads. As mentioned earlier, there has been a significant application pool this year to help the Class IIIs get to compliant engines.

In addition, we intend to support them and work with them to continue to seek those fundings as we are moving forward. We are also specifically talking to each of the class lines individually and trying to determine what is the cheapest and easiest way for them to move through the regulation——

Mr. LAMALFA [interrupting]. OK. Let me stop you there because maybe there is no way for them to move through the regulation.

They are small outfits. They don't make a ton of money in order to change this technology.

Mr. Olvera, and Mr. Nober as well, when they talk about availability of Tier 4 engines, which my stats here show me if we are at Tier 4 engines, if you just took a breath for a minute at CARB and let everybody come up to Tier 4, you are achieving 85 to 90 percent cleaner versus older technology. That sounds like a win to me, but you are already jumping ahead to 5 or 6 or all-electric.

And Ms. Arias, you are saying, like, well, we can take this diesel engine out of a Tier 3 or 2 or whatever, and we will put this newer one in. You don't say that you are going to put a new diesel engine in. You are talking about putting in an all-electric thing that doesn't even exist yet.

How does that work because—well, I want Mr. Nober or Mr. Olvera to talk about that for a moment. How is the Tier 4 availability of those engines coming along here? Can we even replace everything with Tier 4 at this moment? Ms. Arias said there was new technology as of about 2015. That is only a few years ago. Do we expect all of these things to have been changed to Tier 4 by now?

Mr. OLVERA. Tier 4 engines are limited in availability, and with locomotives or railroads requiring their locomotives to all upgrade at an abrupt timeframe, that limited inventory is going to be taken over very quickly——

Mr. LAMALFA [interrupting]. So, we are jumping past Tier 4 with this mandate, right? We haven't even filled out Tier 4 availability. They want 5 or 6, or whatever number you want to call it, right?

Mr. OLVERA. Yes. There are very few locomotives in the short line industry that are at Tier 4 level. My railroad was one of the pioneers jumping to Tier 3 engines back starting in 2008. At the time, that was the best available, or highest tier available, but Tier 4 is just getting started.

Mr. LAMALFA. Well, it is a lot like the trucks in California. They say, Hey, get up to this newest tier from 2011 or newer, and you will be fine for a long time. And then, wham, they change the regs, and those trucks now have to be phased out by 2030. The same as people in good faith trying to do their local—Mr. Nober, touch on that, too, please, Tier 4 availability and the massive 85, 90 percent cleaner if we were just all Tier 4.

Mr. NOBER. So, as I indicated before, when Tier 4s were first required, it took a long to time to iron out the operational issues with them, and only one manufacturer has ever actually been able to produce working Tier 4 locomotive——

Mr. LAMALFA [interrupting]. Currently.

Mr. NOBER. Currently. When they first came out, then, again, there were many problems with them and they kept breaking down. And for a railroad, at least at BNSF where I used to work, they have to operate in Arizona in 120 degrees in the summer, and Montana and minus 50 in the winter on a 24-by-7 basis.

And if there is a failure, that becomes a significant issue in a network industry, and so, reliability is a very important factor, I think.

Mr. LAMALFA. OK. Thank you.

And here we are jumping past a tier that isn't even ready yet with new regs with nondiesel engines, right?

Mr. NOBER. I don't think that there are—I mean, again, I'm not a locomotive expert, but I don't think that there are feasible——

Mr. LAMALFA [interrupting]. I guess I have got to yield back.

Mr. NOBER [continuing]. I don't think that there are feasible locomotives that——

Mr. LAMALFA [interrupting]. I have got to reclaim my time, sir. Thank you. Sorry about that.

Mr. NEHLS. The gentleman yields. Thank you so very much.

Mr. Carson, you are recognized for 5 minutes.

Mr. CARSON. Thank you, Chairman.

Ms. Arias, opponents of California's and EPA's clean air standards complain about the cost of compliance as a burden to business profits. But for a valid analysis, there should be a review of the benefits compared to the costs. Yet, I am not hearing anybody really talk about the cost to human health and well-being in the long term and short term, especially of the damage of unchecked air emissions.

This is especially a problem with disproportionately negative impacts on minority communities, and minority workers, quite frankly. Please describe some of the health dangers and costs of failing to fix these toxic emissions?

Ms. ARIAS. Thank you, sir.

When it comes to our regulation, there are multiple health impacts, including premature deaths, hospitalizations, asthma, lost workdays, on and on, heart issues. It goes on and on.

When we did our regulation, we are required to provide an analysis to our board with all of the information that we have. We were able to provide a cost of the rule to industry, which we have mentioned, of $13.8 billion. We were also able to provide to the board what we call a monetized health benefit, which is the cost to Californians on their health as we achieve the rule.

We were able to calculate that the benefits of this rule would be $32 billion for Californians. So, $13.8 billion cost to industry to comply, and we, as Californians, would save $32 billion.

We also added into the rule a cost should the whole fleet have to turn over nationwide. That cost would be $86 billion is our best estimate. We do not have the data to be able to provide you and the other Members what the monetized health benefits would be.

If you could compel UP and BNSF to give that to us, we would be happy to do that, but on our best estimate, we believe that this rule could provide $200 to $300 billion in health benefits to the Nation for just one line, one class, UP and BNSF, not all of them.

Mr. CARSON. Thank you. I yield back, Chairman.

Mr. NEHLS. The gentleman yields.

I now recognize Mr. Stauber for 5 minutes.

Mr. STAUBER. Thank you very much, Mr. Chair.

There is a consistent message from this administration that electrification is good for the environment. However, my good friend, Mr. Westerman, challenged the Secretary of the Department of Transportation 2 weeks ago on whether it really is the most clean and efficient pathway forward.

While Secretary Buttigieg and other elites can endorse electrification and feel good driving their EVs, it is really concerning that these people just shut their eyes and ears off to the world

around them because electrification comes at a cost, and the supply chain to get the end product is full of pollution and human suffering. I am talking about child slave labor to get the cobalt for those batteries.

We know without question that 33 percent of the cobalt is mined by child slave labor and that is a fact. Nobody disputes that. Fifteen of the nineteen mines in the Congo owned by the Chinese Communist Party use child slave labor. Zero environmental standards and zero labor standards.

While Secretary Buttigieg admitted that child slave labor in the Democratic Republic of the Congo for critical minerals needed for electrification is wrong, and he committed to eliminating such horrors in our supply chain, the Secretary has not once called on the President to rescind the MOU with the DRC. It makes you wonder where the priorities really are, but I digress.

We really can't talk about electrification until we are willing to have an honest conversation about the supply chain in its entirety.

Mr. Nober, you made an interesting observation in your testimony about the CARB rule, similar to the one I just made on electrification as a whole, that certain decisions can make one group feel like they are making a good decision, yet completely neglect the fact that it comes at a great cost.

Can you speak about the increased emissions we would likely see as a result of this rule?

Mr. NOBER. Well, Mr. Stauber, I think that, just to that point, CARB, when they—they did talk about the health benefits to Californians and the costs in California and then estimated health benefits nationwide, which could only come if their regulations forced railroads to adopt those technologies nationwide.

The other alternative, though, is not to adopt technology that doesn't exist nationwide but, instead, to divert cargo that currently goes through California to other States. So, if cargo comes in and it goes by truck, that creates congestion. The congestion on both California roads and wherever else it might go is going to create pollution.

And then, if cargo goes on ships longer, it goes to the gulf coast and it goes to the east coast, or it goes to other States on the west coast or to Mexico and Canada, then it is going to travel longer and then those emissions have to be looked at as well.

So, yes, there are health benefits nationwide if all locomotives were zero emissions, but there aren't nationwide zero-emissions locomotives, and my understanding is that it is not going to be for a very long time.

And instead, if you looked at increased truck traffic and increased rail traffic by other communities, would that offset the benefits? And that is what a nationwide rulemaking would look at, what is the effective mode shift and try to model that. I don't know what would happen.

Mr. STAUBER. Thank you.

Mr. NOBER. We have to look at that.

Mr. STAUBER. Thank you.

Mr. Olvera, when you saw the CARB analysis noting that there would likely be elimination of businesses like yours, what was your reaction? And did the analysis feel flippant or apathetic?

Mr. OLVERA. Yes. I was, obviously, concerned for my railroad who employs 50 people in our community, but most of our customers employ thousands of folks in our community. I think the elimination of a cost-effective and efficient rail freight option to our shippers and our customers would increase their cost and alter their businesses as well and possibly jeopardize job opportunities in our community.

Mr. STAUBER. I will tell you that—in just the last couple seconds I have left—I think that, Ms. Arias, you have a tough job selling California standards to the rest of the Nation. I have been here going on 6 years, and I want nothing to do with California.

I have had an expert sit in that same chair and tell me in northern Minnesota that me and my constituents have to take more scooters to work. It is 35 below. We are not taking scooters to work and from work.

This is the problem. We have one State that tries to force this upon our great Nation. In fact, sometimes, oftentimes we look at California and do just the opposite, just the opposite. I really do believe you are well-intentioned, but I don't agree with the philosophy and how you are going about it.

Mr. Olvera just said he would lose 50 workers if they shut him down and other Tier 1 suppliers. This is about jobs and economy. And you know what, you can follow the rules, meet the emissions, and it will still not be good enough for some people. You will still punish those railroads and other small businesses across this Nation that want to do right.

And I yield back.

Mr. NEHLS. The gentleman yields.

I recognize Ms. Foushee for 5 minutes.

Mrs. FOUSHEE. Thank you, Mr. Chairman, and thank you to the witnesses for being here with us today.

Recently, Innovative Rail Technologies announced that it will deliver the first of two battery-electric switcher locomotives for operational use in Hertford County, North Carolina, in 2024 as part of a public-private partnership between the county and the Nucor Steel Corporation.

Ms. Arias, can you speak to the current state of zero-emissions locomotives development, and can you also touch on ways the railroad industry can work with CARB if it cannot meet the timeline set by the current regulation?

Ms. ARIAS. Yes, ma'am. Thank you.

There are, today, zero-emission locomotives available to be ordered, and in fact, UP and BNSF have ordered them. There are, in fact, switchers available today. There is one operating in our San Pedro port by PHL line, and, in fact, they worked with us to apply for four more.

We know that today, you can buy zero-emission tender cars so that you can do the reconfiguration that we talked about earlier. We know that catenary is available, and you can do the reconfiguration that we talked about earlier. There is zero-emission technology available today. We will continue to track it. We expect that it will continue to increase and cost will continue to go down.

However, we also understand that that can be expensive. We understand that it may be harder for our smaller fleets like our Class

IIIs. We have built in several opportunities within the reg so that they can come talk to us, work with us on alternative compliance plans. If we are able to approve an alternative compliance plan, they will not have the spending account obligation.

There is also an alternative fleet milestone option, which a lot of our passenger train fleets have noted that they will take advantage of. We believe it could also be an option. Same thing, if we are able to work with the fleets and figure out if that path works for them, they will not have the spending account obligation.

We also have various extensions in the rule. We do have hardship extensions. We have extensions if the OEMs are not able to deliver on time. We have extensions for manufacturer issues if any of the other parts they cannot get on time. We have extensions for infrastructure.

Last, we have reached out to each and every operator in our State and are trying to work with them one-on-one to ensure the least cost, most health benefit option moving forward so that we can get to zero emission in the least costly way and continue to transition our fleet as we have done with all the other fleets.

California has been able to transition our freight to zero in many cases, and we want to continue to do that, and we have been able to do it in a very successful economic way.

Mrs. FOUSHEE. So, the EPA introduced Tier 4 locomotive emission standards nearly two decades ago, requiring that emissions or particulate matter and nitrogen oxide be reduced by about 90 percent from Tier 3 levels. Since then, Class I railroads seem to have avoided making substantial upgrades needed to reduce emissions with only approximately 7 percent of active Class I locomotives being Tier 4.

Can you speak to why Class I railroad companies have failed to make the investments needed to improve locomotive emissions after the current Federal standards were enacted?

Ms. ARIAS. Thank you, ma'am.

I wish I could speak to that. They have anecdotally told us multiple times that there are issues with Tier 4. Yet every time we ask for any sort of data or information as to what those issues are, we have never been able to receive it.

So, we can't answer for you what they perceive to be the issues as it relates to Tier 4 engines.

Mrs. FOUSHEE. One final question.

Emissions from the railroad industry in the form of carbon dioxide, nitrogen oxide, and particulate matter have significantly impacted the health of many vulnerable communities that live near rail yards and rail lines across the United States. What effect will CARB's in-use locomotive regulations have on the lives and health of these communities, a similar question that has been asked by a couple of my colleagues?

Ms. ARIAS. Yes, ma'am. Thank you for that.

The communities that are directly within a mile of the rail lines and the rail yards, 90 percent of those are disadvantaged communities, as you have mentioned. With this rule, the reduction of diesel of 90 percent reduction would reduce their cancer risk.

On top of it, obviously, when we are starting to look at the regional aspects, the emissions from these engines don't stay just

within 1 mile, unfortunately. They do impact the whole basin. That is where we start to look at the premature deaths, the hospital visits, the lost workdays, all the other health benefits.

But back to the communities that are within that 1 mile, they certainly, on top of all of these other health benefits that we mentioned, are at much higher risk of cancer due to the exposure to diesel every day and ongoing.

Mrs. FOUSHEE. Mr. Chairman, I yield back.

Mr. NEHLS. Thank you.

Mr. Johnson, you are recognized for 5 minutes.

Mr. JOHNSON OF SOUTH DAKOTA. Mr. Chairman, I would observe that a number of my colleagues have talked about railroads today, in really dark, I think, starkly dark terms, in essence, saying that their existence is a symbol of historic oppression to people of color. And, of course, I can't speak to everybody's experience or the experience of every community, but I can speak to my experience and the experience more generally of South Dakota.

Growing up in Fort Pierre,I grew up near the railroad. Growing up or living in Vermillion, living in Mitchell, living in Pierre and all of these towns, there was the railroad right close to my house. That wasn't a coincidence. That wasn't an accident.

If you overlay the historic map of where did the South Dakota towns go with where the railroad tracks had been built, you would find an almost perfect overlap. Every 10 miles another town was formed because that is where the locomotives needed to fill up with water.

People didn't move there because of oppression. They didn't view this railroad as a symbol of somebody hating them or trying to drag them down. They viewed the railroad as a symbol of opportunity and economic activity. And I guess I just want to mention that to provide a little fuller picture of the historic impact of railroads on communities: without railroads there would be no South Dakota.

In fact, in South Dakota, when you look at those communities, the densest communities of people of color, that would generally be on our Native American reservations. They are not well-served by rail, and they are almost, without exception, seeking investments in rail because they do not view that rail as a symbol of oppression. They view that rail as economic opportunity to lift themselves and their communities up.

I just want to make sure we provide a fuller context before we move on.

So, we have a proposed rule before us that would, I think, almost ridiculously cause Class I railroads moving goods from South Dakota into California to, once they reach the California border, to stop, take off that locomotive, and, instead, get a new zero-emission locomotive, a zero-emission locomotive which despite some of the other claims we have had today, let's be clear, are not widely available in the commercial sense today. In fact, we don't really know when they would be widely available. This is all very aspirational.

There has also been some discussion about this cost-benefit analysis. Ms. Arias, give us a sense. The $86 billion impact that your agency calculated, what number did that put on the delays that

would be felt as secondary and tertiary impacts up the supply chain?

Ms. ARIAS. Good question. We do not do analysis of secondary impacts to the supply chain. It solely calculates the cost should the UP and BNSF determine that they would need to replace the whole fleet.

Mr. JOHNSON OF SOUTH DAKOTA. OK, so, let's be clear. The assumption of your analysis is that this is not a regulation that impacts California. It is a regulation that impacts the entire United States or, in essence, any place that is served by the UP and the BNSF. And I know, ma'am, you know enough about their networks to understand how incredibly far reaching that is.

Ms. ARIAS. They have mentioned that they do not prioritize a fleet within the State, so, we understand that, and——

Mr. JOHNSON OF SOUTH DAKOTA [interrupting]. OK, so, California is attempting to make a rule not that governs Californians but that governs the United States of America.

So, I want to make sure that I understand what you said, ma'am, because your analysis had a zero cost to supply chain impacts. I want to make sure I am understanding what you said. Did you say that there is not a single instance of a Class I railroad providing you any information on the challenges of securing Tier 4 locomotives? Is that accurate?

Ms. ARIAS. That is correct.

Mr. JOHNSON OF SOUTH DAKOTA. Not a single instance?

Ms. ARIAS. They have not given us any data to indicate what the actual issues are. They have anecdotally told us that there are issues with Tier 4, but every time we ask, we are not given the data as to what the issues are.

Mr. JOHNSON OF SOUTH DAKOTA. OK, so, they have not been forthcoming at all?

Ms. ARIAS. They have not.

Mr. JOHNSON OF SOUTH DAKOTA. They just speak in generalities?

Ms. ARIAS. They have not.

Mr. JOHNSON OF SOUTH DAKOTA. So, if your evidentiary record is that thin, ma'am, how can you possibly promulgate this far-reaching rule that, by your own admission, governs America?

I would just—I would hope my colleagues—now, listen. We don't do it perfectly either, ma'am, but I would hope we would have a little bit heftier evidentiary record before we decide to govern our country with such a far-reaching decision.

Mr. Nober, let's turn to you. I have talked a little bit about the constitutional sort of preemption issues. In 30 seconds, sir, what can you tell us?

Mr. NOBER. Well, as I talked about in my testimony, the Interstate Commerce Act is intended specifically to preempt not just State regulation of rail operations but other Federal laws that have the effect of impacting rail operations and regulating them, and that is what would happen here.

So, you would either have to—the California actions would be, in my opinion, clearly preempted, and if the EPA authorized them, it is really to authorize in-use in the State of California, they would have to declare an emergency. They would have to show that there

were—there are some other standards that they would have to meet.

And then they, at the same time, they would also have to show that that could be harmonized with the Interstate Commerce Act, which I don't think they could.

And just if I could add one more thing, in addition to the towns being 10 miles apart in South Dakota, major towns are probably 90 miles apart, because that is how far you had to service a steam locomotive.

Mr. JOHNSON OF SOUTH DAKOTA. I yield.

Mr. NEHLS. The gentleman yields.

I now recognize Mr. DeSaulnier for 5 minutes.

Mr. DESAULNIER. Thank you, Mr. Chair.

This brings back some fond memories when I served. Ms. Arias, I don't know if you were there when I was on the air resources board.

Ms. ARIAS. I was, sir. Nice to see you again.

Mr. DESAULNIER. Nice to see you.

I was a Republican then. I was appointed by Pete Wilson and served under three Governors, two Republicans and a Democrat, and that was in an age where there was a different perspective, at least in the California Republican party.

And I am reminded that Richard Nixon signed the U.S. Clean Air Act, and Ronald Reagan, Governor Ronald Reagan signed the California Clean Air Act, which governs all of this that we are talking about.

So, U.S. EPA, their standard reads, "According to the Clean Air Act" signed by Richard Nixon, "section 209, State Standards, EPA shall grant an authorization under section 209, unless the Administrator finds that California," quote, "was arbitrary and capricious in its finding that its standards are in the aggregate, at least as protective or of public health and welfare as applicable Federal standards."

Number two, "does not need such standards to meet compelling and extraordinary conditions," or that "California's standards and accompanying enforcement procedures are not consistent with this section."

Ms. Arias, obviously, you and your attorneys feel like you have made that criteria.

Ms. ARIAS. Yes, sir. We have put it in writing multiple times as to what we believe we have and how we have met those specific requirements.

Certainly, this has not been an arbitrary effort. As you are very aware, we were working on trying to reduce emissions from rail even when you were on the board. This particular rulemaking has taken over 6 years to be able to bring to the CARB board for consideration.

Certainly, the South Coast and San Joaquin air basins, as long as the toxic diesel contamination warrants and requires this legal action by us for the State.

So, we have, in fact, believe met all of the requirements as necessary and encouraged EPA to approve our authorization as soon as possible.

Mr. DESAULNIER. And could you speak a little bit to the public health benefits of the rule?

Ms. ARIAS. Absolutely. The health benefits themselves are going to be a monetized health benefit of $32 billion just for the State of California. That compares to the $13.8 billion that we assume will cost the industry. As you know, those costs are very conservative. They definitely could do it cheaper, but we don't want to underestimate.

The monetized health benefits are also not all the benefits we know we will achieve. There are other benefits like cancer reduction that we are not currently able to monetize. All we can do is tell the board how much we will reduce the exposure, which, in this case, is 90 percent.

So, in reality, the monetized health benefits are certainly a lot higher. We just don't have the data to be able to provide that to the board.

Mr. DESAULNIER. And you are required to do those cost benefits, as I remember, during——

Ms. ARIAS [interposing]. Yes, we are.

Mr. DESAULNIER [continuing]. Republican administrations by the California Clean Air Act.

Ms. ARIAS. Yes, we are. And it is reviewed by the Department of Finance independently before we take it to the board.

Mr. DESAULNIER. So, in terms of the questions, with all due respect to my friend, the chairman, we already did that, I would opine, at a higher level than would have been done under Federal law.

I remember years ago sitting in hours in southern California in the valley on the diesel train idling rule and the EJ issues that the ranking member has brought up, and I remember, quote, at those hearings saying, "you could have spent money on compliance," meaning the industry, "or you could have spent money on lobbyists and lawyers." And I would add a caveat to campaign contributions. That strikes me as what is going on here.

Yes, there is a burden to the industry, and I recognize that as a former small business owner, but the cost to my mind is long overdue. The valley particulate matter has been amongst the worst in the country.

You made a comment in your opening comments about carbon. Yes, carbon is true, but particulate matter is what kills people. People die because of these emissions.

The trucking industry didn't want to do it either. It took a long time. I remember sitting in those long hearings where the truckers drove around the EPA building in Sacramento for hours, and it was hard for small truckers, but we had them do it.

So, it only seems fair to me for those people who have invested as other stakeholders in dealing with the public health issues and the cost to their business that you are required to do it.

Ms. Arias, just quickly. I have four refineries in the county I represent. Two of them are changing to biodiesel. How soon can we expect that as a fuel that would help with this?

Ms. ARIAS. Yes, we actually have been working on some data as it relates to drop-in fuel opportunities for the rail lines. We are interested in looking at that a little bit more. Again, it gets back to

the alternative compliance plan option. None of the rail yards or none of the rail lines have come in and said that they are interested in that, but we certainly are interested in something that could be used now to achieve those additional reductions.

Mr. DESAULNIER. Mr. Chairman, I will just comment. The petroleum companies believe they do have a model to comply and have biodiesel that will work in these locomotives.

Mr. NEHLS. The gentleman yields.

I now recognize Mr. Mann for 5 minutes.

Mr. MANN. Thank you, Mr. Chairman, and, Mr. Chairman, thanks for having this hearing. This has been very eye-opening, and this is why we do this. And you read the materials ahead of time, but it is very eye opening to me to hear that there is a regulation that's trying to be rolled out in California that there is no way to comply with. Meanwhile, the intention seems to be to roll this out to the rest of the country. A grave concern and that is why we need to have this hearing.

I represent a big ag district in Kansas. Kansas is home to 14 individual freight railroads that connect our manufacturers, our farmers, our producers, and our natural resources to domestic and foreign customers.

Kansas is home to a robust series of short line operators with my district alone containing seven operators and 1,777 miles of track—not 1,776—1,777 miles of track that facilitate rural communities, terminal operations around the Kansas City area and the agriculture industries. Combined, these railroads have nearly 40 million tons of freight across Kansas annually and serve as an economic driver for our economy.

Communities across Kansas have been important rail hubs for more than a century, and the implementation of the CARB rule would jeopardize the reliability and affordability of freight rail transportation and disrupt our supply chains in Kansas.

It was mentioned earlier, and I think we've got to not overlook the fact that this rule will be inflationary, and there is all of this talk about inflation, but one of the reasons is all of these rules and regulations that we have that just drives up cost, this will be inflationary and it will be passed on to consumers.

A few questions, the first couple for you, Mr. Olvera. Please elaborate on the harmful effects that this rule will have on short line operators for you, and then if it is rolled out nationally. And specifically, will this rule jeopardize short line operators' ability to stay in business?

Mr. OLVERA. Yes. I will first speak to California short lines. The typical California short line is a very small business, small operator, operates on very thin margins. To propose, even with State and Federal funding, to upgrade their locomotives to the level that the CARB rule is requiring in such an abrupt period of time, they just financially can't do it. They will go out of business.

Losing those types of efficient and cost-effective freight options will take their customers' product to be moved at a much higher cost, and that absolutely would pass on a higher cost to the end user, to the customer.

For my railroad, we would, essentially, in order to comply, have to use all of our capital expenditure dollars hopefully coupled with

Federal funding to transfer and upgrade our current 11 locomotive fleet to Tier 4 fleet. What that does is it jeopardizes the other capital expenditure projects that we would have in place.

Most of the projects that we deal with are crossing-related and track-related. Crossing-related, you jeopardize the safety of the public. Thousands of cars in our community go over those crossings. You jeopardize the safety of our employees.

And then on track upgrades, typically, we are upgrading those tracks to handle heavier loads and to help get rid of the potential derailments.

Mr. MANN. Thank you.

The feedback I am getting from short line railroads that operator in Kansas is exactly that. These are high-capital, low-margin businesses, and when you suck up all of their capital improvement dollars going towards just upgrading locomotives instead of making safety improvements on the track and other expansion, there is a cost to that for the overall society.

I appreciate that. And by the way, short lines are telling me in Kansas if this rule goes into effect, they will go out of business, which means all of our farmers and ranchers that are trying—all of our farmers that are producing crops aren't going to have railheads to take their crop to, which means it is going to have to be truck which means more trucks on the road.

If your only metric is the environment, it will be bad for the environment, not to mention the fact it is going to dramatically increase our food prices. We have got to be thoughtful about these regulations.

A quick question for you, Ms. Arias. You said earlier that you had no interest in mode shifts from rail to truck. Won't this rule do just that?

Ms. ARIAS. We don't believe so. We have looked at various analyses of mode shift. We have looked at various analyses of deferment of freight to other ports. We believe there is enough profit margin from a container moving on rail to allow for the upgrade of the technology.

We also are very aware that there is almost a doubling of the amount of freight that is being projected to come through, and so, we will need all modes, but we need them to——

Mr. MANN [interrupting]. Did your analysis look into the safety concerns of this? In other words, when railroads have to divert so many capital dollars to upgrading their engines away from crossings and everything, did the safety aspect of this hit your analysis?

Ms. ARIAS. It did. It did come up. The railroads provided that information to us as well as provided it directly to our board.

Mr. MANN. Thank you.

I see my time has expired. Thank you, Mr. Chairman. I yield back.

Mr. NEHLS. Thank you. The gentleman yields.

I now recognize Mr. Carter for 5 minutes.

Mr. CARTER OF LOUISIANA. Thank you, Mr. Chairman, and thank you to our witnesses who are joining us today.

My district in southeast Louisiana at the mouth of the Mississippi River is a critical point for national commerce. It is home to the Port of South Louisiana, one of the Nation's leaders in total

tonnage, as well as the Port of New Orleans, the only deepwater port served by all six Class I railroads.

Along with their neighboring deepwater ports near the end of the river, they account for approximately 70 percent of our Nation's grain exports, among other critical items. Continued rail operation through these ports is critical for both our local economy and the Nation at large.

However, we bear the scars of industry and commerce. While I completely support industry, we must continue finding ways to make it safer, cleaner for the people that live in its close proximity.

I live in an area that, unfortunately, is sometimes referred to as—I represent, rather, an area that is sometimes referred to as cancer alley, a distinction that we don't like, a distinction that we would like to correct.

Because of the large amount of petrochemical plants, industry, and activity in that area, neighbors are forced to live with things that many other neighbors are not. We know that many of these plants and entities that emit problematic carcinogens or problematic particulates are situated in poor communities, communities of Black and Brown.

While I support trade and commerce, it cannot continue to be at the expense of the health of our communities. I am committed to working with both industry to make sure that we have strong economies, but also making sure that we have healthy communities that are economically prosperous.

So, my question, Ms. Arias, freight train routes run through or parallel to communities of color and low-income communities, which bear disproportionate health burdens due to their proximity to toxic emissions from locomotives.

However, according to the EPA, Tier 4 locomotives have 90 percent lower particulate matter emissions and 80 percent lower nitrogen oxide emissions than Tier 2. How have communities in California been impacted by the close proximity to these rail yards and rail lines? And how might this change with the implementation of cleaner locomotives?

Ms. ARIAS. Yes, sir. Thank you for the question.

Our communities, very much like your community, we see that 90 percent of the communities within 1 mile of our rail lines and our rail yards are our disproportionate communities of color. They are at higher risk of cancer. They are at higher risk of other health impacts associated with these diesel engines.

All of our communities within the nonattainment areas are also impacted because this pollution does not stay local. It does go regional, also global issues.

From our rule alone, we are hoping to be able to save 3,200 premature deaths. We are also hoping to save 1,500 ER visits and hospital visits. There are other benefits, as I mentioned earlier, a 90-percent reduction in exposure to these communities from this diesel toxic.

Mr. CARTER OF LOUISIANA. Is there a safe threshold for which——

Ms. ARIAS [interrupting]. There is no safe threshold to diesel.

Mr. CARTER OF LOUISIANA [continuing]. People can breathe particulate matter?

Ms. ARIAS. There is absolutely no safe threshold to diesel, which is why we need to transition to zero-emission operations.

Mr. CARTER OF LOUISIANA. So, when we talk about lowering, we talk about modifying, none of it, none of it is acceptable?

Ms. ARIAS. No.

Mr. CARTER OF LOUISIANA. Is that correct?

Ms. ARIAS. That is correct.

Mr. CARTER OF LOUISIANA. And while commerce is clearly important and while industry is clearly important, nothing trumps the health of a community because if you have an unhealthy community, you cannot have a healthy economy.

Mr. Olvera, you mentioned the rail line was the recent recipient of a CRISI grant funding to upgrade your locomotives to low-emitting Tier 4 vehicles. The CRISI program is now four times larger than before due to investments from the program of the Bipartisan Infrastructure Law. Would you like to continue to see the program funded at the same level going forward? What would that mean for operators like you who are trying to lower their emissions?

Mr. OLVERA. So, first off, it is essential for CRISI funding to continue and hopefully continue even at larger levels——

Mr. CARTER OF LOUISIANA [interrupting]. So, that is a yes? You do support it and you would like to see it at higher levels?

Mr. OLVERA. I absolutely support CRISI funding. The short answer for us is that we are unable to comply with the CARB rule without the assistance of CRISI funding. Even with that, it is a big financial burden on our company, and, like I mentioned, other short lines just won't be able to comply.

But it is estimated that short lines in the Nation have about $12 billion of needed funds to upgrade infrastructure, rail assets, and modernize their railroads.

And so, in the most recent CRISI funding, there was a few hundred million dollars that were allocated to short lines, which is much appreciated, but you can see the discrepancy between the current funding and the ultimate need. We need it more often and more of it.

Mr. CARTER OF LOUISIANA. Some of my colleagues intimated that they were concerned about these regulations threatening to possibly shut you down. If you did not have access to CRISI funds, would that likely threaten you even further to being in demise?

Mr. OLVERA. Absolutely. I will use an average of a new Tier 4 locomotive costs several millions of dollars. When we recently applied and was awarded CRISI funding, our portion is approximately $1 million. But on a standalone basis, if my railroad had to pay $4 million-plus for each of our 11 locomotives to be upgraded, it's just not feasible. We wouldn't be able to comply.

Mr. CARTER OF LOUISIANA. My time has expired. Thank you, sir.

I yield back.

Mr. NEHLS. The gentleman yields.

I now recognize Mr. Yakym for 5 minutes.

Mr. YAKYM. Thank you, Mr. Chairman, and thank you to our witnesses for being here and for the time to sound the alarm and sound the alarm bell on this important issue.

One of the reasons I love our system of Government is that it empowers States to be laboratories of democracy, to experiment with new policies and see what works.

My home State of Indiana has a proud tradition of innovative thinking that has allowed us to not just craft policies that work best for Hoosiers, but even to export some of these ideas to other States or even to the Federal level. The Railroad Crossing Elimination Program is a great example of us doing just that.

Now, California is a State blessed with natural beauty and fertile agricultural land, but its laboratory has been littered with, frankly, terrible ideas. It spent $24 billion to fight homelessness over the last 5 years, but has no data on whether the money actually reduced homelessness.

California's high-speed rail boondoggle was initially estimated to cost $33 billion but nearly 20 years later, there is still no timeline for completion and it might need another $100 billion.

Its defund-the-police policies have hollowed out once bustling city centers, and it managed to turn a $100 billion budget surplus into a $45 billion deficit in just 2 years. That might be a record.

What I don't want and what Hoosiers in my district don't want is to be subject to yet another one of California's unworkable radical climate mandates.

Mr. Nober, CARB has said that Class I railroads like Union Pacific and BNSF will likely pass on the cost of compliance, which is upwards of $800 million per year, quote, "across the Nation." But CARB also argues that this mandate will only apply to California. Doesn't the fact that the cost will be spread beyond California mean that this rule impacts interstate commerce and is, therefore, preempted?

Mr. NOBER. Well, I don't think there is any question that the rule impacts interstate commerce and is, in fact, preempted, and I think much of the discussion you have heard today has been about the hope for national impact of this. And so, that is, while maybe well-meaning, is exactly what this committee prohibited when it passed the Interstate Commerce Commission Termination Act and set the law out.

Now, the fact that the cost will be spread nationwide and the benefits would be local is probably further evidence of the fact that this is an interstate network system, and one that is very difficult to have stop at the State border. The same way that aircraft can't stop at the California State border and switch out their engines, just because that is just not the nature of interstate systems like this.

Mr. YAKYM. Thank you.

And Mr. Olvera, CARB argues that freight rail operations like you should just raise rates to compensate for this new mandate. As a short line operator, can you tell me what this mandate means to you, your company, and your workers in terms of inflation and employment?

Mr. OLVERA. Yes. So, my railroad is a handling carrier. We receive our freight rates from our Class I operators. So, through contract provisions, our short line doesn't have the ability to raise rates to cover CARB regulation costs. So, we have no ability to do that.

And the increase in rail freight, if it happens from this CARB rule, which it has been said that it will absolutely happen, then our market competitors, trucking, would have more of an advantage against the railroad and further hurt our business and our ability to achieve profits and growth.

Mr. YAKYM. Thank you.

And Mr. Yal, do you generally agree with Mr. Olvera's assessment?

Mr. YAL. Yes, I do. In fact, the point about these costs, their ability to do capital improvements, safety improvements, and operational improvements, and those budgets going to this instead of going into, from our side, the construction jobs and projects that we rely on, that is also a very real issue.

And like Mr. Olvera said, it is just going to shift over to trucking. That is all that is going to happen.

Mr. YAKYM. Thank you.

And Mr. Olvera, is this technology mandated by this rule readily available and feasible for short line railroads to acquire?

Mr. OLVERA. Did you say electric vehicles?

Mr. YAKYM. For short line railroads to acquire. Is the technology readily available and feasible for you to acquire?

Mr. OLVERA. So, first off, on the Tier 4 side, there is one U.S. manufacturer, Cummins, and those engines are limited in inventory manufacturing, and as railroads rush to upgrade, that inventory is going to be depleted.

In terms of battery-charged locomotives, those are in prototype stages. As it was called out earlier, there might be a railroad that has one or two in some version of testing, but in terms of it being commercially available, that is not the case.

Worst off, for the concept of a battery-charged locomotive, that requires maybe 24 hours of charging for 8 hours of use. My diesel engine runs 24/7. So, if I were to replace a diesel engine with a battery-operated locomotive, I may need two or three battery-operated locomotives to accommodate that change with a further larger cost and limited ability to comply.

Mr. YAKYM. And finally, it would be accurate to say then that they are mandating that you buy something that does not yet exist?

Mr. OLVERA. That is correct.

Mr. YAKYM. Thank you.

Mr. Chairman, I yield back.

Mr. NEHLS. The gentleman yields.

I now recognize Mr. Burlison for 5 minutes.

Mr. BURLISON. Thank you.

Mr. Olvera, the freight rail industry is the most fuel-efficient way of transporting goods across the country, and as we have heard today, even Republicans and Democrats agree that it is the cleanest form of transportation in the country. One would think that we would want to encourage a migration towards—anyone who would care about the environment would want to migrate, would want to move freight to rail.

What do you think is the real motivation behind this mandate?

Mr. OLVERA. I think one of the biggest issues with the mandate is that there haven't been data analyzed for those who are im-

pacted to truly understand all of the impacts of this cleaner air initiative. Short lines, and mine included, are not opposed to cleaner locomotives, but the timeframe in which we are asked to do this and before certain technology is commercially available is just not a possibility for us to comply.

So, I think—so, yes, we are all for——

Mr. BURLISON [interrupting]. So, you are saying this is out of a motivation of an idealistic pipedream? That is what I would call it.

Mr. OLVERA. It is aspirational at best. Everybody would be for it, but the way to get there is not what is being proposed through the CARB rule.

Mr. BURLISON. I would say that the efforts are delusional at best.

So, let me ask it in a different way. These efforts are almost so extreme, one might—it has me wondering if there is some rent-seeking occurring if companies—the few companies that make these Tier 4, class 4 engines, like KLW, Siemens, EMD, Brookville, I wonder, do they have a relationship with the California Air Resources Board?

Mr. OLVERA. I am uncertain. You would have to ask the CARB representative, but I can't speak to that.

Mr. BURLISON. But you are saying that—so, to get a better idea of the cost—I see what is frustrating, and, Ms. Arias, I am not asking a question. I am just talking to you. What is absurd is what California doesn't see that's happening.

Across the country, States like Missouri are receiving people who are fleeing like refugees this draconian State to the tune of hundreds of thousands of people a year. They are coming at a net loss.

California is reducing its size. And why? Because the cost of living is outrageous, the most expensive State in the contiguous 48, whether you are talking—in all factors. Transportation cost, the most expensive State. Housing cost, food cost. Everything is more expensive in California, and all you have to do is look at the people that are regulating the hell out of the cost.

So, Mr. Nober, one might wonder, if you are trying to improve the supply chain, if you are trying to reduce cost, would this be a good avenue to do that?

Mr. NOBER. Well, I would come back to the point you made a little bit earlier, Congressman, which is that it is requiring the adoption of technology by a date certain that doesn't exist. And what winds up happening is that that deters the adoption of new technology because businesses don't know if what they are buying is going to be able to—they are going to amortize it over its useful life.

And so, I think Mr. Olvera spoke earlier about having bought Tier 3 locomotives and halfway through their useful life, they are now going to be not useful and have to upgrade to Tier 4.

And I think folks looking at this regulation might say, Why would we invest in any—I am just speculating, but—why would we invest in any locomotives until there are working zero-emission locomotives that are operable in the demands of freight rail, which is 24 by 7 by 365. And the technological hurdles for that are significant, and I don't think there is an end date for when that kind of technology will be available.

Mr. BURLISON. And the sad part is the reach. You have these refugees who have migrated to States like Missouri and fleeing all of this regulatory State, and yet, now the arm of these California regulators is going to impact people across the United States financially.

Mr. NOBER. I think that is—that will be, one, either a goal or certainly an effect of the regulation.

Mr. BURLISON. Thank you.

My time has expired.

Mr. DUARTE [presiding]. The gentleman yields back.

I now recognize myself for 5 minutes.

Well, Mr. Olvera, let's start with you, my fellow Modestoid. How long have you been at Modesto?

Mr. OLVERA. Pretty much all my life.

Mr. DUARTE. Fantastic. You look a little younger than me.

I remember a few things in Beard Industrial tract where you worked that are not there anymore. I know Tri Valley Growers has been reformed as Signature Food products. Signature Foods, another major cannery for peaches, is gone. Del Monte is still there, but we are losing them.

I mean, in fact, I just pulled up—my grandfather was a peach grower right there along highway—right there along the Santa Fe railroad lines. I didn't like the train whistles, but I never felt I was dying from them.

I think we have been on that property for five generations, about a mile away from the Beard Industrial tract, as farmers.

And we are losing a lot of commerce in Modesto. We are losing it, and it is sad because as we know, Modesto has got the Modesto Irrigation District, the second oldest irrigation district in the State; 1889 I think it was formed, right after Turlock in 1888.

We have got hydroelectric power. We have got fresh surface water. We have got the infrastructure of both the railroads that you serve to the east and to the west of you, which is critical, and that is why we have the largest canneries, the largest wineries, the largest spaghetti sauce makers. We have got the highest tech Frito-Lay plant.

We're not there inside the Tesla trucks and all of the—but right now, the United States produces .66 percent of the world's canned peaches. It has fallen 16.99 percent in the last year, and Brazil and the Netherlands have gone up.

Now, I have always taken pride that Modesto feeds the world. I have taken pride that we have a local food system.

Is cutting the last speck of emissions a bigger health priority than a diverse nutritious diet for Americans, especially a locally or domestically produced food-secure, domestic diet for Americans, working families especially? I ask that rhetorically to someone.

No. We are giving up enormous food resources out of America because of these onerous, idiotic regulatory programs.

Mr. Nober has done a good job today explaining how by doing this through a waiver, this is establishing national policy that disrupts our food supply in one of the most critical food producing regions in the Nation while avoiding the due process that we normally afford.

If we had due process, we could take into account the dietary needs of American families and balance them against the air quality needs of American families. But we chose, we chose not to do that because we found a loophole, right, Ms. Arias? Wasn't this convenient not to have to weigh these matters?

Ms. ARIAS. No, that is never our intention, to ignore impacts associated with the rule, and as we go through our 6-year process, we are always interested in any of the impacts associated with our rules.

Mr. DUARTE. A 6-year impact where we know that Tier 4 engines are going to be able to reduce nine-tenths of the air emissions that the Tier 0 did that Mr. Olvera invested in Tier 3 and now you are getting your first Tier 4s.

Mr. OLVERA. Yes.

Mr. DUARTE. We are saying, well, we were agnostic as to whether we go from rail to truck or not, even though trucks are 3X the emissions per ton of food delivered per mile as rail. But in California, we also know that if we had had a full transparent public policy process and hearing on this, we would know that California is not building freeways.

Highway 5 was built when I was born in 1966. It is two lanes each direction from the bay area down to Bakersfield. We are building warehouses all up and down that corridor, and we are not building freeways. We are barely widening 99 to help people get to work.

This is our food valley. This is the San Joaquin Valley, the fruit bowl of the Nation. We are not building the trucks we need. We are outlawing the trains we need. We are weighing the last air quality increment over affordability.

Do you believe, Ms. Arias, that diet is a key health factor for working families, low-income families, all families, color; I don't care. Everybody needs a healthy and diverse diet and affordable diet.

Ms. ARIAS. Yes. As an ag business major from Chico, I can tell you that the agricultural production in our State is very important.

Mr. DUARTE. Did that show up in your public comment program on this policy proposal?

Ms. ARIAS. What do you mean, sir?

Mr. DUARTE. Did it show up? Did people say we need a domestic, diverse, nutritious food supply? We need a logistic system that will actually meet the need of a diverse food supply? Or was that bypassed by you going through a waiver and then calculating the benefits nationally but not taking public input on the cost?

Ms. ARIAS. No, sir. The ag industry was very vocal about the necessity to be able to continue to produce agriculture as we promulgated the rule.

Mr. DUARTE. And did they agree with your idea that the last 1 percent of emissions needed to be eliminated and that the balance of human health would be benefited by increasing the cost of food, pushing trucks onto overcrowded freeways that we have a policy in California not to increase the capacity of?

Ms. ARIAS. The ag industry did not come in support of all the way through the rule. Yes, they are concerned about the movement

of their product, but we are talking about one-third of the emissions necessary to meet the Clean Air Act.

Mr. DUARTE. Nine-tenths of which you could achieve with Tier 4 engines, and another three-quarters you can take out by not pushing it onto their freeways.

Ms. ARIAS. We certainly are interested in Tier 4 engines. The industry——

Mr. DUARTE [interrupting]. I gavel myself. Thank you.

Ms. ARIAS [continuing]. Has told us they are not. And if they were to purchase a Tier 4 engine, they can continue to utilize it well into the 2050s.

Mr. DUARTE. Thank you. I yield back.

And I will recognize Mr. Fong for 5 minutes.

Mr. FONG. Thank you, Mr. Chair, and the witnesses for being here.

Ms. Arias, good to see you. I recently got elected and served in the State assembly on the Transportation Committee and on the Select Committee on Ports and Goods Movement.

So, let me ask this question. In 2005, CARB entered into a voluntary agreement with BNSF and UP to reduce emissions at rail yards. The agreement stated, quote, "The parties recognized that participating railroads are federally regulated and that aspects of State and local authority to regulate railroads are preempted."

It further stated, quote, "The Federal Clean Air Act, the Interstate Commerce Termination Act, and many other laws established a uniform Federal system of equipment and operational requirements."

At that time, CARB acknowledged Federal preemption. So, what has changed since then?

Ms. ARIAS. Yes. Thank you for that question. The biggest change is the technology that is available today. When you look at the opportunity to reconfigure the existing engines with the battery tenders or catenary, that was not an option before, and it is today. That allows us to access our authority to be able to promulgate a rule for in-use.

We are not regulating the engine manufacturers. In some cases, they are providing zero-emission technology, but that is not because of our rule.

The ability to be able to change the power source of an already electric engine is relatively new and something that now gives us the ability to do an in-use rule.

Mr. FONG. So, I would say that we can't look at this regulation and this issue in a vacuum. CARB is imposing mandates and regulations on all aspects of the supply chain. So, we are discussing the rail impacts.

CARB has imposed mandates on the trucking industry. CARB is imposing significant mandates on the ports. So, together, all of these regulations have devastating impacts on our Nation's distribution of goods and products.

So, my question is, how does the State of California plan to mitigate these supply chain disruptions that are clearly acknowledged and there is a consensus on, and what does CARB say to the consumer when they have to pay more for goods and products?

Ms. ARIAS. Yes, good question. We have, over the years, heard of many concerns related to our rules and how it is going to cause diversion of our freight and how it will disrupt the supply chain.

However, we have also successfully seen these rules be implemented without supply chain diversion and without supply chain disruptions.

Our port continue to be the largest ports in the Nation. We continue to process the largest amount of containers for the Nation. We continue to provide a lot of food for the Nation——

Mr. FONG [interrupting]. Let me——

Ms. ARIAS [continuing]. All while being able to transition to a cleaner freight transport system.

Mr. FONG. Let me just say, though—I apologize for interrupting—but that empirically is not true. California ports are losing significant market share to other ports. As mentioned before by the other witnesses, goods and products are now not coming to California. They are going to other States, other ports.

And you now are mandating—so, our trucking industry can't get engines, our railroads are struggling to afford new engines, engines that technically are not feasible at this moment, and then the ports are being mandated to the point where probably—there is going to be a volume cap on what goes into the ports, and all of those containers are going to go to other States.

So, empirically, what you are saying is not true, and the supply chain inflation that has existed—has occurred in the past with the supply chain crisis that happened in the pandemic, consumers paid more.

So, how does the State of California tell the average consumer they are going to pay more based on this regulation?

Ms. ARIAS. We have published data that shows that this regulation could cost each household $36 a year.

And as a point to the ports, they have actually been having record-breaking years. Yes, there is some diversion of discretionary containers, but the actual containers coming through are much higher than they have ever been, and we continue to project that they will actually double within the next several decades.

Mr. FONG. So, does your assessment take into account all of these regulations together, or are you just taking——

Ms. ARIAS [interposing]. Correct.

Mr. FONG [continuing]. Are you taking this into account for just——

Ms. ARIAS [interrupting]. Oh, the $36, sir?

Mr. FONG. Yes.

Ms. ARIAS. No, the $36 is just this reg.

Mr. FONG. Just for rail?

Ms. ARIAS. Per year, per household.

Mr. FONG. Right. So, if you add in the trucking regulations, you add in the port regulations, you add in all the regulations to the entire supply chain, the system of systems that moves products; 40 percent of the goods and products that come into the United States of America come to the Port of L.A. and Long Beach. So, does your analysis take into account all of these regulations layered on top of each other, to the impact to the average consumer?

Ms. ARIAS. No. We have not done an analysis that shows the total monetized benefits that we receive from all these rules compared to the cost per household of these rules.

Mr. FONG. As a Californian, I would say that when it comes to strengthening our supply chain, California is not the model.

Mr. DUARTE. The Chair now recognizes Mr. Kiley for 5 minutes.

Mr. KILEY. Thank you, Mr. Chair.

Ms. Arias, you are with CARB, you are the chief of the transportation and toxics division, correct?

Ms. ARIAS. Correct.

Mr. KILEY. Thank you for being here with us today, but I do have to ask, are you an elected official?

Ms. ARIAS. I am not.

Mr. KILEY. Is anyone at CARB an elected official?

Ms. ARIAS. Some of our board members are, yes.

Mr. KILEY. But are they acting in an elected capacity when they make policy at CARB?

Ms. ARIAS. They are—some of them are elected, but they are all appointed by our senate and Governor.

Mr. KILEY. They're appointed, not——

Ms. ARIAS [interposing]. Correct.

Mr. KILEY. OK.

Ms. ARIAS. Well, they originally may be elected until——

Mr. KILEY [interrupting]. So, you took this opportunity upon yourselves to issue this new regulation banning nonelectric trains? Is that correct?

Ms. ARIAS. The staff promulgated the rule and took it to the board for their consideration, and they adopted it.

Mr. KILEY. So, it wasn't voted on by the legislature?

Ms. ARIAS. It was not.

Mr. KILEY. It wasn't voted on by the people of California?

Ms. ARIAS. It was not.

Mr. KILEY. So, Mr. Chair, I am very glad you called this hearing because we have really a crisis of democratic legitimacy in California, where we have an agency, a massive bureaucracy, CARB, that is making tectonic changes to our society, not just in California but across the country, without any measure of democratic accountability and is enacting harebrained scheme after harebrained scheme that wouldn't even survive whatever modicum of rationality might be present in the supermajority legislature.

And it is having dramatic impacts on our State. I mean, you could flip through the pages of dystopian fiction and not find an entity quite like CARB in terms of just how completely out of control and disconnected from the real world it has become, and I think that this regulation under consideration today banning nonelectric trains is a perfect example of that.

So, Mr. Olvera, you testified about how currently railroads are already the most environmentally friendly way to transport freight across the country, correct?

Mr. OLVERA. That is correct. Today, railroads contribute 2 percent of transportation-related greenhouse gas emissions, while our competitor, trucking, contributes 23 percent.

Mr. KILEY. And you have also testified that the technology to comply with this regulation is not currently in existence. Is that correct?

Mr. OLVERA. That is correct.

Mr. KILEY. And that because of this, short lines such as your company or others may be forced to shut down. Is that correct?

Mr. OLVERA. That is correct. To comply with the CARB ruling as written, many short lines in the State of California cannot comply. They would go bankrupt. And as I explained, my railroad, we would have to defer lots of other safety-driven projects in order to comply with the locomotive upgrade.

Mr. KILEY. So, this would shift freight from more environmentally friendly to less environmentally friendly modes of transport?

Mr. OLVERA. That is correct. It would push more to truck. It would have a worse impact on emissions.

Mr. KILEY. So, the whole purpose of this regulation, the ostensible purpose, which is to reduce emissions, it would actually do just the opposite. It is a self-undermining, self-defeating regulation.

But, of course, it does a lot more than that in terms of the collateral damage or cost. You testified that this would raise costs for consumers, correct?

Mr. OLVERA. That is correct.

Mr. KILEY. Making the experience of inflation worse in California and across the country? Is that correct?

Mr. OLVERA. Yes, that is correct.

Mr. KILEY. And in addition to that, you would have more vehicles on the road which would create more traffic for drivers, I assume?

Mr. OLVERA. More traffic, more congestion, and there were 6,000 deaths related to heavy trucks last year, and that has been increasing year over year. To put more trucks on our roads, that number unfortunately would probably increase.

Mr. KILEY. So, more wear-and-tear on the roads, more accidents, more injuries, more deaths?

Mr. OLVERA. That is correct.

Mr. KILEY. And then you have also testified, Mr. Yal, about some of the other costs in terms of construction costs, correct?

Mr. YAL. That is correct.

Mr. KILEY. Is it fair to say that this regulation, by increasing the cost of construction, both in terms of the cost of materials and the cost of their transport, would increase the already high cost of housing in California?

Mr. YAL. That is correct, yes.

Mr. KILEY. And you also testified that it would make it more difficult for us to build new infrastructure. Is that correct?

Mr. YAL. Yes. Our concern is that if the funds that are there for passenger rail operators and freight rail operators that would have been used for capital improvements, which is what we do, what our industry does, it is going to get diverted to this effort, and there will be a significant decrease in available funding through that, in addition to making the cost of projects bigger and more expensive. So, your dollar goes just less further.

Mr. KILEY. So, if I have this right, we have an unelected, not democratically accountable body, that has decided on its own to

make policy not just for California but effectively for the entire country, and has done so in the name of reducing emissions but has come up with a policy that will actually increase emissions, while also increasing costs and inflation for consumers by putting more vehicles on the road, creating more traffic, creating more wear-and-tear on our roads, reducing our road quality, creating more accidents means more injuries and more death, increasing the cost of construction, increasing the cost of housing, and making it more difficult to build new infrastructure.

I am glad we had this hearing, Mr. Chair, because I think this is exactly the wrong policy for California and for our country. I yield back.

Mr. DUARTE. The gentleman yields back.

We now recognize Mr. Molinaro for 5 minutes.

Mr. MOLINARO. Thank you, Mr. Chairman. I do feel a little bit out of place as a New Yorker, but I will offer to you that when California or New York institutes rules or regulations or new policy, the rest of the country should likely be afraid.

Ms. Arias, I don't want to take issue with where California is as it relates to your economic activity. The State represents 14.5 percent of the entire national economy, but I do want to tell you the tale of once being the empire.

I serve in a State that once was the largest population in the Nation, was the largest economy in the Nation, once was the ultimate location for cultural and economic activity—once.

It is actually one of the reasons that we are referred to as the Empire State. We built the Midwest, thanks to the great work of the Erie Canal and others.

But now we lead the Nation in outmigration. More people leave the State of New York to every other State in the Nation than any other State in the Nation. We shoulder the highest burden of taxation of any people in the country—even more than California.

And the answer as to why is because policymakers, elected and appointed, established rules and regulations that are unachievable without consideration for the actual impact to the end user, the end user being the citizen, the taxpayer, the consumer.

You reference, Ms. Arias, that your analysis, the CARB's analysis, is simply that there may be disruptions to the supply chain, but they are surmountable in the near term. Is that about right?

Ms. ARIAS. No, we didn't talk about disruptions in the supply chain for this. I was referring to the overall supply chain. Sorry if that was——

Mr. MOLINARO [interrupting]. So, you acknowledge that this regulation, this rule, disrupts the supply chain?

Ms. ARIAS. No, I would say it transforms the supply chain.

Mr. MOLINARO. That is a very—it is a lovely word that even I use. I love it because it avoids the actual truth, which is disruption is what happens in order for transformation to occur, if you can achieve it.

But we recognize it is very hard to achieve the goal. In New York, thanks to California, New York, in establishing the climate leadership policy, CLCPA, uses basically the same standard.

It looks across the river and says, we are going to cross this wild roaring river, but we are not going to tell you how to build the bridge, and we don't even care if you can build the bridge.

It is an absurd kind of governance. If we want to get to the kind of economic and environmental benefit that perhaps policies like this seem to want to achieve, you must have the path to get there, and you can't get there from here.

Mr. Olvera, just a few moments ago, Ms. Arias did suggest that this rule would have a de minimis impact on families across America. I think she said $36 a year.

First, I will offer to you that that can't be possible, and second, I would offer to you, Mr. Olvera, that I don't judge what people can or cannot afford. I always appreciate—and I mean no disrespect. I was once an appointed official as well, but I always appreciate when people who aren't elected say to other people who have to pay the bills, it really won't cost you that much.

It is sort of like when you say to your kid, it is going to hurt me more than it hurts you. I get that $36 doesn't sound like a lot of money. It is impossible that that is the limited impact, but without question, I am not going to judge what people can or cannot afford.

CARB's own analysis suggests that this rule, in and of itself, creates $86 billion in nationwide compliance costs, and that, of course, these costs are going to disrupt, transform, and impact the supply chain.

Can you speak to sort of humanize this? How do we expect the CARB rule to impact the cost of, let's say, groceries, to the average American family?

Mr. OLVERA. Sure. So, today, rail is a very cost-efficient freight option for our customers. I have heard from different customers at times, the savings by going through rail freight versus truck freight is three to four times less. So, that freight option, the rail freight option, if it was removed and mandated that our customers had to use a higher expense to move their goods, that decreases their bottom line, and the only way to make up for that is to pass on costs to the customer. That would absolutely increase cost of goods to the end user.

Mr. MOLINARO. Sure. And I remember not being here in Congress when the other side of the aisle did control both Houses of the legislature, imposed the Inflation Reduction Act. And I remember elected and bureaucratic leaders suggesting there would be no impact on inflation, and yet we experienced the highest rate of inflation in 40 years.

I know, Mr. Olvera, and I won't ask you to answer this again, but you spoke to the impact that this rule has on smaller Class II and III railroads. In fact, the rule itself could exceed their annual operating budgets and likely result in the decline of those operations.

I don't want to—I have 30 seconds, so, Mr. Nober, I just want to reference for you, obviously, other States can impose, and States like New York have imposed, similar rules as it relates to vehicle emissions.

Can you just suggest to us what are the potential impacts, let's say, if New York were to—with a single party governing—Demo-

cratic party governing in New York, what would happen if New York were to adopt a similar rule?

Mr. NOBER. Well, I mean, it would again create the kinds of problems that you don't want to see in interstate commerce, which is different operating rules and requirements in different States, so that you can't have interoperable equipment between—over the 50 States, and that kind of flies in the face of interstate commerce. So, that would create more and more patchwork issues, and it would show why this is preempted.

Mr. MOLINARO. Thank you, Mr. Nober.

Thank you, Mr. Chairman.

Mr. NEHLS [presiding]. Thank you. The gentleman yields.

Are there any further questions from any members of the subcommittee who have not been recognized? We have 8 minutes. We are voting right now, so, we have 8 minutes for the Members to get over there.

I want to have a second round. I want to respect the hell out of the gentleman to my right, Mr. LaMalfa, but I don't know—I will tell you what, Mr. LaMalfa, you have got 2 minutes—2 minutes.

Mr. LAMALFA. All right. Thank you, Mr. Chairman. Appreciate it greatly.

Ms. Arias, have you taken into account if the requirement—65 percent of the locomotive fleet would be banned by the year 2030? We have heard repeatedly that the technology for Tier 4, let alone the later tiers, isn't even working yet to any extent to replace that many locomotives.

We heard General Van Ovost, who is the head of the U.S. Transportation Command for our military vehicles.

Have you taken into account the effect of being able to deploy military vehicles and equipment across the country where it needs to be, in this study, in this idea?

Because if we can't move that because an electric train can only go 100 miles or something, what is going to happen with that? Have you taken that into account as well as——

Ms. ARIAS [interrupting]. Yes, sir. Military is exempt.

Mr. LAMALFA [continuing]. Perishable ag goods?

Ms. ARIAS. Yes. Military is exempt.

Mr. LAMALFA. And they said it is OK?

Ms. ARIAS. Yes. Military is exempt from the rule.

Mr. LAMALFA. Oh, they are exempt from it?

Ms. ARIAS. Yes.

Mr. LAMALFA. OK. Mr. Olvera, touch on, please, to wrap it up, on the available—we have heard it glossed over, oh, we have the technology, we will just take the Tier 3 or 4 diesel engine out and put electric in, basically. Is that even close to practical?

Mr. OLVERA. The electric locomotive is not currently commercially available, and as I mentioned before, the replacement of an electric vehicle, replacing a diesel locomotive is completely different. Charge time on a battery-operated locomotive is 24 hours for 8 hours of use. My diesel engine runs 24/7.

I may need two to three electric locomotives to replace one diesel engine.

Mr. LAMALFA. So, to replace 65 percent of the locomotives by 2030, no way, right? Quickly.

Mr. OLVERA. I don't see how that is commercially feasible and possible.

Mr. LAMALFA. Mr. Yal, we are talking about this special account where they want to take massive amounts of money from the railroad operators and put it into a special account that is unavailable for capital for you.

You have a very big project that is being looked at in Barstow which would massively increase efficiency for railroads. What is this special account thing tying up all your finances going to do to you?

Mr. YAL. The project is a $1½ billion intermodal railroad facility. It is to be built by BNSF. And the concern is that this spending account is going to divert resources from BNSF's capital improvement fund which funds these intermodal facilities, this one, and there are others——

Mr. LAMALFA [interrupting]. Quickly. Because it means you probably are not going to build it because your money is all tied up?

Mr. YAL. That is what we are hearing, yes.

Mr. LAMALFA. Yes. So, we are going to lose the efficiency of that new project? Yes.

Mr. YAL. Correct.

Mr. LAMALFA. Thank you, Mr. Chairman. I greatly appreciate the indulgence. Thank you.

Mr. NEHLS. Thank you. The gentleman yields.

Mr. DeSaulnier is going to get the last word, and you have a minute.

Mr. DESAULNIER. Mr. LaMalfa, I gave you the chance to have more time.

Just briefly, there are elected officials on CARB. There always has been. It is required by the California Clean Air Act. Again, Ronald Reagan as Governor. I was one of those representing the districts.

Ms. ARIAS. Correct.

Mr. DESAULNIER. Number 2, just because CARB passes this doesn't mean that every State has to go on it as well. They have to——

Ms. ARIAS [interrupting]. And, in fact, we have never had any other State pick up our offered rules.

Mr. DESAULNIER. Right. So, they have to go through their own legislative process——

Ms. ARIAS [interposing]. Correct.

Mr. DESAULNIER [continuing]. And then ask for—so, if it is a national trend, it is not by statute.

Ms. ARIAS. Correct.

Mr. DESAULNIER. Thirdly, you are doing what you are required by statute because you have to comply and get these reductions. You can also use the alternative plan to get to those reductions.

Ms. ARIAS. Correct.

Mr. DESAULNIER. So, all of those things, I just wanted to clear up, and thank you, Mr. LaMalfa, and the chairman, for letting me talk.

Mr. NEHLS. Absolutely.

Any further questions from any members of the subcommittee who have not been recognized?

Seeing none, that concludes our hearing. I would like to thank each one of you for being here. I thought this was very informative, very insightful, and thank you for your testimony.

The subcommittee stands adjourned.

[Whereupon, at 4:32 p.m., the subcommittee was adjourned.]

SUBMISSIONS FOR THE RECORD

Letter of April 22, 2024, to Hon. Michael S. Regan, Administrator, Environmental Protection Agency, from Casey Katims, Executive Director, U.S. Climate Alliance, Submitted for the Record by Hon. Frederica S. Wilson

APRIL 22, 2024.

The Honorable MICHAEL S. REGAN,
Administrator
U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20004.

Docket ID No. EPA–HQ–OAR–2023–0574

DEAR ADMINISTRATOR REGAN,

I write to you on behalf of the U.S. Climate Alliance (Alliance), a bipartisan coalition of 24 governors committed to climate action that together represent approximately 60 percent of the U.S. economy and 55 percent of the U.S. population. The Alliance appreciates the opportunity to comment on California's request for an authorization under the Clean Air Act (CAA) for the In-Use Locomotive Regulation (IULR), which supports our shared goals to confront the climate crisis, reduce harmful air pollution, advance environmental justice, and protect public health. The Alliance has long supported state flexibility in the CAA that permits California to adopt, and allows other states and territories to follow, regulations that can be more protective of public health and welfare than applicable federal standards. We strongly support authorization of California's IULR rule, which was promulgated consistent with CAA requirements,[1] and encourage EPA to grant it without delay.

Transportation remains the largest source of greenhouse gas emissions across the Alliance. We agree with the Biden administration that a rapid deployment of zero-emission (ZE) technologies across all transportation modes [2] must be a central component of the U.S. Long-Term Strategy to confront the climate crisis. Importantly, IULR sets ZE operating requirements for locomotives that can help achieve these goals. Granting this authorization will ensure California and other Alliance members can continue to lead on transportation decarbonization—driving reductions in transportation emissions at the state level while ensuring the U.S. does not fall behind in our national efforts to limit global warming.

California's IULR is also expected to significantly reduce harmful NOx and PM2.5,[3] improving public health for tens of millions of residents in the state. For other Alliance states and territories,[4] granting the authorization would provide a critical new mechanism to support compliance with National Ambient Air Quality Standards and protect public health in their jurisdictions. Emissions reductions achieved from the rule would avoid premature deaths, hospitalizations for cardiovascular illness, hospitalizations for respiratory illness, and emergency room visits, yielding billions in health benefits.[3] IULR also advances environmental justice by reducing disproportionate exposure to vehicle pollution concentrated in frontline communities, particularly those surrounding locomotive operations at railyards, industrial facilities, and rail corridors.[3]

ZE rail technology, such as overhead catenary, is a proven and established technology in passenger and freight applications both in the United States and around the world.[5] Additionally, private operators along with state and local transportation agencies are already investing in, testing, and deploying new emerging ZE and ZE-capable rail technologies like battery-electric, hydrogen fuel cell, and hybrid.[6] Recognizing the potential of these technologies, the U.S. Department of Transportation is also supporting their deployment with recent federal investments.[7] IULR will advance these efforts by driving further innovation and investment, and by increasing the market availability of ZE locomotives in California and across the country.

The Alliance stands firmly in support of California's authority as permitted under the CAA to adopt its own requirements for locomotive operations and emissions

standards for non-new locomotives and engines, as well as the authority of other states and territories to voluntarily adopt those regulations.[1] Such regulations can play a vital role in states' ability to improve air quality, protect public health, advance environmental justice, and tackle climate change. California's authorization request meets the conditions required by the law, and the state's promulgation of IULR is consistent with the requirements of the CAA. We support full approval of the authorization request without delay.

Thank you again for the opportunity to comment and for the Administration's collaboration with states and territories to confront the climate crisis.

Sincerely,

CASEY KATIMS,
Executive Director, U.S. Climate Alliance.

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[1] 42 U.S.C. § 7543 (2010), https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap85-subchapII-partA-sec7543.pdf; U.S. Environmental Protection Agency, *Locomotives and Locomotive Engines; Preemption of State and Local Regulations* (Washington, DC), https://www.federalregister.gov/documents/2023/11/08/2023-24513/locomotives-and-locomotive-engines-preemption-of-state-and-local-regulations.

[2] U.S. Department of State and the Executive Office of the President, *The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050* (Washington, DC), https://www.whitehouse.gov/wp-content/uploads/2021/10/US-Long-Term-Strategy.pdf.

[3] California Air Resources Board, *Updated Informative Digest: Proposed In-Use Locomotive Regulation* (CARB, Sacramento, CA), https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/uid.pdf.

[4] Including Vermont, which is in the Ozone Transport Region, but excluding Hawaii.

[5] For recent examples of rail electrification conversion using overhead catenary technology, see: Nick Ferris, *How India electrified 45% of its railway network in just five years* (Energy Monitor), https://www.energymonitor.ai/tech/electrification/how-india-made-45-of-its-railway-network-electric-in-just-five-years/; Railway Gazette International, *Indian Railways starts double-stack electric operation* (Railway Gazette), https://www.railwaygazette.com/freight/indian-railways-starts-double-stack-electric-operation/56733.article.

[6] California Air Resources Board, *Appendix F: Technology Feasibility Assessment for the Proposed In-Use Locomotive Regulation* (CARB, Sacramento, CA) https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/appf.pdf; Richard Clinnick, *Siemens to build 73 trains for Amtrak including first battery-hybrid* (International Railway Journal), https://www.railjournal.com/fleet/siemens-to-build-73-trains-for-amtrak-including-first-battery-hybrid; BNSF, *BNSF Sustainability Overview*, https://www.bnsf.com/in-the-community/environment/sustainability-overview-2023/index.html; Union Pacific, *Union Pacific Railroad to Assemble World's Largest Carrier-Owned Battery-Electric Locomotive Fleet*, https://www.up.com/media/releases/battery-electric-locomotive-nr-220128.htm; California Department of Transportation, *Arriving Soon in California: First Intercity Zero-Emission, Hydrogen Passenger Trains in North America* (Caltrans, Sacramento, CA), https://dot.ca.gov/news-releases/news-release-2023-034; Marybeth Luczak, *Pennsylvania Awards $8.7MM for 'Green' Power* (Railway Age), https://www.railwayage.com/freight/switching-terminal/pennsylvania-awards-8-7mm-for-green-power/.

[7] U.S. Department of Transportation—Federal Railroad Administration, *FY 2022 Consolidated Rail Infrastructure and Safety Improvement Program Selections: Project Summaries* (FRA, Washington, DC), https://railroads.dot.gov/sites/fra.dot.gov/files/2023-09/FY%202022%20CRISI%20Program%20Selections%20-%20Project%20Summaries__PDFa.pdf.

Letter of July 9, 2024, to Hon. Troy E. Nehls, Chairman, and Hon. Frederica S. Wilson, Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials, from Kristen Swearingen, Vice President, Legislative and Political Affairs, Associated Builders and Contractors, Submitted for the Record by Hon. Troy E. Nehls

JULY 9, 2024.

The Honorable TROY NEHLS,
Chairman,
House Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines, and Hazardous Materials, U.S. House of Representatives, Washington, DC 20515.

The Honorable FREDERICA WILSON,
Ranking Member,
House Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines, and Hazardous Materials, U.S. House of Representatives, Washington, DC 20515.

DEAR CHAIRMAN NEHLS, RANKING MEMBER WILSON AND MEMBERS OF THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 67 chapters representing more than 23,000 members, I appreciate the opportunity to comment on today's hearing, "An Examination of the California Air Resources Board's (CARB) In Use Locomotive Regulation."

On Nov. 7, 2023, the California Air Resources Board requested that the U.S. Environmental Protection Agency authorize its In-Use Locomotive Regulation pursuant to section 209(e) of the Clean Air Act. This regulation would ban all locomotives 23 years or older from operating within California and mandate zero-emissions locomotives by 2030.

To date, no commercially viable, zero-emission locomotives exist that would comply with CARB's rule, imposing unfeasible restrictions that could have a devastating impact on the construction industry. EPA's authorization of the CARB rule would impose enormous compliance costs and likely have national impacts on the railway system, creating new logistical challenges for a key part of the supply chain. This could potentially lead to significantly increased construction materials prices, which are already 41% higher [https://www.abc.org/News-Media/News-Releases/abc-construction-materials-prices-decrease-in-may-for-the-first-time-since-december] than they were at the start of the pandemic.

While ABC joined a wide range of industry stakeholders in submitting comments [https://www.abc.org/LinkClick.aspx?fileticket=MycJTZ0Xvjk%3d&portalid=1&
language=en-US] urging the EPA to deny this request, it is critical that the EPA understands the significant risks associated with authorizing this rule, including closure of short-line operators unable to afford compliance, soaring supply chain costs and delays to critical infrastructure projects.

While ABC recognizes the importance of maintaining environmental safeguards, CARB's regulatory overreach threatens America's contractors that work to deliver construction projects on time and on budget. ABC appreciates the subcommittee's efforts to investigate this harmful rule. Our members stand ready to build and maintain America's infrastructure without undue regulatory burdens.

Sincerely,

KRISTEN SWEARINGEN,
Vice President, Legislative & Political Affairs,
Associated Builders and Contractors.

Letter of July 8, 2024, to Hon. Troy E. Nehls, Chairman, and Hon. Frederica S. Wilson, Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials, from Ryan Bowley, Vice President, Government Affairs, The Fertilizer Institute, Submitted for the Record by Hon. Troy E. Nehls

JULY 8, 2024.

The Honorable TROY NEHLS,
Chairman,
Subcommittee on Railroads, Pipelines and Hazardous Materials, Committee on Transportation and Infrastructure, U.S. House of Representatives, 2029 Rayburn House Office Building, Washington, DC 20515.

The Honorable FREDERICA WILSON,
Ranking Member,
Subcommittee on Railroads, Pipelines and Hazardous Materials, Committee on Transportation and Infrastructure, U.S. House of Representatives, 589 Ford House Office Building, Washington, DC 20515.

DEAR CHAIRMAN NEHLS & RANKING MEMBER WILSON:

Over sixty percent of fertilizer moves by rail year-round in the United States, making an efficient rail system essential to ensuring that fertilizers are available to U.S. farmers during key application windows. In many cases, rail is the only way to transport fertilizer products long distances, and as a single rail tank car is the equivalent to four tank trucks, rail is often the most efficient and safest way to ship fertilizers.

The fertilizer industry is also committed to environmental stewardship, with many companies at the forefront of increasing energy efficiency and working towards decarbonizing manufacturing sites to increase the sustainability of fertilizers while ensuring agricultural productivity.

With these factors in mind, we are concerned about the impacts from the California Air Resources Board (CARB) In-Use Locomotive Regulation on freight rail operations and the ability of our member companies to meet the needs of their customers—America's farmers—who depend upon timely delivery of these critical plant nutrients. As you know, the CARB rule would ban most locomotives more than 23 years old beginning in 2030 and require a switch to zero emissions equipment for new line-haul locomotives beginning in 2025. This mandate from CARB was established despite the reality that zero emissions locomotive technology is not commercially available today.

As noted by the Association of American Railroads in its recent comments to the Environmental Protection Agency (EPA), the Regulation "would effectively ban the operation in California of locomotives more than 23 years old . . . if CARB's regulation is authorized, more than ⅔ of the locomotive fleet could not enter California." Such an artificial limitation of railroad capacity would cause significant disruption to the operations of the rail carriers serving the West Coast, with ripple effects across the country impacting fertilizer deliveries and shipments of farm products after harvest. This risks additional food price inflation impacting American consumers.

The likely impacts of CARB's rule on the agriculture sector were highlighted in a recent article from agricultural economists published by the University of Illinois Urbana-Champaign.[1] The article, which is enclosed with this letter, focuses on the importance of "efficient and cost-effective rail transportation to move agricultural commodities to West Coast ports" for the nearly $100 billion in agricultural and food exports from the Midwest. As noted by the authors, "the potential economic implications [from CARB's In-Use Locomotive Regulation] . . . could be significant."

These impacts include "elevated shipping costs [that] diminish the competitiveness of U.S. agricultural products" and "logistical inefficiencies [that] can restrict access to vital markets and decrease market share." The authors go on to note that California's rules have the potential to be adopted by other states, "possibly impacting other rail transportation routes to key markets and ports, such as those in the Pacific Northwest." While the article focuses on farm and food products, it's conclusions reinforce TFI's concern that CARB's rule will impact the fertilizer industry directly through increased costs and greater challenges in transporting products to farmers and indirectly as those farmer customers similarly face additional economic and operational challenges in transporting their goods to markets.

[1] Steinbach, S., S. Arita, S. Meyer, and S. Sydow. "How California's New Locomotive Regulation Could Impact Midwest Agriculture." farmdoc daily (14): 121, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, June 28, 2024.

In a previous letter to EPA regarding the Regulation, TFI and others across the agriculture industry further noted that CARB's regulation "would require railroads and rail customers to meet regulatory goals that cannot be reached . . . zero emissions locomotives would have to be purchased . . . but such locomotives are not yet commercially viable and won't be in the foreseeable future."[2] Additionally, the Regulation's "Spending Account" provisions risk creating disruptive financial burdens to short line railroads who often provide critical service to farm communities and customers.

TFI appreciates the Subcommittee holding a hearing on CARB's In-Use Locomotive Regulation, the impacts of the Regulation, and its legality under the Clean Air Act and federal preemption statutes prohibiting state and local regulation of rail transportation. Speaking to the interstate commerce impacts of CARB's rule, the Surface Transportation Board, rightly noted its "potentially highly significant impact . . . on interstate rail transportation," in some cases "directly managing or governing rail transportation."[3] The significant impacts of CARB's action—impacts that will be felt by rail customers and ultimately American consumers—demand close Congressional attention and scrutiny.

Thank you again for your attention on this important issue. Should you have any questions, please contact me.

Sincerely,

RYAN BOWLEY,
Vice President, Government Affairs, The Fertilizer Institute.

ATTACHMENT

HOW CALIFORNIA'S NEW LOCOMOTIVE REGULATION COULD IMPACT MIDWEST AGRICULTURE

[The 10-page document is retained in committee files and is available online at https://farmdocdaily.illinois.edu/2024/6/how-californias-new-locomotive-regulation-could-impact-midwest-agriculture.html]

Statement of Ian N. Jefferies, President and Chief Executive Officer, Association of American Railroads, Submitted for the Record by Hon. Troy E. Nehls

INTRODUCTION

On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to submit this statement for the record about the California Air Resources Board's (CARB) regulation on emissions from in-use locomotives.

At the outset, let me be clear that the rail industry shares the goal of CARB, the Environmental Protection Agency (EPA), and members of Congress to improve air quality and reduce greenhouse gas (GHG) emissions related to rail transportation. Railroads know that, as cumulative global emissions continue to rise, emissions reductions and policies aimed at transitioning toward a net-zero economy are desirable.

Those policies, though, must be realistic, lawful, and reasonable from a cost-benefit standpoint. The policies cannot assume that technology that does not exist can simply be willed into existence. And the policies must not unduly impair the efficient functioning of the national freight rail network. Unfortunately, as explained below, CARB's regulation fails on all these fronts, which is why the EPA should deny the authorization necessary for it to take effect.

RAILROADS ARE CRUCIAL FOR ECONOMIC AND ENVIRONMENTAL PROGRESS

Freight railroads play an outsized role in keeping our economy moving. They serve our industrial and agricultural economies by moving enormous quantities of raw materials and finished goods to and from production areas. Without railroads,

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[2] Agriculture Transportation Work Group, Comment on California State Nonroad Engine Pollution Control Standards; In-Use Locomotive Regulation; Requests for Authorization (April 5, 2024). https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0574-0080.

[3] Surface Transportation Board, Comment on California State Nonroad Engine Pollution Control Standards; In-Use Locomotive Regulation; Requests for Authorization (April 23, 2024). https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0574-0155.

international trade as we know if could not exist: railroads connect our farmers, mining operations, and manufacturers with both domestic markets and markets in Canada, Mexico, and overseas. Millions of Americans work in industries that are more competitive in the tough global economy thanks to the affordability and productivity of America's freight railroads. Railroads also make it possible for retailers to fill their shelves with the products we want to buy. In short, it is virtually impossible to overstate freight railroads' contribution to our economic well-being, standard of living, and quality of life.

Railroads are already an environmentally preferred way to move freight. On average, railroads move a ton of freight nearly 500 miles on one gallon of fuel. Railroads are three to four times more fuel efficient than trucks, and a single train can replace several hundred trucks on our already congested highways. Railroads account for approximately 40 percent of U.S. long-distance freight volume (measured by ton-miles) but account for just 1.8 percent of total U.S. transportation-related GHG emissions and just 0.6 percent of total U.S. GHG emissions.

Railroads, though, are not satisfied with the status quo: they are continually seeking out further emissions reductions, both voluntarily and as the result of cooperative partnerships with local and state regulators. They have invested in zero-emission support infrastructure, expanded the use of biofuels to reduce their carbon footprint, and integrated new technologies to minimize fuel consumption, further reducing emissions.

AAR's members have also been working with locomotive manufacturers to develop and test low- and zero-emission battery-powered locomotives, and several railroads are also investigating the potential of hydrogen fuel-cell locomotives. However, these locomotives are still firmly at the development and testing stage and are nowhere near commercial viability.

WHAT CARB'S REGULATION ENTAILS

CARB's regulation, if authorized, would prohibit railroads, beginning in 2030, from operating locomotives in California that are more than 23 years beyond their original manufacture date. This means locomotives originally built in 2007 or earlier would effectively be banned in California. The regulation also states that, beginning in 2030 for industrial, switch, and passenger locomotives and 2035 for line-haul locomotives, newly purchased locomotives operated in California must be zero-emission.[1]

Of the approximately 23,000 locomotives in the U.S. Class I railroad locomotive fleet today, more than 15,000—nearly two-thirds—were built before 2007. Non-Class I railroads operate several thousand additional locomotives. According to CARB, as of 2020, the average age of non-Class I locomotives in California was 43 years old.[2]

CARB's regulation also requires railroads to deposit funds into an escrow account overseen by the state to be used exclusively to purchase and test zero-emission technology. Initial estimates from BNSF and Union Pacific, the two Class I freight railroads operating in California, indicate the required deposit would amount to $700–$800 million per year per railroad. Non-Class I railroads too would be required to pay up to several million dollars into this fund each year—far exceeding what some could absorb without facing insolvency.

THE CARB REGULATION WOULD CRIPPLE INTERSTATE RAIL TRAFFIC

A key feature of the North American rail network is its interoperability, which underlies its efficiency and cost effectiveness. Locomotives cross state lines and national borders thousands of times a day, seamlessly pulling trains from one end of the country to the other and everywhere in between. Railroads do not, and could not, have dedicated fleets for each state. It therefore makes little sense to speak of a "California rail industry" or a "New York rail industry" or a "Missouri rail industry." Rather, we have a truly national, completely interconnected freight rail industry. Indeed, a rail car or locomotive could find itself in Texas one day, in California a week later, in Illinois a week after that, and in Pennsylvania a week after that.

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[1] Generally speaking, switch locomotives are lower horsepower units used primarily to move railcars in rail yards and short distances outside rail yards. Line-haul locomotives are generally higher horsepower units used predominantly on mainline tracks for long-distance movements.

[2] Class I railroads—there are six today—are those with 2022 revenue of at least $1.03 billion. They account for roughly 95 percent of U.S. rail industry revenue. The more than 600 non-Class I railroads, also called short line and regional railroads, range in size from tiny operations handling a few carloads a month to much larger entities operating across several states. Non-Class I railroads rarely purchase new locomotives, but instead typically purchase used units from Class I carriers, leasing companies, rail equipment dealers, or other non-Class I railroads.

Yet CARB's regulation would force railroads to adopt such a model. This means that if CARB's regulation were authorized, more than two-thirds of the U.S. Class I locomotive fleet could not enter California (and any state that replicated the CARB rule). According to data from the Surface Transportation Board, California is sixth in the nation in the volume of rail carloads that originate, terminate, or move through a state—6.8 million carloads for California in 2022.[3] Moreover, California is home to the two largest intermodal ports in the United States. A huge variety of imported goods arrive at these ports and move inland by rail, while exports from throughout the country make their way by rail to those ports for shipment overseas.

CARB's regulation would therefore hamstring interstate commerce. Under the best-case scenario, locomotives would need to be switched at the California border—assuming a compliant locomotive were available and railyards were subsequently constructed at every intersection point along the state borders. If no compliant locomotive were available, freight coming into California would need to be transferred from train to trucks. The result would be supply chain disruptions and widespread diversions of freight from rail to trucks that are less fuel efficient and less cost effective than railroads. Truck-caused highway damage would also increase. Supply chains would become hopelessly snarled and logistics costs would skyrocket.

It is not just rail track and carloads that are interconnected. At any given moment, 5% to 10% of the line-haul locomotives operated by Class I railroads are owned or leased by another railroad, a practice known as "locomotive run-through interoperability." As a result, it is a regular occurrence, for example, for trains to leave Chicago for a destination in California without a change to the locomotive(s) pulling that train. This practice allows railroads to maximize operational efficiency and reduces transportation time by eliminating the need to exchange locomotives when moving from one railroad's line to another's. Therefore, CARB's regulation of emissions from locomotives "that operate in California" is tantamount to the nationwide regulation of locomotive emissions.

The regulation would force railroads to set aside massive funds each year to support a premature transition to zero-emission technology. Forcing railroads to set aside this level of funding will almost certainly increase the cost of rail service in California and elsewhere, ultimately driving up prices for consumers and pushing more rail traffic to trucks. For many small railroads, the required set aside will lead to their insolvency. A policy that leads to such an outcome cannot possibly be considered sound.

Finally, if EPA were to authorize CARB's regulation, California would be the first state to adopt these standards, but not the only one. Other states are given the authority to adopt an identical regulation to California's if EPA does grant that authorization. Comparing this regulation to equivalent ones on passenger vehicles and the trucking sector, it is probable that anywhere from a dozen to eighteen other states could chose to adopt California's regulation into their own state laws. This would further degrade the interoperability of the network and compound the financial obligations of the spending account provision as the regulation spreads across the country.

THE CARB REGULATION VIOLATES FEDERAL LAW

Congress has provided neither CARB nor EPA the authority to mandate the rapid and technologically infeasible decarbonization of the rail industry. Moreover, Congress has long recognized that if the rail network is going to function safely and efficiently while meeting the economic needs of the nation, railroads cannot be subject to a patchwork of different state and local regulations across the country.

In addition to violating the Clean Air Act's prohibition on states regulating emissions from new locomotives, CARB's regulation violates the ICC Termination Act (ICCTA) of 1995 because it runs afoul of ICCTA's federal preemption provisions. Policymakers have long recognized that the integrated nature of the industry is crucial to its success. For example, in 1970, Congress found that the railroad industry " . . . has a truly interstate character calling for a uniform body of regulation and enforcement . . . The integral operating parts of these companies cross many State lines. In addition to the obvious areas of rolling stock and employees, such elements as operating rules, signal systems, power supply systems, and communication systems of a single company normally cross numerous State lines. To subject a carrier to enforcement before a number of different State administrative and judicial sys-

[3] See https://www.stb.gov/wp-content/uploads/CARSSTATE-2022.xlsx.

tems in several areas of operation could well result in an undue burden on interstate commerce."[4]

Congress adopted this same sound reasoning when it passed ICCTA. Congress recognized that the federal government should retain exclusive control over the regulation of railroad operations due to the inherent interstate nature of freight railroading. Specifically, ICCTA grants the Surface Transportation Board (STB) exclusive jurisdiction over "transportation by rail carriers, and the remedies provided . . . with respect to rates, classifications, rules . . . practices, routes, services, and facilities of such carriers." Under ICCTA, "transportation" refers to "a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail" and "services related to that movement."

Courts have 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. Indeed, CARB itself has acknowledged that attempts to regulate the rail industry were preempted by federal law.

By specifically targeting the rail industry, CARB's rule violates ICCTA's preemption sections. The rule's spread would create an unworkable, fragmented patchwork of state regulations for locomotive emissions that would cause far more problems and entail far more costs than other, better alternatives that could be pursued instead.

COMMERCIALLY VIABLE ZERO-EMISSION FREIGHT LOCOMOTIVES DO NOT EXIST

In recent years, the rail industry and their suppliers have made significant investments in developing and testing prototype battery electric and hydrogen fuel cell locomotives. Significant progress has been made and much promising work continues.

That said, given the current stage of development of zero-emission locomotive technologies, compliance with the time frames found in this regulation is not feasible. Today, zero-emission locomotives are still in the early testing phase of development and are not close to widespread commercial viability. The premature retirement of older locomotives, without availability of zero-emission replacements, simply makes no sense.

CARB's regulation goes also goes beyond what the U.S. Department of Energy (DOE) believes to be technologically feasible. In its Fiscal Year 2025 Budget Request, DOE requested $35 million to, among other items, *demonstrate* a 50% reduction in GHG emissions in a locomotive engine by 2030.[5] This stands in stark contrast to the portion of CARB's regulation which would require all new locomotives purchased for use in California to be fully zero-emissions beginning in 2030.

In addition to the lengthy timelines needed to commercialize zero-emission locomotives, railroads would also need to build out a national network to supply power to these new locomotives. No matter the power source, new infrastructure will require permits and environmental reviews, which would take years even in a best-case scenario. It would be impossible to meet either the 2030 or 2035 timelines established in the regulation, even if an adequate number of theoretical zero-emission line-haul locomotives actually existed.

CARB itself does not suggest that zero-emission locomotives are available now or will be by 2030. Rather, CARB says only that zero-emission technology *might* be *possible* at some point. CARB fails to consider if the technology will be safe, reliable, maintainable, or operable on the North American rail network. CARB's regulation relied on flawed literature and interviews with non-rail personnel who lack the requisite knowledge needed on this topic.

CONCLUSION

In the past, railroads and CARB have worked collaboratively to drive significant reductions in emissions. These initiatives have helped pave the way for more sustainable rail operations across the nation. It is deeply unfortunate that CARB has decided to forego the proven path of collaboration in favor of flawed assumptions, regulations that lack legal authority, and a casual and willful disregard for technological realities. While the spirit behind CARB's regulation is consistent with the rail industry's environmental commitment, the regulation itself is unworkable and

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[4] H.R. Report No. 91–1194, 1970.

[5] U.S. Department of Energy, *FY 2025 Congressional Justification, Vehicle Technologies, Decarbonization of Off-Road, Rail, Marine, and Aviation Technologies* (March 2024) https://www.energy.gov/sites/default/files/2024-03/doe-fy-2025-budget-vol-4-v2.pdf

infeasible. EPA should therefore deny the authorization needed for CARB's regulation to be enforced.

Letter of April 10, 2024, to Hon. Michael S. Regan, Administrator, Environmental Protection Agency, from U.S. Chamber of Commerce et al., Submitted for the Record by Hon. Troy E. Nehls

APRIL 10, 2024.

The Honorable MICHAEL S. REGAN,
Administrator,
Environmental Protection Agency, 1200 Pennsylvania Avenue NW; 1101–A, Washington, DC 20460.

Re: CARB's Clean Air Act Authorization Request (EPA–HQ–OAR–2023–0574)

DEAR ADMINISTRATOR REGAN:

We urge you to deny the California Air Resources Board's (CARB) application to exempt its In-Use Locomotive Regulation (Regulation) from the Clean Air Act.

The overreach of the CARB Regulation is stunning. It would mandate zero-emissions locomotives in some cases by 2030 and across-the-board by 2035, even though the technologies necessary to achieve these reductions do not exist.

Despite moving 40% of the nation's long-distance freight by ton-mile, the sector accounts for only 0.6% of U.S. GHG emissions. Moreover, railroads are an essential freight transportation option for American businesses—including those in manufacturing, agriculture, retail, and energy production—in which scale of operations is critical to competing in the global market.

Allowing the Regulation to move forward would cause enormous and destructive impacts to America's supply chains and economy, and likely increase greenhouse gas emissions.

- *California Regulation Would Be National Regulation*. A very large portion of the locomotive fleet moves through the state of California each year, so railroads operating as far away as Montana, Pennsylvania, North Carolina, and even Maine and Florida would be forced to comply with California's standard.
- *The CARB Regulation Threatens the U.S. Supply Chain*. Railroads are developing new technologies to reduce emissions, but there are no viable, zero-emission locomotives that could be deployed at scale to meet the demands of the CARB Regulation. Without proven technology in place, the logistical challenges of complying with this Regulation would be enormous and complicate critical supply chains for energy products, food, intermodal deliveries, and service to America's ports.
- *Freight Would Be Forced from Rail to Roads*. It is hard to envision a scenario whereby trains would stop at the California border to change locomotives without significant impact on national supply chains, making diversion of freight off the rail network the most likely outcome.
- *The CARB Regulation Would Drive Short Line Railroads Out of Business*. In California alone, short lines handle more than 260,000 carloads per year. Nationally, short line railroads handle 20 percent of rail cars at origin and destination, serving virtually every industry. Short lines do not have the capacity to replace their entire locomotive fleets to comply with the deadlines.
- *The CARB Regulation Would Harm the Largest Railroads and their Customers*. Estimates suggest that Class I railroads would be required to deposit as much as $800 million per year, per railroad, for compliance with spending account provisions of the proposal. This capital drain could force major infrastructure improvements to be shelved, including those designed to reduce operations emissions and improve safety. Moreover, Union Pacific recently estimated that a fleet renewal as stipulated by the CARB Regulation would lead to more than $14 billion in cost increases passed on to consumers.

Ultimately, the CARB Regulation would undermine efficiency and dramatically slow commerce, thereby undermining the integrity of the integrated supply chain and the reliability of railroads to meet demand. Ironically, it would also harm ongoing efforts to reduce greenhouse gas emissions in the freight rail industry. We urge you to reject CARB's application.

Sincerely,

U.S. Chamber of Commerce.
Agricultural Retailers Association.
Aiken Chamber of Commerce.
Alaska Chamber.
Albany Area Chamber of Commerce (OR).
Arkansas State Chamber of Commerce / Associated Industries of Arkansas.
Ascension Chamber of Commerce.
Associated Industries of Florida.
Berkeley Chamber of Commerce.
Billings Chamber of Commerce.
Brea Chamber of Commerce.
Buckeye Valley Chamber of Commerce.
Buellton Chamber of Commerce.
Burlington Chamber of Commerce.
Cadillac Area Chamber of Commerce.
California Business Roundtable.
California Farm Bureau.
Campbell County Chamber of Commerce.
Canby Area Chamber of Commerce.
Carlsbad Chamber of Commerce.
Central Fairfax Chamber of Commerce.
Chamber Southwest Louisiana.
Chandler Chamber of Commerce.
Chicagoland Chamber of Commerce.
Chino Valley Chamber of Commerce.
Columbia Montour Chamber of Commerce.
Colusa County Chamber of Commerce.
Corsicana & Navarro County Chamber of Commerce.
Davis Chamber of Commerce.
Decatur Chamber of Commerce.
Detroit Regional Chamber.
Duchesne County Chamber of Commerce.
Eden Prairie Chamber.
Edwardsville/Glen Carbon Chamber of Commerce.
Fort Worth Chamber of Commerce.
Fountain Hills Chamber of Commerce.
Gateway Chambers Alliance.
Georgia Chamber of Commerce.
Glendora Chamber of Commerce.
Green Oaks, Libertyville, Mundelein, Vernon Hills Chamber of Commerce.
Grant County Chamber of Commerce.
Greater Binghamton Chamber of Commerce.
Greater Cheyenne Chamber of Commerce.
Greater Coachella Valley Chamber of Commerce.
Greater Flagstaff Chamber of Commerce.
Greater Grass Valley Chamber of Commerce.
Greater High Desert Chamber.
Greater Lafayette Commerce.
Greater Lawrence Chamber of Commerce.
Greater Mankato Growth.
Greater North Dakota Chamber.
Greater Omaha Chamber.
Greater Phoenix Chamber.
Greater Rochester Chamber of Commerce.
Greater Shreveport Chamber.
Greater Spokane Valley Chamber of Commerce.
Greater Topeka Chamber.
Habersham County Chamber of Commerce.
Harbor Association of Industry and Commerce.
Huber Heights Chamber of Commerce.
Illinois Chamber of Commerce.
Indiana Chamber of Commerce.
Inland Empire Economic Partnership.
Iowa Association of Business and Industry.
Joliet Region Chamber of Commerce & Industry.
Kalispell Chamber of Commerce.
Kentucky Chamber of Commerce.
Kingman Area Chamber of Commerce.
Louisiana Association of Business and Industry (LABI).
Laguna Hills Chamber of Commerce.
Laguna Niguel Chamber of Commerce.
Lewistown Area Chamber of Commerce.
Long Beach Area Chamber of Commerce.
Longview TX Chamber of Commerce.
Los Angeles Area Chamber of Commerce.
Los Angeles County Business Federation (BizFed).
Loudoun County Chamber of Commerce.
Maryland Chamber of Commerce.
Minneapolis Regional Chamber.
Minnesota Chamber of Commerce.
Missouri Chamber of Commerce and Industry.
Modesto Chamber of Commerce.
Montana Chamber of Commerce.
Moses Lake Chamber of Commerce.
Murrieta/Wildomar Chamber of Commerce.
Nebraska Chamber of Commerce & Industry.
Nevada Farm Bureau Federation.
New Jersey State Chamber of Commerce.
Newark Regional Business Partnership.
Newport Beach Chamber of Commerce.
North Carolina Chamber of Commerce.
North Country Chamber of Commerce.

NORTH SAN DIEGO BUSINESS CHAMBER.
NORWALK CHAMBER OF COMMERCE.
ORANGE COUNTY BUSINESS COUNCIL.
OREGON BUSINESS & INDUSTRY.
PALM DESERT AREA CHAMBER OF COMMERCE.
PALOS VERDES PENINSULA CHAMBER OF COMMERCE.
PAYSON SANTAQUIN AREA CHAMBER OF COMMERCE.
PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY.
POCATELLO-CHUBBUCK CHAMBER OF COMMERCE, INC.
PORT HUENEME CHAMBER OF COMMERCE.
PRATTVILLE AREA CHAMBER OF COMMERCE.
QUEEN CREEK CHAMBER OF COMMERCE.
QUEENS CHAMBER OF COMMERCE.
RANCHO MIRAGE CHAMBER OF COMMERCE.
RIO RANCHO CHAMBER OF COMMERCE.
ROSEBURG AREA CHAMBER OF COMMERCE.
SAN ANGELO CHAMBER OF COMMERCE.
SAN GABRIEL VALLEY ECONOMIC PARTNERSHIP.
SAN MARCOS CHAMBER OF COMMERCE.
SANTA BARBARA SOUTH COAST CHAMBER OF COMMERCE.
SANTA PAULA CHAMBER OF COMMERCE.
SANTEE CHAMBER OF COMMERCE.
SCHUYLKILL CHAMBER OF COMMERCE.
SIMI VALLEY CHAMBER OF COMMERCE.
SOUTH BEND REGIONAL CHAMBER.
SOUTH DAKOTA CHAMBER OF COMMERCE & INDUSTRY.
SOUTH VALLEY CHAMBER OF COMMERCE.
ST. PAUL AREA CHAMBER.
STREETSBORO AREA CHAMBER OF COMMERCE.
THE CHAMBER OF GRAND FORKS / EAST GRAND FORKS.
THE GREATER HOUSTON PARTNERSHIP.
THE GREATER SPRINGFIELD CHAMBER OF COMMERCE.
THE MANSFIELD AREA CHAMBER OF COMMERCE.
TULARE CHAMBER OF COMMERCE.
UNION COUNTY KY CHAMBER OF COMMERCE.
UTAH VALLEY CHAMBER OF COMMERCE.
VEGAS CHAMBER.
WASHINGTON COUNTY (MD) CHAMBER OF COMMERCE.
WEST VENTURA COUNTY BUSINESS ALLIANCE.
WHITE PINE CHAMBER OF COMMERCE.
WILL COUNTY CENTER FOR ECONOMIC DEVELOPMENT.
WILLITS CHAMBER OF COMMERCE.
YORBA LINDA CHAMBER OF COMMERCE.

Letter of April 22, 2024, to the Environmental Protection Agency, from Daniel J. Erspamer, Chief Executive Officer, Pelican Institute for Public Policy et al., Submitted for the Record by Hon. Troy E. Nehls

APRIL 22, 2024.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
EPA Docket Center,
Office of Air and Radiation, Docket EPA–HQ–OAR–2023–0574, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

a-and-r-docket@epa.gov

Subject: Opposition to the California Air Resources Board In-Use Locomotive Regulation

ADMINISTRATOR REGAN,

We, the undersigned individuals, and representatives of state public policy organizations, write to you today to express our strong opposition to the California Air Resources Board (CARB) rule targeting the freight rail industry. We believe this CARB rule, now under review by your agency as it pursues a waiver, poses significant threats to the engines of our economy and the broader supply chain. State economies could be particularly affected, as well as infrastructure and supply chains that vary by location.

The CARB rule suffers from several critical and fatal flaws.

Namely, it unfairly burdens the freight rail industry and their customers without acknowledging the limitations of current technologies. The rule fails to consider the ongoing challenges and complexities faced by the industry to convert or eliminate locomotives when the feasibility, practicality, and technology do not exist. CARB's lack of meaningful consultation and dialogue with key stakeholders, including railroads, shippers, and stakeholders, is evident with the drafting and implementation of this arbitrary and misguided rule.

Furthermore, the CARB rule significantly underestimates its potential negative impact on commerce and consumers. By unfairly and unjustly targeting the freight rail industry, this regulation is likely to inflate costs for businesses and shippers

that rely on rail transportation. These increased costs will inevitably translate to higher prices for American consumers who are already burdened with record inflation.

Diesel locomotives are critical components of the nation's transportation network and should be celebrated as an environmental success story. They facilitate the safe and efficient movement of essential commodities, goods, and products, from agriculture to automobiles. In fact, the freight rail industry has invested billions of dollars to modernize and upgrade their fleet to reduce emissions through voluntary initiatives, resulting in substantial reductions in emissions. The proposed CARB rule, with its additional regulatory burdens, could be counterproductive to this effort.

In addition to the economic and environmental concerns outlined above, the CARB rule threatens to disrupt the efficiency and flow of the entire nation's supply chain. This could lead to increased delivery delays and disruptions, inefficiencies, and inequities across state lines, and impede industry-leading technological innovations and investment.

Critically for this group of signers, if the EPA rubber stamps this rule, it could effectively set a precedent that allows one state to unilaterally dictate environmental and transportation policy for the other 49 states. One state should not be empowered—explicitly or implicitly—to dictate policy for the rest of the country. This is the opposite of federalism.

We believe that environmental protection should be balanced with the need for a robust and resilient transportation system that supports economic growth and future prosperity. This CARB rule, as it stands, tilts the scales dangerously out of balance as it cripples one of our nation's economic engines.

We urge the EPA to unequivocally reject the proposed CARB rule and safeguard the interests of our citizens, our commerce, and our communities.

Thank you for your time and consideration of our comments.

Sincerely,

STEPHANIE SMITH,
President & CEO, Alabama Policy Institute.
LANCE CHRISTENSEN,
Vice President, Education Policy & Government Affairs, California Policy Center.
GARRETT BALLENGEE,
President & CEO, Cardinal Institute for West Virginia Policy.
ANDRÉ J. BÉLIVEAU,
Senior Manager of Energy Policy, Commonwealth Foundation.
TIM HOEFER,
CEO, Empire Center for Public Policy.
KYLE WINGFIELD,
President & CEO, Georgia Public Policy Foundation.
HEATHER CURRY,
Director of Strategic Engagement, Goldwater Institute for Public Policy.
RONALD M. NATE, PH.D.,
President, Idaho Freedom Foundation.
C.J. SZAFIR,
CEO, Institute for Reforming Government.
LINDSAY KILLEN,
Vice President of National Strategy, James Madison Institute.
MATTHEW GAGNON,
CEO, Maine Policy Institute.
DOUGLAS CARSWELL,
CEO, Mississippi Center for Public Policy.
CHRIS CARGILL,
President & CEO, Mountain States Policy Center.
JOHN TSARPALAS,
President, Nevada Policy Research Institute.
DANIEL J. ERSPAMER,
CEO, Pelican Institute for Public Policy.
JIM VOKAL,
CEO, Platte Institute.
MIKE STENHOUSE,
Founder & CEO, Rhode Island Center for Freedom & Prosperity.
PAUL GESSING,
President, Rio Grande Foundation.
BETTE GRANDE,
Co-Founder & CEO, Rough Rider Policy Center.
DERRICK MAX,
President, Thomas Jefferson Institute for Public Policy.
MANDY LUDTKE,
Executive Director, Wyoming Liberty Group.
CAROL PLATT LIEBAU,
CEO, Yankee Institute for Public Policy.

Letter of July 9, 2024, to Hon. Troy E. Nehls, Chairman, Subcommittee on Railroads, Pipelines, and Hazardous Materials, and Hon. Rick Larsen, Ranking Member, Committee on Transportation and Infrastructure, from David Williams, President, Taxpayers Protection Alliance et al., Submitted for the Record by Hon. Troy E. Nehls

JULY 9, 2024.

The Honorable TROY NEHLS,
Chair,
Subcommittee on Railroads, Pipelines, and Hazardous Materials, Committee on Transportation and Infrastructure, U.S. House of Representatives, 2165 Rayburn House Office Building, Washington, DC 20515.

The Honorable RICK LARSEN,
Ranking Member,
Committee on Transportation and Infrastructure, U.S. House of Representatives, 2165 Rayburn House Office Building, Washington, DC 20515.

Re: Opposition to the California Air Resources Board In-Use Locomotive Regulation Docket EPA–HQ–OAR–2023–0574

We, the undersigned individuals and representatives of national organizations and think tanks representing millions of taxpayers and consumers, write to express our strong opposition to the California Air Resources Board (CARB) rule regarding diesel locomotives. As advocates for accountable and responsible governance, economic opportunity and prosperity, consumer welfare, and taxpayer protection, we believe that this regulation sets a dangerous precedent for American commerce and consumers. This will have negative consequences that are not restricted to California. Therefore, we urge the Environmental Protection Agency (EPA) to reject the Clean Air Act (CAA) waiver request.

CARB's recent mandate for diesel locomotives, as reported in various media outlets including *National Review*, *The Wall Street Journal*, and *Washington Examiner*, is deeply concerning. The new rule would put in place emissions standards that are both unreasonable and unworkable. CARB's unilateral imposition of unachievable and unrealistic technological requirements on locomotive manufacturers threatens to disrupt vital supply chains and transportation links on which American consumers and industry rely. Their rule will exacerbate delays and disruptions and increase inflationary pressures.

CARB's failure to engage productively with the industry or their millions of customers during the drafting of this onerous mandate demonstrates that the rule prioritizes politics over practical public policy. A lack of industry dialogue has highlighted the infeasibility of CARB's proposed rule due to significant resource and technological challenges.

Freight rail locomotives play a crucial role in hauling commercial cargo and industrial products across vast distances efficiently and safely. American freight railroads are recognized as the cleanest and safest means of long-haul transportation in the nation. Yet, CARB continues to target the rail industry with unparalleled regulations.

The primary concern with CARB's rule is its imposition of deadlines and standards that exceed current technological capabilities. Reputable institutions, such as the Alliance for Innovation and Infrastructure, the Competitive Enterprise Institute, The Heritage Foundation, and the Washington Legal Foundation, have emphasized the technological infeasibility of CARB's emission mandate. Such unrealistic requirements place an excessive burden on manufacturers, railroads, and suppliers. This will hinder economic growth, stifle supply chains, and threaten innovation and investment.

Additionally, the CARB regulation mandates railroads deposit significant funds into a California-created and California-managed account. This diverts crucial resources away from capacity enhancements, infrastructure upgrades, safety and service projects, and technology improvements. Redirecting as much as 20 percent of annual investments into one account threatens the ability of railroads to invest in their future, especially when it comes to equipment, service, and the workforce.

Furthermore, approving this California rule would set a troubling precedent of federal acquiescence to state overreach. Allowing individual states to dictate nationwide standards undermines regulatory consistency and creates a patchwork of conflicting regulations that will only serve to hinder interstate commerce in freight rail, an already over-regulated industry. Unelected bureaucrats and regulators in California should not be able to dictate national supply chain standards or transportation policy for the rest of the nation.

Ultimately, the negative impact of this CARB rule on commerce and consumers cannot be overstated. It will drive up labor, production, shipping, and supply chain costs. This will create higher prices for goods and services for consumers of goods reliant on rail transportation. At a time when the federal government is focused on driving down inflation, this is the last thing the administration should consider or approve.

We urge the agency to reject CARB's request for a CAA waiver, and instead advocate for a more balanced, collaborative, and scientific approach. Protecting communities and the environment need not require burdensome regulation. Rather, a sensible approach would engage industry stakeholders, foster economic growth, promote innovation, and protect taxpayers and consumers.

Thank you for your consideration of this critical issue.

Sincerely,

DAVID WILLIAMS,
President, Taxpayers Protection Alliance.
MELISSA MELENDEZ,
Director of State Chapters & Executive Director for AFPI-California, America First Policy Institute.
DOUGLAS HOLTZ-EAKIN,
American Action Forum.†
PHIL KERPEN,
President, American Commitment.
STEVE POCIASK,
President & CEO, The American Consumer Institute.
TOM PYLE,
President, American Energy Alliance.
RICHARD MANNING,
President, Americans for Limited Government.
MARC MARIE,
Regulatory Policy Fellow, Americans for Prosperity.
RYAN ELLIS,
President & CEO, Center for a Free Economy.
CRAIG RUCKER,
President, Committee for a Constructive Tomorrow.
PATRICIA PATNODE,
Research Fellow, Competitive Enterprise Institute.
MATTHEW KANDRACH,
President, Consumer Action for a Strong Economy.
YAËL OSSOWSKI,
Deputy Director, Consumer Choice Center.
DAVID H. SAFAVIAN,
Executive Vice President and General Counsel, CPAC.
DAVID WALLACE,
Founder, FAIR Energy Foundation.
PHILLIP L. BELL,
Director of External Relations, FreedomWorks.
GEORGE LANDRITH,
President, Frontiers of Freedom.
JAMES TAYLOR,
President, The Heartland Institute.
CAMERON SHOLTY,
Executive Director, Heartland Impact.
RYAN WALKER,
Executive Vice President, Heritage Action.
DAVID R. HENDERSON,
Hoover Institution, Stanford University.†
ANDREW LANGER,
President, Institute for Liberty.
TOM GIOVANETTI,
President, Institute for Policy Innovation.
IKE BRANNON,
Jack Kemp Foundation.†
ALFREDO ORTIZ,
CEO, Job Creators Network.
CHARLES SAUER,
President, Market Institute.
PATRICK MCLAUGHLIN,
Mercatus Center, George Mason University.†
PETE SEPP,
President, National Taxpayers Union.
JOHN TAMNY,
President, Parkview Institute.
KAREN KERRIGAN,
President & CEO, Small Business & Entrepreneurship Council.
STEPHEN MOORE,
Co-Founder, Unleash Prosperity Now.
NORM SINGLETON,
Senior Fellow, U.S. Policy.
JAMES L. MARTIN,
Founder/Chairman, 60 Plus Association.
SAULIUS "SAUL" ANUZIS,
President, 60 Plus Association.

† Organization listed for identification purposes only

Letter of April 22, 2024, to Hon. Michael S. Regan, Administrator, Environmental Protection Agency, from Herman Haksteen, President, Private Railcar Food and Beverage Association et al., Submitted for the Record by Hon. Troy E. Nehls

Submitted Electronically

APRIL 22, 2024.

The Honorable MICHAEL S. REGAN,
Administrator,
U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW; 1101–A, Washington, DC 20460.

Re: Docket ID No. EPA–HQ–OAR–2023–0574

DEAR MR. ADMINISTRATOR,

The Private Railcar Food and Beverage Association, American Forest and Paper Association, Consumer Brands Association, Freight Rail Customer Alliance, National Coal Transportation Association, National Industrial Transportation League, and Western Coal Traffic League (otherwise referred to as "Joint Associations"), is pleased to submit these comments on the California Air Resources Board's (CARB) request for U.S. Environmental Protection Agency (EPA) authorization of its In-Use Locomotive Regulation (Regulation) in the above-referenced docket.

We urge EPA to deny CARB's request. As major transportation stakeholders and some of the largest users of freight rail, Joint Associations' members are extremely concerned that the rule is both technically and economically infeasible, and therefore inconsistent with Clean Air Act (CAA) requirements. In addition, the Regulation is clearly preempted by the ICC Termination Act, 49 U.S.C. §§ 10101 et seq (ICCTA) as the Regulation would greatly interfere with rail transportation.

The Private Railcar Food and Beverage Association (PRFBA) is comprised of 16 global food and beverage companies and manufacturers, headquartered in North America. These members include Frito-Lay (PepsiCo), Molson Coors Beverage Company, KraftHeinz Food Company, General Mills, Inc., McCain Foods USA, Inc., Nortera Foods/Bonduelle Americas, Tropicana Brands Group, Boardman Foods, Inc., G3 Enterprises, Inc., JD Irving/Cavendish Farms, Simplot, Lamb Weston Holdings, Inc., Univar Solutions, Land O' Lakes, Inc., National Sugar Marketing, LLC, and Leprino Foods. All are major rail shippers that rely on the railroads to produce and distribute their food and beverage products that are vital to the health and welfare of our nation and essential to feeding its citizens. Without adequate rail service, their food and beverages will not be on American store shelves.

Moreover, PRFBA members all own or lease railcars. As such, they absorb costs associated with equipment ownership, operation, and maintenance. This regulation would greatly affect the ability to fully utilize PRFBA members' rail cars. If there is a shortage of locomotives, this would result in "parking" these railcar assets which is seldom a wise financial decision. PRFBA members invest millions of dollars in rail cars.

The American Forest and Paper Association (AF&PA) is comprised of small, medium and large companies in rural and urban communities across the country making roughly 87% of the pulp, paper, paper-based packaging and tissue products made in the United States.

The Consumer Brands Association (CBA) champions the industry that makes the products you choose and the brands you trust. From household and personal care to food and beverage products, the consumer packaged goods industry plays a vital role in powering the U.S. economy, contributing $2 trillion to U.S. GDP and supporting more than 20 million American jobs.

The Freight Rail Customer Alliance (FRCA) is an umbrella membership organization that includes large trade associations representing more than 3,500 electric utility, agriculture, chemical, and alternative fuel companies, and their consumers. The mission of FRCA's growing coalition of industries and associations is to obtain changes in Federal law and policy that will provide all freight shippers with reliable rail service at competitive prices.

The National Coal Transportation Association (NCTA), is a non-profit corporation comprised of electric utilities, coal producers, shippers of coal-related commodities, and entities that produce, repair, and manage all facets of railcar component parts and systems, as well as provide services for railcar operations. Its primary purpose is to promote the exchange of ideas, knowledge, and technology associated with the transportation and beneficial uses of coal.

Founded in 1907, the National Industrial Transportation League (NITL) , has been a trade association representing The Voice of the Shipper across truck, rail,

intermodal, ocean, and barge. NITL members represent a wide variety of commodities and businesses, who rely on efficient, competitive, and safe marine, rail, and highway transportation systems within the United States and beyond to meet their supply chain requirements and the needs of their customers. NITL's shipper members include those who move consumer goods, manufacturers, agriculture, chemicals, steel, forest products, fuels, food and more. NITL's 200 members spend billions on freight dollars annually and employ millions of people.

The Western Coal Traffic League (WCTL) was founded in 1977. It is comprised of consumers of coal products produced from United States mines located west of the Mississippi River.

The CARB rule would ban most locomotives more than 23 years old starting in 2030. It would require new passenger, switch, and industrial locomotives to be zero emissions beginning in 2030 and require new line-haul locomotives to be zero emissions beginning in 2035. However, no commercially viable technology exists today for zero emission locomotives for line haul service.

The CARB rule would require dramatic advances in locomotive technology. It would also require sweeping upgrades to the nation's electrical transmission system and interconnection permitting process that we believe are infeasible by the implementation deadlines. These issues raise serious concerns that the CARB regulation violates the CAA. As discussed in EPA's February 27, 2024, Federal Register Notice (89 FR 14484), EPA has previously held that state standards and enforcement procedures are inconsistent with section 202(a) of the CAA if "there is inadequate lead time to permit the development of the necessary technology, giving appropriate consideration of the cost of compliance within that time." Following the precedent of these previous decisions, EPA should deny authorization of the CARB requirements.

The Joint Associations strongly support a uniform federal regulatory framework for the nation's freight rail network. Allowing California and other states to adopt unique rules governing locomotives would be contrary to the ICC Termination Act of 1995, which largely preempts local or state laws that have a regulatory impact on railroads. If the CARB regulations were authorized by EPA, we believe freight rail carriers and their rail customers, including the respective members of the Joint Associations, would be significantly hindered financially and operationally. The inevitable increases in transportation costs and introduction of operational inefficiencies for shippers and receivers, especially for those who are rail-dependent or captive, would also result in further inflation. For these and other reasons, we believe there is substantial merit to the claims by the Association of American Railroads and the American Short Line and Regional Rail Association in their pending legal challenge of the rules in the U.S. District Court for the Eastern District of California that all or a significant part of CARB's regulations are preempted by 49 U.S.C. §10501(b), which gives the Surface Transportation Board ("STB") exclusive jurisdiction over the operations and other activities of freight railroads in interstate commerce, and as written preempts all state and federal laws that are in conflict. The District Court affirmed the legitimacy of the railroads' preemption arguments in an order issued February 16, 2024.

The Ninth Circuit Court of Appeals (Court) in *Ass'n of Am. R.Rs. v. S. Coast Air Quality Mgmt. Dist. (AAR)*, 622 F.3d 1094 (2010), has already held that idling rules and related reporting requirements that "apply exclusively and directly to railroad activity" were "plainly" preempted by the ICCTA. 622 F.3d at 1098. The Court explained that the ICCTA and STB precedent preserve a potential role for state and local environmental regulators, but it is limited: (1) state and local agencies may promulgate "EPA-approved statewide plans" under the CAA, which are sometimes "possible to harmonize with ICCTA," or (2) state and local regulators may "enforce their generally applicable regulations in a way that does not unreasonably burden railroad activity." *Id*. Here, no "EPA-approved" Statewide Implementation Plan is at issue. The provisions of the "In-Use *Locomotive* Regulation," Cal. Code Regs., tit. 13, § 2478 (emphasis added), are not "generally applicable regulations," *AAR*, 622 F.3d at 1098. Thus, under *AAR*, categorical preemption cannot be avoided merely because the Regulation is intended to address air pollution. As in *AAR*, the provisions here apply "exclusively and directly to railroad activity" and "have the effect of managing or governing rail transportation." 622 F.3d at 1098 (quotation marks omitted); *see also Delaware v. STB*, 859 F.3d 16, 22 (D.C. Cir. 2017) (*Del.*) (upholding the STB's determination that locomotive idling rules were categorically preempted because the law directly and exclusively "regulates rail transportation by prohibiting locomotives from idling in certain places at certain times").

In applying ICCTA categorical preemption, courts ask if the specific "statutes or regulations" at issue target railroad operations. *Del.*, 859 F.3d at 19, 22. Thus, in *AAR*, the Court held that "rules" imposing idling and reporting requirements "plain-

ly" were not of "general applicability," 622 F.3d at 1098, even though the South Coast "regulated numerous sources of pollution" other than locomotives.

The ICCTA preempts state laws "with respect to *the regulation* of rail transportation," 49 U.S.C. § 10501(b)(2) (emphasis added), and courts have reasoned that when laws of general applicability are enforced against railroads—e.g., "standard building, fire, and electrical codes"—the incidental impact on railroads is different than direct regulation. But there is nothing remote or incidental about the Regulation's effect on rail transportation. The provisions at issue apply "exclusively and directly to railroad activity" and govern how railroad operators must engage in railroad transportation in California. *AAR*, 622 F.3d at 1098.

Allowing this Regulation would subvert the ICCTA's core objective of "national uniformity in laws governing rail transportation." The STB has explained that nonfederal rules regulating locomotive idling and imposing reporting obligations would "directly interfere" with the purpose of the ICCTA by subjecting railroads "to fluctuating rules as they cross state lines." *U.S. EPA, Petition for Declaratory Order*, No. FD 35803, 2014 WL 7392860, at *6, *8 (S.T.B. Dec. 29, 2014) (describing locomotive idling rules adopted or considered by other states). If ICCTA categorical preemption evaporated whenever a state imposed supposedly analogous regulations on another industry, the railroad regulatory scheme would devolve into a balkanized system of state-by-state regulations—precisely what Congress sought to avoid by prioritizing "the uniformity of Federal standards." H.R. Rep. No. 104–311, at 96 (1995).

In addition to the significant legal issues here, compliance costs and supply chain reliability are at stake for rail shippers and their customers across the country. Rail carries about 40 percent of long-distance freight in the U.S. While this regulation is ostensibly imposed within California, the impact of this costly and burdensome regulation will be felt nation-wide. It is estimated that railroads will need to deposit up to $800 million per year in a "Spending Account" for purchase and testing of zero-emission equipment that does not exist or is viable. This compliance cost alone is estimated to increase costs to customers by $14 billion for just one Class I railroad. These costs of course will be passed on to customers, including those respective members of the Joint Associations.

Further, the Joint Associations are concerned that the "Spending Account" provisions of the rule would impose significant financial burdens on railroads, which may be untenable for some short line railroads. If these carriers are unable to continue operations, it could create additional supply chain disruptions and negatively impact large segments of the economy, including manufacturers, farmers, and energy producers. Short line railroads handle 20 percent of rail cars at origin and destination and are a critical link for manufacturers and other businesses to access the national rail network. Short line railroads in California and railroads in other states that could subsequently adopt the California standards cannot absorb the costs to upgrade locomotive fleets and other compliance costs associated with this regulation, potentially leaving customers along any routes that go out of service without access to this mode of transportation. At worst, investments in other critical network upgrades or projects benefiting the environment will be diverted in order to pay for compliance with this regulation.

In addition to the compliance costs, this standard threatens rail reliability by forcing adoption of unproven technology to power locomotives. Since the COVID–19 pandemic, the nation has seen the mess resulting from, and costs associated with, supply chain delays and disruptions.

Voluntarily introducing unproven and potentially unreliable technology into this critical portion of the transportation sector is inviting future costly and time-wasting supply chain disruptions that can be entirely avoided by rejecting CARB's authorization request.

The Joint Associations strongly oppose EPA granting CARB's request. We urge EPA to carefully consider the feasibility of the CARB rule as well as its potential impacts on freight shippers that rely on rail service to deliver essential products throughout the nation.

Thank you for your consideration of our comments.

Sincerely,

HERMAN HAKSTEEN,
President, Private Railcar Food and Beverage Association.

JULIE LANDRY,
Vice President, Government Affairs, American Forest & Paper Association.

THOMAS MADRECKI,
Vice President, Campaigns & Special Projects, Consumer Brands Association.

ANN WARNER,
Spokesperson, Freight Rail Customer Alliance.

JOHN WARD,
Executive Director, National Coal Transportation Association.
NANCY O'LIDDY,
Executive Director, National Industrial Transportation League.
BETTE WHALEN,
President, Western Coal Traffic League.

Letter of July 9, 2024, to Hon. Troy E. Nehls, Chairman, and Hon. Frederica S. Wilson, Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials, from Michael W. Johnson, President and Chief Executive Officer, National Stone, Sand, and Gravel Association, and Robert Dugan, President and Chief Executive Officer, California Construction and Industrial Materials Association, Submitted for the Record by Hon. Troy E. Nehls

JULY 9, 2024.

The Honorable TROY E. NEHLS,
Chairman,
Subcommittee on Railroads, Pipelines, and Hazardous Materials, Washington, DC 20515.

The Honorable FREDERICA WILSON,
Ranking Member,
Subcommittee on Railroads, Pipelines, and Hazardous Materials, Washington, DC 20515.

Dear Chairman Nehls and Ranking Member Wilson:

Ahead of the Railroads, Pipelines, and Hazardous Materials Subcommittee's July 9th Hearing entitled "*An Examination of the California Air Resources Board's (CARB) In Use Locomotive Regulation*" we write on behalf of the members of the National Stone, Sand & Gravel Association (NSSGA) and California Construction and Industrial Materials Association (CalCIMA), to express our concerns over the California Air Resources Board's (CARB) request for EPA authorization of its In-Use Locomotive Regulation.

The CARB rule would ban most locomotives that are more than 23 years old starting in 2030. It would require new passenger, switch, and industrial locomotives to have zero-emissions beginning in 2030 and new line-haul locomotives to have zero-emissions beginning in 2035. However, no commercially viable technology exists today for zero-emission locomotives for line haul service, making the petition unreasonable, arbitrary, and capricious. We are concerned that the rule is technically and economically infeasible, and therefore inconsistent with the Clean Air Act (CAA) requirements. We urge EPA to deny CARB's request.

Our organizations represent aggregates producers and those who manufacture equipment and services that support the construction industry. Our members are essential to the work of this country. Our members employ thousands of hard-working men and women, who are responsible for the essential raw materials found in every home, building, road, port, dam and public works project.

The CARB rule would require dramatic advances in locomotive technology. It would also require sweeping upgrades to the nation's electrical transmission system and interconnection permitting process that we believe is infeasible by the implementation deadlines. California lacks statutory authority for each of these endeavors.

These issues raise serious concerns that the CARB regulation violates the CAA. As discussed in EPA's Feb. 27, 2024, Federal Register Notice (89 FR 14484), EPA has previously held that state standards and enforcement procedures are inconsistent with section 202(a) of the CAA if "there is inadequate lead time to permit the development of the necessary technology, giving appropriate consideration to the cost of compliance within that time." Following the precedent of these previous decisions, EPA should deny authorization of the CARB requirements.

We are further concerned that the "Spending Account" provisions of the rule would impose significant financial burdens on railroads, which may be untenable for some short-line railroads who are often the first mile and last mile for critical commodities and have significant Impacts the interstate commerce they enable including critical infrastructure and essential consumer goods. If these carriers are unable to continue operations, it could create additional supply chain disruptions and negatively impact large segments of the economy, including construction materials producers. manufacturers, farmers, and energy producers.

We strongly support a uniform federal regulatory framework for the nation's freight rail network. Allowing California and other states to adopt unique rules governing locomotives would be contrary to the ICC Termination Act of 1995, which largely preempts local or state laws that have a regulatory impact on railroads. Furthermore, it would undermine the national framework that supports the interoperability of rail equipment across the network, potentially harming the reliability and efficiency of rail service for our industries.

Thank you for your consideration of our concerns. We urge EPA to carefully consider the feasibility of the CARB rule, as well as its potential impacts on freight shippers that rely on rail service to deliver essential materials throughout the nation.

Sincerely,

MICHAEL W. JOHNSON,
President and CEO, National Stone, Sand & Gravel Association.

ROBERT DUGAN,
President and CEO, California Construction & Industrial Materials Association.

cc: The Honorable Sam Graves
The Honorable Rick Larsen

Letter of April 22, 2024, to Karl Simon, Director, Transportation and Climate Division, Office of Transportation and Air Quality, Environmental Protection Agency, from Rob Benedict, Vice President, Petrochemical and Midstream, American Fuel and Petrochemical Manufacturers, Submitted for the Record by Hon. Troy E. Nehls

APRIL 22, 2024.

KARL SIMON,
Director, Transportation and Climate Division,
Office of Transportation and Air Quality, Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

RE: *California State Nonroad Engine Pollution Control Standards; In-Use Locomotive Regulation; Requests for Authorization, Docket ID No. EPA–HQ–OAR–2023–0574*

DEAR DIRECTOR SIMON:

The American Fuel & Petrochemical Manufacturers ("AFPM") asks the Environmental Protection Agency ("EPA") to deny the California Air Resources Board's ("CARB") request that EPA grant a waiver for CARB's In-Use Locomotive Regulation pursuant to section 209(e) of the Clean Air Act ("CAA").[1] As one of the largest users of freight rail, AFPM members would be directly impacted by these technically and economically infeasible regulations that are inconsistent with CAA requirements. The arbitrary and capricious regulation set forth by California threatens to dramatically slow national commerce and undermine the integrity of the integrated supply chain and the ability of railroads to meet demand.

AFPM members make the fuels and petrochemicals that make modern life possible and keep America moving. To produce these essential goods and bring them to market, AFPM members depend on safe and efficient rail transportation to move their feedstocks and products to and from refineries and petrochemical facilities. More than two and half million carloads of fuel and petrochemical feedstocks and products move by rail every year.

AFPM members are committed to environmental stewardship, and we support technology-neutral, free market solutions that provide consumer choice. However, AFPM opposes government electrification mandates that create an unlevel playing field and fail to achieve cost-effective emission reductions. We have serious concerns about the CARB petition and the impacts an EPA approval will have on the U.S. freight rail system and rail-dependent manufacturing sectors.

[1] *See* 89 Fed. Reg. 14484 (Feb. 27, 2024), "California State Nonroad Engine Pollution Control Standards; In-Use Locomotive Regulation; Requests for Authorization." EPA–HQ–OAR–2023–0574–0001.

CALIFORNIA CANNOT, AND SHOULD NOT, DICTATE NATIONAL RAIL OR ENVIRONMENTAL POLICY

Congress intended that the federal government serve as the sole regulator in this sector. Federal statutes such as section 209(e)(1) of the Clean Air Act ("CAA") and the ICC Termination Act ("ICCTA") of 1995 make clear that approval of CARB's authorization request would be inappropriate and unlawful. A significant share of the locomotive fleet moves through California, meaning interstate and international commerce likely would be affected if railroads are forced to abide by a unique set of rules in California. Given the national scope and inter-connectedness of the U.S. rail system, it is unlikely trains will change locomotives at the California border without significant delays and other impacts on the national supply chain. EPA should reject this proposal that will harm supply chains by forcing transition to technologies that do not yet exist.

As acknowledged in EPA's February 27, 2024, Federal Register Notice (89 FR 14484), EPA has historically interpreted CAA section 209(e)(2)(A)(iii)'s "consistency" inquiry harmonious with other section 209 waivers' consistency requirements, meaning that these state standards and enforcement procedures must provide adequate "lead time to permit the development of the necessary technology, giving appropriate consideration to the cost of compliance within that time."[2] EPA must adhere to the statute and deny California's request for a preemption waiver, since it does not afford adequate lead time and does not appropriately consider the cost of compliance. These costs are ultimately born by all rail shippers and, by extension, the general public.

Further, California's request impacts the refining industry and numerous other industries beyond rail, and raises significant grid reliability issues and national security concerns. The U.S. does not have adequate supplies of the critical minerals and metal needed for the level of electrification caused by this and other CARB rules such as the Advanced Clean Cars II ("ACC II") regulations.[3] The forced electrification of the railroad industry is a major policy question that Congress has not directly authorized. CARB's request for authorization also raises other statutory and constitutional concerns, including conflicts with the import-export clause, privileges and immunities clause, full faith and credit clause, equal sovereignty doctrine, dormant commerce clause, regulatory takings, and dormant foreign affairs preemption doctrine.[4]

GRANTING THE REQUEST WOULD CREATE SIGNIFICANT SUPPLY CHAIN DISRUPTIONS

This regulation from CARB could significantly disrupt the supply chain for all sectors of the U.S. economy, especially manufacturers and shippers who rely on consistent, reliable rail service. It could lead to delays for businesses and increased costs for both shippers and consumers that could ultimately lead to a massive supply chain crisis. The locomotive technology and the infrastructure needed to power it are not available. Further, CARB's efforts to analyze these hurdles are insufficient and fall far short of overcoming the legal standard need to proceed.

For example, as the Rail Customer Coalition noted in their letter to this docket, a broad cross-section of manufacturing, agricultural, and energy industries that depend on the railroads to deliver reliable and affordable service are set to be negatively impacted. These industries are essential to a healthy U.S. economy, with operations and employees throughout the country collectively providing more than 7 million jobs and producing more than $4.8 trillion in economic output. CARB's request puts all these industries at risk.

THE REQUEST IS NOT FEASIBLE

The CARB rule would require dramatic advances in locomotive, and related, technologies on a timeline and scale that are not feasible. The CARB rule would ban most locomotives more than 23 years old starting in 2030. It would also require new passenger, switch, and industrial locomotives to be zero emissions beginning in 2030

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[2] *Ibid*.

[3] *See* "California Air Resources Board—Advanced Clean Cars II" All of AFPM's same concerns with ACC II apply to this rulemaking. *See generally* Final Brief for Private Petitioners, *Ohio v. EPA*, No. 22–1081 (D.C. Cir. April 20, 2023) (incorporated herein by the reference); *See* Comments Submitted by the American Fuel & Petrochemical Manufacturers on California State Motor Vehicle Pollution Control Standards; Advanced Clean Cars II Regulations; Request for Waiver of Preemption; Opportunity for Public Hearing and Public Comment, 88 Fed. Reg. 88,908 (Dec. 26, 2023), Docket ID EPA–HQ–OAR–2023–0292–0060.

[4] *See* U.S. Constitution Article I, Section 10, Clause 2; Article IV, Section 2; Article IV, Section 1; Amendment 10.4.3; Amendment 5; and Article I, Section 8, Clause 3

and require new line-haul locomotives to be zero emissions beginning in 2035. However, no commercially viable technology exists today for zero emission locomotives for line haul service, making the request unreasonable, arbitrary, and capricious.

It would also necessitate sweeping upgrades to the nation's electrical transmission system and interconnection permitting process that are infeasible by the implementation deadlines. Our current grid simply cannot support electrified locomotives in any appreciable way. According to the U.S. Department of Energy's National Transmission Needs Study, the national electric transmission infrastructure would need to grow 57% by 2035 to reach the Biden Administration's clean energy goals for light-, medium- and heavy-duty vehicles.[5] Yet at the historical pace of approximately 1% annual growth for these infrastructure projects, the transmission system could not support the requirements of this rule. In fact, more than half a century is needed for the Administration to achieve its stated goals for only light duty vehicles. This challenge is exacerbated by mandates to electrify multiple modes of transportation, coupled with permitting system that delays much needed power, mining, and charging projects for years if not decades.

California lacks statutory authority for each of these endeavors. Despite aggressive research and development and innovation in the rail sector and significant private investments, deployment of the technologies within the timeframe of this rule is unreasonable, arbitrary, and capricious.

THE IN-USE LOCOMOTIVE REGULATIONS ARE UNLAWFUL

The CAA preempts the In-Use Locomotive Regulations because they do not qualify for a waiver under section 209(e) of the Act. Under that provision, CARB cannot "adopt or enforce" these regulations until receiving a preemption waiver from EPA. Here, CARB acted prematurely and "adopted" the regulation before EPA issued a waiver. That said, EPA cannot grant California a preemption waiver if (1) CARB's determination regarding the In-Use Locomotive Regulations is arbitrary and capricious, (2) California "does not need" these regulations to meet "compelling and extraordinary conditions," or (3) California's standards and the accompanying enforcement procedures are not consistent with section 209 of the CAA, 42 U.S.C. § 7543.[6] CARB has not adequately shown these regulations are needed to address compelling and extraordinary conditions and that they are as protective as federal standards. CARB's failure to address issues of central relevance to the regulation renders its determination arbitrary and capricious.[7]

CARB failed to demonstrate it "needs" the In-Use Locomotive Regulations to address "compelling and extraordinary conditions." The state's local air pollution analysis was incomplete at best, and greenhouse gas ("GHG") emissions, by nature, are not a local problem. Despite generating 40% of the nation's long-distance freight by ton-mile, the locomotive sector accounts for a minuscule 0.6% of U.S. GHG emissions.[8] Section 209 was designed to address distinct localized problems, not global problems that are shared with the many other areas in the U.S. As such, California's request to address conditions related to global climate change cannot qualify for a section 209 waiver. Given how small a proportion of worldwide GHG emissions are represented by California's locomotive emissions, this regulation will have no discernible impact on GHG emissions or impacts on California and thus California cannot "need" this regulation.

Similarly, an exceedingly small portion of the California's nitrogen oxide and particulate matter emissions are attributed to trains.[9] Therefore, this Regulation cannot "address compelling and extraordinary conditions" related to criteria pollutants.

Finally, section 209(b)(1) mandates that California determine whether its proposed regulation is at least as protective of public health "*and*" welfare as applicable federal standards. CARB never conducted a full life cycle analysis of electric locomotive engines, nor did CARB conduct a comparative analysis as to why its proposed regulations option would accomplish public health goals more effectively than alternative scenarios, such as evaluating without considering alternative emissions reduction scenarios such evaluating the public health and welfare benefits of Tier 3 and Tier 4 standards for all locomotives.

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[5] *See* Department of Energy, Grid Development Office, "National Transmission Needs Study". Published October 30, 2023.

[6] *See* 42 U.S.C. § 7543(e)(2)(A)(i)–(iii).

[7] *See* 40 CFR Subchapter C Part 92.

[8] *See* Association of American Railroads, "Freight Railroads and Climate Change". March 2021.

[9] CARB's Criteria Pollutant Emission Inventory Data (2017) (see mobile and stationary source data). In addition, absent a true lifecycle assessment, CARB has not quantified the claimed benefits of this regulation.

Instead, CARB arbitrarily and capriciously concludes regulation set forth by California threatens to dramatically slow national commerce and undermine the integrity of the integrated supply chain at great cost and for limited environmental benefit, if any, particularly on a true lifecycle emissions basis. Finally, California's conditions related to global climate change are not "extraordinary."

CONCLUSION

Thank you for your consideration of these comments. AFPM strongly urges EPA to carefully consider the legality and feasibility of the CARB rule as well as its potential impacts on freight shippers that rely on rail service to deliver essential products throughout the nation.

Sincerely,

ROB BENEDICT,
Vice President, Petrochemical & Midstream,
American Fuel & Petrochemical Manufacturers.

Letter of April 5, 2024, to Hon. Michael S. Regan, Administrator, Environmental Protection Agency, from Agricultural Producers and Agribusinesses, Submitted for the Record by Hon. Troy E. Nehls

Submitted Electronically

APRIL 5, 2024.

The Honorable MICHAEL S. REGAN,
Administrator,
U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW; 1101–A, Washington, DC 20460.

Re: CARB's Clean Air Act Authorization Request (EPA–HQ–OAR–2023–0574)

DEAR MR. ADMINISTRATOR:

The undersigned groups representing agricultural producers and agribusinesses urge you to deny a request from the California Air Resources Board (CARB) for authorization of regulations that would target key aspects of the operation of freight locomotives in California. The proposed regulations would (1) levy annual fees on rail carriers for deposit in accounts that can only be used to comply with the regulations; (2) require the decommission of locomotives 23 years or older beginning in 2030 and require that new switch, industrial (used by rail customers) and passenger locomotives operate in zero-emission configuration (2035 for new line haul locomotives); (3) attempt to regulate locomotive emissions by requiring railroads to shut them down while in transit in certain circumstances; and (4) impose certain reporting and "administrative payments."

If the CARB regulations were authorized by EPA, we believe freight rail carriers and their rail customers would be significantly hindered financially and operationally. The inevitable increases in transportation costs and introduction of operational inefficiencies for agricultural shippers and receivers would result in food price inflation. For these and other reasons, we believe there is substantial merit to the claims by the Association of American Railroads and the American Short Line and Regional Rail Association in their pending legal challenge of the rules in the U.S. District Court for the Eastern District of California that all or a significant part of CARB's regulations are preempted by 49 U.S.C. §10501(b), which gives the Surface Transportation Board ("STB") exclusive jurisdiction over the operations and other activities of freight railroads in interstate commerce, and as written preempts all state and federal laws that are in conflict. The District Court affirmed the legitimacy of the railroads' preemption arguments in an order issued February 16, 2024.

Moreover, the proposed rules would require railroads and rail customers to meet regulatory goals that cannot be reached. Specifically, zero emissions locomotives would have to be purchased to replace the decommissioned locomotives, but such locomotives are not yet commercially viable and won't be in the foreseeable future.

Presumably, battery technology would need to be utilized to meet the zero-emission requirement. While battery powered locomotives have been tested, they are not presently commercially viable primarily due to a limited operating range.

In summary, we believe the proposed CARB regulations pose a significant danger to U.S. agriculture and the broader U.S. supply chain and that as written they are legally questionable. We therefore urge you to reject the request for authorization.

Thank you for your consideration of our concerns with CARB's request for authorization of its in-use locomotive regulation.

Sincerely,

NATIONAL ASSOCIATIONS

ADVANCED BIOFUELS ASSOCIATION.
AGRICULTURAL RETAILERS ASSOCIATION.
AGRICULTURE TRANSPORTATION COALITION—AGTC.
AMERICAN FARM BUREAU FEDERATION.
AMERICAN FEED INDUSTRY ASSOCIATION.
AMERICANHORT.
AMERICAN SOYBEAN ASSOCIATION.
CONSUMER BRANDS ASSOCIATION.
CORN REFINERS ASSOCIATION.
NATIONAL AQUACULTURE ASSOCIATION.
NATIONAL ASSOCIATION OF WHEAT GROWERS.
NATIONAL CATTLEMEN'S BEEF ASSOCIATION.
NATIONAL CHICKEN COUNCIL.
NATIONAL CORN GROWERS ASSOCIATION.
NATIONAL COTTON COUNCIL.
NATIONAL COUNCIL OF FARMER COOPERATIVES.
NATIONAL GRAIN AND FEED ASSOCIATION.
NATIONAL OILSEED PROCESSORS ASSOCIATION.
NATIONAL SORGHUM PRODUCERS.
NORTH AMERICAN MILLERS' ASSOCIATION.
NORTH AMERICAN RENDERERS ASSOCIATION.
PET FOOD INSTITUTE.
SOY TRANSPORTATION COALITION.
SPECIALTY SOYA GRAINS ALLIANCE.
THE FERTILIZER INSTITUTE.
USA RICE.

STATE/REGIONAL ASSOCIATIONS

AGRIBUSINESS COUNCIL OF INDIANA.
ALASKA FARM BUREAU.
ARIZONA FARM BUREAU FEDERATION.
ARKANSAS SOYBEAN ASSOCIATION.
ASSOCIATION OF CALIFORNIA EGG FARMERS.
CALIFORNIA FARM BUREAU.
CALIFORNIA GRAIN AND FEED ASSOCIATION.
CALIFORNIA POULTRY FEDERATION.
CALIFORNIA SEED ASSOCIATION.
CALIFORNIA WAREHOUSE ASSOCIATION.
COLORADO FARM BUREAU.
GRAIN AND FEED ASSOCIATION OF ILLINOIS.
IDAHO FARM BUREAU FEDERATION.
ILLINOIS FARM BUREAU.
ILLINOIS SOYBEAN ASSOCIATION.
INDIANA FARM BUREAU.
IOWA SOYBEAN ASSOCIATION.
KANSAS AGRIBUSINESS RETAILERS ASSOCIATION.
KANSAS FARM BUREAU.
KANSAS GRAIN AND FEED ASSOCIATION.
KENTUCKY SOYBEAN ASSOCIATION.
LOUISIANA FARM BUREAU FEDERATION.
MICHIGAN AGRI-BUSINESS ASSOCIATION.
MICHIGAN FARM BUREAU.
MICHIGAN SOYBEAN ASSOCIATION.
MID-ATLANTIC SOYBEAN ASSOCIATION.
MINNESOTA GRAIN AND FEED ASSOCIATION.
MINNESOTA SOYBEAN GROWERS ASSOCIATION.
MISSISSIPPI FARM BUREAU FEDERATION.
MISSISSIPPI SOYBEAN ASSOCIATION.
MISSOURI FARM BUREAU.
MISSOURI SOYBEAN ASSOCIATION.
MONTANA FARM BUREAU FEDERATION.
MONTANA GRAIN GROWERS ASSOCIATION.
MONTANA WHEAT & BARLEY COMMITTEE.
MT AGRICULTURAL BUSINESS ASSOCIATION.
NEBRASKA FARM BUREAU.
NEBRASKA SOYBEAN ASSOCIATION.
NEVADA FARM BUREAU FEDERATION.
NEW MEXICO FARM AND LIVESTOCK BUREAU.
NEW YORK FARM BUREAU.
NORTH CAROLINA FARM BUREAU.
NORTH DAKOTA AGRICULTURAL ASSOCIATION.
NORTH DAKOTA GRAIN DEALERS ASSOCIATION.
NORTH DAKOTA SOYBEAN GROWERS ASSOCIATION.
OHIO AGRIBUSINESS ASSOCIATION.
OHIO FARM BUREAU FEDERATION.
OHIO SOYBEAN ASSOCIATION.
OREGON FARM BUREAU.
PACIFIC COAST RENDERERS ASSOCIATION.
PACIFIC EGG & POULTRY ASSOCIATION.
PENNSYLVANIA FARM BUREAU.
SOUTH CAROLINA CORN & SOYBEAN ASSOCIATION.
SOUTH DAKOTA FARM BUREAU.
SOUTH DAKOTA SOYBEAN ASSOCIATION.
TENNESSEE FARM BUREAU FEDERATION.
TEXAS GRAIN AND FEED ASSOCIATION.
VIRGINIA FARM BUREAU.
VIRGINIA SOYBEAN ASSOCIATION.
WASHINGTON FARM BUREAU.
WISCONSIN AGRI-BUSINESS ASSOCIATION.
WISCONSIN FARM BUREAU FEDERATION.

CC: Senate Committee on Agriculture, Nutrition and Forestry
House Committee on Agriculture
Senate Committee on Commerce, Science, and Transportation

Senate Committee on Environment and Public Works
House Committee on Transportation and Infrastructure
Senate Committee on Health, Education, Labor and Pensions
House Committee on Energy and Commerce
The Honorable Tom Vilsack
The Honorable Pete Buttigieg
The Honorable Martin Oberman
The Honorable Karen Hedlund
The Honorable Robert Primus
The Honorable Patrick Fuchs
The Honorable Michelle Schultz

APPENDIX

QUESTIONS TO DILLON OLVERA, PRESIDENT AND CHIEF EXECUTIVE OFFICER, MODESTO AND EMPIRE TRACTION COMPANY, ON BEHALF OF THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION, FROM HON. TROY E. NEHLS

Question 1. In her testimony before the Committee, CARB Chief Arias claimed the CARB Rule's alternative compliance plans offer an opportunity for Class II and Class III operations to comply with the Regulation.

Are these options a viable alternative for Class II and Class III operations?

ANSWER. These options are not viable for the Modesto and Empire Traction Company (MET). My understanding is that there are two alternatives that are offered by CARB:

The first alternative is the Small Business Hardship Extension. This offers a 3-year extension from the initial compliance date for locomotive operators that fall under $5 million[1] in annual gross revenue. Given our current locomotive fleet and their remaining useful lives, this alternative would need to be between a 10 to 15-year extension to provide any benefit. During their rulemaking process, CARB failed to understand that most short line locomotives begin their service with our industry used, often already fifteen or more years old, and then we will use them for very long lifespans of many decades more. Because of this misunderstanding, the CARB requirements for equipment lifespans and this extension option were wholly inappropriate given the operational and economic conditions of short line railroads.

Because of the capital intensity of small railroads, the CARB revenue threshold for this option is likely to exclude many Class II and III operators who have greater revenue but with very slim margins typical of short line railroads. This is why the Small Business Administration (SBA) sets the federal size standard for small business short line railroads at 1,500 employees. For unknown reasons, CARB chose not to utilize this SBA threshold in crafting their rule and instead created their own revenue measure that is not appropriate given the economics of small railroads.

The second option is the Alternative Compliance Plan. This allows for regulated entities to receive credit towards the locomotive requirements by reducing the targeted emissions by taking other measures at their operations, which must occur within three miles of their locomotive operations, in the case of PM and NOX reductions. The MET does not possess any such assets where such a scale and type of emissions reductions could be achieved, and I don't believe many other Class II or Class III railroads possess such assets either.

Question 2. Businesses need to earn an adequate rate of return to justify the time, effort, risk, and opportunity costs of operating the business. Workers make similar judgments when looking for or changing jobs. Do you believe the bureaucrats that draft these regulations appreciate these realities? Do they acknowledge the inherent tradeoffs of their policies?

ANSWER. In my opinion, the CARB team failed to properly consider the economics of the small railroads that would be impacted during their regulatory impact assessment. They did not understand the scale of the costs their regulation would impose on small railroads, nor how those costs would impact those businesses' viability over the medium and long term.

Two key tradeoffs in benefits were not considered during CARB's analysis:

First, the regulation mandates a huge increase in investments in locomotives over historical costs that will displace years of spending on other valuable activities at railroads like ours. For example, investments will have to be commensurately re-

[1] Adjusted annually for inflation by the U.S. Consumer Price Index.

duced in areas like railroad track and grade crossing protection, which would otherwise improve safety for railroad workers and the public.

The second tradeoff not properly considered is the risk of diversion of rail traffic to truck. Especially for the smallest short line railroads, the cost burden imposed by the regulation—an order of magnitude over traditional motive power fleet capital costs—could result in line segments or even entire railroads becoming unprofitable. This could lead to a small railroad's freight traffic being shifted to truck, with the associated impacts in areas like road congestion and accidents, pavement damage and higher logistics costs for shippers.

I also believe that CARB's forecasts for adoption of zero-emissions truck technology are unrealistically aggressive. If my expectation turns out to be true, then the tradeoff of such a modal shift would be the impacts of a much greater emissions profile per unit of freight transported by diesel trucks instead of rail, multiplied by each 3–4 trucks replacing each railcar in trains transporting many railcars at a time.

Question 3. In your opinion, should issues of this scope and magnitude be considered as agency regulations? Specifically, should such a far-reaching regulation be subject to the Administrative Procedure Act?

ANSWER. I feel strongly that this issue is wholly a federal one. The only appropriate venue for government action on locomotive emissions should be a formal rulemaking process carried out by the Environmental Protection Agency. As argued in our industry's litigation[2] that is underway against CARB over their regulation, state action in this area is preempted by at least three provisions of federal law: the Interstate Commerce Commission Termination Act, the Clean Air Act, and the Locomotive Inspection Act. This preemption has been repeatedly upheld in decades of case law. Unfortunately there is a mechanism in the CAA that facilitates avoidance of elements of the Administrative Procedure Act that Congress intended to be applied to protect the public interest when significant rulemakings are carried out.

Question 3.a. Has agency use of waivers and guidance provided an end-run around normal rulemaking procedures? Are they being used to create loopholes in the rulemaking process?

ANSWER. The provisions of the Clean Air Act that enable California's stricter-than-federal emissions regulations to be "authorized" by the Environmental Protection Agency, and to subsequently be adopted by other states, in my opinion, do create a hugely problematic loophole.

Section 209(e)(2) of the Clean Air Act[3] establishes the California waiver process for nonroad engines, under which CARB has petitioned EPA for approval of their regulation. This will be the first time this has been tried with locomotives, but a sister provision, Section 177 of the CAA, governing road vehicle emissions, has been utilized for many authorizations. Those regulations have been subsequently adopted by many states, with tremendous resulting national impacts. The scale of the California market and the CAA authorization and state adoption process has been used repeatedly to de facto establish national standards for emissions without having to carry out a federal rulemaking process with associated safeguards, or to consider the federalism implications of the action.

Question 3.b. Can you detail the consequences of allowing an agency to circumvent the rulemaking process?

ANSWER. In the case of this CARB regulation, one consequence is that an agency action that would qualify as a major rulemaking[4] avoids the detailed scrutiny, public engagement, Congressional review and rigorous cost-benefit analysis that would accompany a formal rulemaking process. The impacts of the rule entering effect in California alone would trip this threshold, were it a formal rulemaking, and the ability for it to propagate to other states multiplies the impact potential. Because this is not a rulemaking, the Congressional Review Act requirements are not triggered. Among the protections established in law by Congress that are avoided are those under the Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act. These provisions are specifically designed to protect America's small businesses during the process of development of major rules, such as by enabling small business advocacy review panels between EPA, the Small Business Administration and OMB's Office of Information and Regulatory Affairs (OIRA). A for-

[2] Assoc. of American Railroads et al. v Liane Randolph et al. Case No. 2:2023cv01154 filed June 16, 2023 https://dockets.justia.com/docket/california/caedce/2:2023cv01154/429700

[3] 42 USC 7543(e)(2)

[4] In the case of the Congressional Review Act a rule anticipated to have an annual effect on the economy of $100m or more, among other criteria.

mal rulemaking process for a major rule also provides a more elaborate venue and extended process facilitating the participation of other agencies in the process. I noted that even for this informal authorization process by EPA, both SBA and the Surface Transportation Board did each file comments expressing serious concerns with the legal and practical implications of federal authorization of the CARB In-Use Locomotive Regulation.

Question 4. In your testimony, you provided an example of how Modesto Empire Traction Company had partnered with state entities to reduce its operational emissions. Now, this same state appears to be undoing that very same collaboration. Can you please elaborate on the status of this collaboration?

ANSWER. Beginning in 2008, the MET worked closely with California to apply for state grants. Nine of our 11 locomotives were upgraded from Tier 0 to Tier 3 due this work. There are three different grants in place today that have obligations that will be completed through 2032, yet the new regulation requires us to repower these locomotives to Tier 4 by 2030. In addition, the MET still has debt tied to these Tier 3 locomotives and made millions of dollars of our own investment into these locomotives with the expectation that they would be compliant in the state of California for 30–40 years after acquiring them.

MET has applied for funding for locomotive investments from the U.S. DOT's Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant program. If won, this grant would support repowering the MET's Tier 3 locomotives to Tier 4 to enable compliance with the new CARB regulation.

In my opinion, CARB, in their development of the regulation, did not consider the interplay of their regulation with previous public investments made to reduce locomotive emissions. Implementation of the regulation will result in the abandonment of these earlier improvements, which is a waste of tax dollars. CARB has taken a maximalist approach that fails to recognize the huge reductions in emissions that can be and have been achieved at short line locomotive fleets within the EPA tiers below Tier 4. The agency also failed to understand the economic realities of short line motive power investments. Short lines have always almost exclusively established their fleets by acquiring used locomotives on the secondary market. Even with public assistance, the match funding amounts alone that must be provided by the short line for repowers or acquisitions of the latest locomotives are still typically a multiple of the historical average used locomotive acquisition costs for these firms and are not achievable.

QUESTIONS TO ROGER NOBER, DIRECTOR, GW REGULATORY STUDIES CENTER AND PROFESSOR OF PRACTICE AT THE TRACHTENBERG SCHOOL OF PUBLIC POLICY AND PUBLIC ADMINISTRATION, GEORGE WASHINGTON UNIVERSITY, FROM HON. TROY E. NEHLS

Question 1. As discussed at the hearing, in 2005 CARB entered into a voluntary agreement with BNSF and UP to reduce emissions at rail yards.[1] The agreement stated: "The parties recognize that Participating Railroads are federally regulated and that aspects of state and local authority to regulate railroads are preempted."[2] It further stated, "the Federal Clean Air Act, the Interstate Commerce Termination Act and many other laws establish a uniform federal system of equipment and operational requirements."[3] CARB acknowledged Federal preemption in this agreement. When I asked CARB Chief Arias "what changed" she responded that the "technology changed."[4]

However, preemption determinations are not based on the availability of technology, nor do they compel adoption of new technology under Federal law. What Federal law is CARB relying on to support the request for authorization to supersede Federal preemptive law?

ANSWER. I am not aware of any provision of the Interstate Commerce Act, the Federal Clean Air Act or any other provision of federal law dealing with transpor-

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[1] Cal. Air Resources Board, ARB/Railroad Statewide Agreement: Particulate Emissions Reduction Program at California Rail Yards (June 2005), *available at* https://ww2.arb.ca.gov/sites/default/files/2020-06/2005%20MOU%20Remediated%2003102020.pdf.

[2] *Id.*

[3] *Id.*

[4] *An Examination of the California Air Resources Board's (CARB) In-Use Locomotive Regulation: Hearing Before the H. Comm. on Transp. and Infrastructure, 118th Cong.* (July 09, 2024), (statement of Heather Arias, Chief, Transportation and Toxics Division, California Air Resources Board).

tation where a determination of whether an action of a State is preempted depends on the availability or feasibility of the technology being imposed by such State. A preemption determination is predicated on whether the action being taken by the State falls within the zone of activities that were covered by the Federal assertion of preemption in the Federal statute. The availability or feasibility of technology is not a consideration.

Question 2. In your opinion, is this a climate rule masquerading as a hazardous emissions rule?

ANSWER. In my opinion, the principal reasons for CARB adopting this in use locomotive rule are related to CARB's desire to eliminate internal combustion engines in transportation. My opinion is based on CARB's actions and statements over the years as well as the statement at a meeting I attended when I was at BNSF by the former Chairman of CARB that the agency intended to eliminate internal combustion engines.

Question 3. During the hearing it was discussed whether CARB considered the full economic impact of the regulation, including secondary and tertiary impacts on supply chains. Ms. Arias responded, "[w]e did not do analysis of supply chains."[5] In your opinion, can you explain whether a policy of this magnitude be considered under the Administrative Procedure Act process?

ANSWER. In my testimony I discussed my strong belief that locomotive emissions regulation may only be done by the Environmental Protection Agency in a notice and comment rulemaking that would be subject to the Administrative Procedure Act and all other requirements that govern federal notice and comment rulemakings. It is particularly important that an action which will have significant national effects be done at the federal level, where all interested parties may comment and the federal agency reviewing the comments is legally required to consider all potential impacts, not just those on one particular state.

Question 4. In her testimony, Ms. Arias reiterated the claim that the In-Use Locomotive Regulation "are not regulating engine manufacturers".[6] Please elaborate on why this is a distinction without a difference.

ANSWER. Any locomotive that is purchased by a rail carrier, either passenger or freight, only has utility and value if it is used in revenue service. The CARB regulation, while not purporting to regulate engine manufacturers, attempts to create a *de facto* national use standard. Were such a standard to go into effect, then locomotive purchasers could only use locomotives that complied with the in-use standard and thus if a manufacturer wanted to sell any, it would need to sell use-compliant units. Importantly, part of CARB's analysis included discussions with locomotive manufacturers to ascertain the feasibility of such compliant locomotives, thus demonstrating the importance of manufacturers to the CARB proposal.

QUESTIONS TO HEATHER ARIAS, CHIEF, TRANSPORTATION AND TOXICS DIVISION, CALIFORNIA AIR RESOURCES BOARD, FROM HON. TROY E. NEHLS

Question 1. In response to a question from Representative Foushee concerning the state of zero emissions locomotive technology, you stated that catenary systems are a viable compliance option.

However, an analysis found that catenary systems would be prohibitively expensive and provides less pulling power than is necessary for Class I freight.[1] In addition, the electric grid in the State of California is already stretched and experiences frequent mandatory brownouts. The same analysis determined that the In-Use Locomotive Regulation will require California to invest between $780–$830 million or up to $2.1 billion in added power capacity just in California. As the rule is expected to require the industry to shift its entire locomotive fleet, according to CARB, this will result in similar costs incurred in other states. Any such build-out would require addressing difficult technological challenges and necessary permitting, which adds time frames measured in years.

ANSWER. The California Air Resources Board (CARB) disagrees with the premises of this question. For example, CARB disagrees that catenary rail would be prohibitively expensive or would provide inadequate pulling power. Catenary rail is used

[5] *Id.*
[6] *Id.*
[1] Brattle Memorandum, Review of CARB's Proposed Regulation, (Apr. 22, 2024) at 7, *available at* https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0574-0168.

throughout the world to move freight and, historically, was employed in many areas of the United States. The Brattle Memorandum referenced above relies on an outdated technology assessment. Current catenary technology powers trains with some of the heaviest hauls in the world.[2]

CARB also disagrees that California experiences frequent brownouts. California's energy grid has not experienced energy demand-driven outages in some time due in part to steps the state has taken to improve reliability including expanding its clean energy portfolio and increasing battery storage.[3] California's robust energy planning is discussed further below.

CARB also disagrees that the In-Use Locomotive Regulation (Locomotive Regulation) will require railroads to make changes outside of California.

Question 1.a. Has CARB considered whether the State's grid will have the capacity to serve the rail industry and other energy users?

ANSWER. Yes. As part of CARB's rulemaking process CARB prepared a Final Environmental Analysis for the Proposed In-Use Locomotive Regulation[4] addressing long-term operation-related impacts on energy within California. The analysis concluded that long-term energy impacts associated with the Regulation would be less than significant due to the forecasted increase in California's energy capacity.[5] California has robust planning processes in place to forecast energy demands and ensure grid reliability. These processes involve the utilities and their regulator (the California Public Utilities Commission), the California Independent System Operator that operates the part of the grid that serves most of California, the California Energy Commission (CEC), and CARB. A key part of these processes is the long-term forecast analysis conducted by the CEC, which plans for projected increases in demand and will include the energy demands of the Locomotive Regulation.[6]

Question 1.b. How has CARB accounted for the feasibility and logistics of power generation and grid construction capacity in formulating the In-Use Locomotive Rule?

ANSWER. The processes for energy forecasting and planning described above address the need for additional power generation and grid capacity for the Regulation, as they do for all anticipated changes in energy demand.

Question 1.c. How did CARB estimate the impact of this regulation on the State's broader economy-wide electrification strategy? Assuming CARB conducts such analysis, are they done in isolation according to each proposed policy or rule, or are they aggregated to measure impacts across the entire power network?

ANSWER. Again, California's processes for energy forecasting and planning described above comprehensively address present and future energy demands in the state, including demands from the Locomotive Regulation and other CARB regulations.

Question 2. During your testimony, you stated that CARB has been working with California Class III railroads on incentive and alternative compliance programs. But it is our understanding that this outreach to date has been minimal and that CARB employees have not visited many railroad sites to obtain valuable insight into short line operations.

Question 2.a. How many Class III railroad sites did CARB personnel visit during preparation of the Regulation?

ANSWER. CARB went to three railroad sites and held multiple virtual meetings with Class III operators to get their input on the Locomotive Regulation. Those meetings were generally virtual (rather than in-person) because of the COVID–19

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[2] See analysis by Moving Forward Network, *Support for Granting California's Authorization Request for the In-Use Locomotive Regulation, Docket No. EPA–HQ–OAR–2023–0574*, (Apr. 22, 2024), at 29–31, *available at* https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0574-0167.

[3] Daniel Dale and Ella Nilsen, *Fact check: Trump falsely claims California had 'blackouts all over the place this summer,'* (Nov. 4, 2023), *available at* https://www.cnn.com/2023/11/04/politics/fact-check-trump-california-blackouts-electricity-grid/index.html.

[4] CARB, Final Environmental Analysis for the Proposed In-Use Locomotive Regulation (April 14, 2023), *available at* https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/locomotive__final__ea.docx.

[5] *Id*. at 73–74.

[6] *See* California Energy Commission, Integrated Energy Policy Report—IEPR, last visited Aug. 9, 2024, *available at* https://www.energy.ca.gov/data-reports/reports/integrated-energy-policy-report. *See also* California ISO, Transmission Planning, last visited Aug. 9, 2024, *available at* https://www.caiso.com/generation-transmission/transmission/transmission-planning; Zero-Emission Vehicle Infrastructure Joint Statement of Intent, last visited Aug. 9, 2024, *available at* https://ww2.arb.ca.gov/sites/default/files/2023-04/ZEV%20Infrastructure%20Joint%20Statement%20of%20Intent%204-20-23%20final.pdf.

Pandemic. The California Short Line Railroad Association (CSLRA) and CARB also met virtually on multiple occasions. CARB also held four public workshops as it developed the Regulation. CSLRA and individual Class III railroads were invited to all of these and CSLRA and many Class III railroads attended.

CSLRA and its members were sent information about funding opportunities available through State and local government for zero emission rail. The CSLRA and other Class III operators were invited to a webinar for the Grant Orientation for Zero Emission Rail Operation (GO ZERO) program CARB started in November 2023 to assist Class III operators in obtaining federal grant funds. As a result, CARB has applied for federal funding on behalf of three Class III operators to replace 10 diesel locomotives with zero emission locomotives.

Question 2.b. Please describe your outreach plan to Class III railroads related to the In-Use Locomotive Regulation in California.

ANSWER. CARB has had communication with Class III operators and the CSLRA during the outreach and regulatory development phases of the Locomotive Regulation and after CARB Board approval. On April 27, 2023, the Board directed CARB staff to continue outreach efforts to ensure that affected industry are aware of the requirements of the Locomotive Regulation, with a focus on Class III and industrial operators, and available incentive funding opportunities. In response to this Resolution, CARB launched the GO ZERO program as discussed above, to help California's Class III and industrial operators adopt and use zero emission rail technologies with minimal costs. Additionally, each operator has been informed of the opportunity to meet with CARB staff individually to discuss funding and compliance pathways.

Question 2.c. It is unacceptable the short lines be forced to cease operations as a result of this regulation. Please explain how CARB will work with short lines who are not able to utilize the alternative compliance plans that are provided in the regulation.

ANSWER. CARB disagrees with the premise of the question. Moreover, due to the smaller size of their fleets, short lines would typically need to modify (or acquire, if the railroad so chooses) only a handful of locomotives to qualify for the Alternative Fleet Milestone Option. And, as stated, CARB has developed and provided a number of tools for railroads to identify potential grant funding opportunities to assist in meeting the requirements of the Locomotive Regulation. There are several examples of Class III railroads obtaining millions in grant funds to upgrade their older locomotives. For example, Watco received $15.7 million in federal funding through the 2023 CRISI program to convert eight Tier 0 locomotives into battery-powered ZE locomotives.[7] In addition, as of July, the Volkswagen (VW) Environmental Mitigation Trust for California has received applications to fund up to $1.6M per locomotive for the replacement of 35 diesel locomotives (27 pre-Tier 0, 1 Tier 1, and 7 Tier 3) with 19 Tier 4 and 6 zero emission locomotives. This year alone the VW Mitigation Trust and GO ZERO program will assist with the funds to replace 20% of all California short line locomotives. Thus, it is plausible that most short line railroads will be able to obtain the necessary funds to comply if they do not have sufficient funding. CARB is always willing to help any railroad identify funding opportunities that may be available to them.

Further, in the event that a short line railroad's annual gross revenues do not exceed $5 million, it can obtain relief from the Locomotive Regulation under the small business hardship exemption in the regulation.[8]

CARB anticipates that short lines with more than $5 million in revenues would have the resources to seek and obtain funding and/or otherwise comply with the Regulation through one of the various compliance paths. In the event an individual short line faces particularly difficult circumstances, CARB is always willing to discuss those circumstances with the short line, to advise on various compliance and funding options.

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[7] FY 2022 Consolidated Rail Infrastructure and Safety Improvement Program Selections: Project Summaries, accessed July 23, 2024, https://railroads.dot.gov/sites/fra.dot.gov/files/2023-09/FY%202022%20CRISI%20Program%20Selections%20-%20Project%20Summaries.pdf; *see also* Exeter gets on board with world's cleanest diesel trains, accessed July 23, 2024, https://thesungazette.com/article/news/2020/03/04/exeter-gets-on-board-with-worlds-cleanest-diesel-trains/.

[8] Cal. Code Regs., tit. 13, § 2478.14.

QUESTION TO HEATHER ARIAS, CHIEF, TRANSPORTATION AND TOXICS DIVISION, CALIFORNIA AIR RESOURCES BOARD, FROM HON. VINCE FONG

Question 1. In 2005, CARB entered into a voluntary agreement with BNSF and UP to reduce emissions at rail yards.[9] The agreement stated: "The parties recognize that Participating Railroads are federally regulated and that aspects of state and local authority to regulate railroads are preempted."[10] It further stated, "the Federal Clean Air Act, the Interstate Commerce Termination Act and many other laws establish a uniform federal system of equipment and operational requirements." CARB acknowledged Federal preemption in this agreement. When I asked "what changed," you responded that the "technology changed."

However, none of these laws base or limit preemption on technology, nor do they compel adoption of new emissions limits under Federal law. Section 209(e)(1) of the Clean Air Act explicitly precludes state or political subdivisions from adopting or attempting to enforce any standard or other requirement related to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this chapter, including new locomotives or new engines in locomotives.[11]

In addition, as CARB acknowledged as part of the 2015 Agreement, the Interstate Commerce Committee Termination Act "preempts all state laws that may reasonably have the effect of managing or governing rail transportation.[12] Mr. Roger Nober of the George Washington University Regulatory Studies Center noted as such in his written and oral testimony.[13]

CARB acknowledged as part of the 2015 Voluntary Agreement with BNSF and UP that state and local-based regulation of emissions is preempted under Federal law. From what source does CARB draw legal authority to negate Federal preemption of the In Use Locomotive rule?

ANSWER. Neither the text quoted in the referenced documents nor anything else in those documents establishes that CARB previously adopted the broad view of ICCTA preemption suggested by the question. As the quoted text indicates, CARB has previously indicated it understands that "aspects of state and local authority to regulate railroads are preempted." CARB has not changed this view; it still understands that ICCTA preempts certain state and local regulations. Nothing in those quotations or the referenced documents, however, indicates that CARB "acknowledged" that all state "regulation of emissions is preempted under Federal law."

Rather, the documents indicate that CARB understood it would face litigation risk if it sought to regulate locomotive emissions because the railroads would likely take the position that any such effort by CARB is preempted by ICCTA. Far from asserting that state-level regulation of locomotive emissions is always preempted, CARB noted that "neither the STB nor the courts have to date addressed the specific substantive matters included in the Agreement"—i.e., the emission control measures in the Agreement. CARB further noted the "likelihood of a legal challenge by the railroads" should CARB adopt regulations similar to the measures in the Agreement. Accordingly, CARB believed—at the time and in the circumstances present there—that the Agreement was preferable in order to achieve "immediate statewide emission reductions."

Two railroad trade associations have challenged the Regulation on ICCTA preemption grounds (among others). CARB has asserted its views in its filings in that case which are publicly available, one of which is attached hereto.[14] For example, CARB has noted that the Clean Air Act expressly preserves authority—subject to EPA authorization—for California to regulate emissions from non-new locomotives.[15] CARB declines to reiterate or expand on its views here, considering pending litigation.

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[9] *Id.*

[10] *Id.*

[11] 42 U.S.C. § 7543(e)(1); *see also*, 42 U.S.C. § 7543 (e)(1)(B).

[12] *Assoc. of Am. R.R. v. S. Coast Air Quality Mgmt.*, 622 F.3d 1094, 1098 (9th Cir. 2010).

[13] An Examination of the California Air Resource Board's (CARB) In-Use Locomotive Regulation, Hearing Before the Subcomm. on Railroads, Pipelines and Hazardous Materials of the H. Comm. on Transp. and Infrastructure, 118th Cong. (July 9, 2024), (Statement of Mr. Roger Nober).

[14] ECF No. 51–1, Case No. 2:23-cv-01154–DJC–JDP (E.D. Cal) at 26–33.

[15] 42 U.S.C. § 7543(e)(2) (describing authorizations available "[i]n the case of any nonroad vehicles or engines *other than those referred to in subparagraph (A) or (B) of paragraph (1)*) (emphasis added); *see also id.* § 7543(e)(1)(B) (addressing "*[n]ew* locomotives") (emphasis added).

[Editor's note: In response to Hon. Vince Fong's question, Ms. Heather Arias of the California Air Resources Board enclosed the following document, which is retained in committee files: ECF No. 51–1, Case No. 2:23-cv-01154–DJC–JDP (E.D. Cal) at 26–33 (46 pages total).]

QUESTIONS TO HEATHER ARIAS, CHIEF, TRANSPORTATION AND TOXICS DIVISION, CALIFORNIA AIR RESOURCES BOARD, FROM HON. HENRY C. "HANK" JOHNSON, JR.

Question 1. Ms. Arias, in your testimony, you highlight significant health benefits that is projected to reduce emergency room visits and hospitalizations by 1,500 cases related to respiratory illnesses and other health impacts caused by diesel particulate matter and nitrogen oxide emissions.

Can you elaborate on the strategies or provisions within the regulation are specifically targeted at mitigating the health impacts from diesel particulate matter and nitrogen oxide emissions, and how are these expected to contribute to reducing emergency room visits and hospitalizations?

ANSWER. The Locomotive Regulation is designed to reduce emissions from non-new locomotives operating in California. Locomotives generate significant emissions of PM2.5 and NOx, contributing approximately 650 tons per year (tpy) of PM2.5 and 30,000tpy of NOx in California.[16] Human exposure to diesel particulate matter and nitrogen oxides can cause heart and lung damage and lead to emergency room visits and hospitalizations. Reduction of emissions leads to less exposure, and thus less emergency room visits and hospitalizations. CARB estimates that these emissions reductions will prevent approximately 3,200 premature deaths, 1,100 hospital admissions and 1,500 emergency room visits in California.[17]

Question 2. In your testimony, you highlighted the significant role of locomotives as a source of criteria pollutants in California. This is particularly concerning as it affects vulnerable residential communities already highly impacted by nitrogen oxide (NOx) and toxic diesel particulate matter, for which there is no known safe level of exposure.

Could you elaborate on the specific impacts affecting marginalized communities and the comprehensive measures being implemented to mitigate pollution near railyards and similar facilities?

ANSWER. Over 90% of railyards in California are within one mile of at least one Disadvantaged Community defined by California Senate Bill 535. People living in Disadvantaged Communities experience unjust inequities and disproportionate pollution. Diesel exhaust emitted by locomotives can cause cancer in humans,[18] and people living closer to railyards experience higher diesel exhaust exposure and higher cancer risk.[19, 20] High diesel exhaust exposure is also linked to heart and lung disease.[21] Switcher locomotives operating in railyards are often the dirtiest, worsening the inequitable impacts to people living near railyards. Vibrations, noise pollution, and light pollution near railyards are also a significant concern.

Research shows that pollution exposures disproportionately impact people of color.[22] This inequity persists when looking specifically at rail activity. Communities with the highest pollution exposures from major railyards in California have larger proportions of people of color. This disproportionality was identified in previous studies looking at specific California railyards. For example, in Los Angeles County in 1980, around the time when a major railyard was being approved for construc-

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[16] CARB Initial Statement of Reasons for In-Use Locomotive Regulation, at 179–180, *available at* https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/isor.pdf.

[17] *Id*. at 25.

[18] International Agency for Research on Cancer, IARC: Diesel Engine Exhaust Carcinogenic, June 12, 2012. (Weblink: https://www.iarc.who.int/wp-content/uploads/2018/07/pr213_E.pdf)

[19] CARB, Initial Statement of Reasons Appendix H: Health Analyses for the Proposed In-Use Locomotive Regulation pp. 15–21, September 20, 2022. (Weblink: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/apph.pdf)

[20] CARB, Health Risk Assessment for the Four Commerce Railyards, November 30, 2007. (https://ww2.arb.ca.gov/sites/default/files/classic/railyard/hra/4com_hra.pdf)

[21] CARB, Initial Statement of Reasons Appendix H: Health Analyses for the Proposed In-Use Locomotive Regulation pp. 32–33, September 20, 2022. (Weblink: https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/locomotive22/apph.pdf

[22] Apte et al., A Method to Prioritize Sources for Reducing High PM2.5 Exposures in Environmental Justice Communities in California, November 21, 2019. (Weblink: https://ww2.arb.ca.gov/sites/default/files/classic/research/apr/past/17rd006.pdf)

tion, more than half of a nearby community consisted of people of color.[23] In comparison, Los Angeles County at that time was more than half non-Hispanic white. In San Bernardino, Hispanics/Latinos comprised more than 71% of people surveyed from a region that was on average 1.9 miles from a major freight railyard.[24]

CARB established the Community Air Protection Program (CAPP) to focus on reducing air pollution exposures in such EJ communities in response to Assembly Bill (AB) 617. This first-of-its-kind statewide effort includes community air monitoring and community emissions reduction programs. In addition, the Legislature appropriated funding to support early actions to address localized air pollution through targeted incentive funding to deploy cleaner technologies in these communities, as well as grants to support community participation in the AB 617 process. Out of the ten Assembly Bill 617 communities from the first year of this program, nine of them have rail activity as a contributing factor.

The Locomotive Regulation will significantly benefit marginalized communities, both broadly by reducing non-new locomotive emissions across California and specifically by creating incentives to operate ZE technology in Disadvantaged Communities.[25]

CARB has taken other steps to reduce pollution near railyards as well. The Advanced Clean Fleets regulation will work in conjunction with the Advanced Clean Trucks regulation to reduce emissions from drayage trucks operating at seaports and railyards. Amendments to the Transportation Refrigeration Unit (TRU) regulations will reduce particulate matter emissions and transition a portion of TRUs, which operate near railyards and ports, to zero emissions. Significant pollution reductions and health benefits will also be achieved by the Ocean-Going Vessel Fuel, Ocean-Going Vessel At Berth, Heavy-Duty Low NOx, Small Off-Road Engine, Commercial Harbor Craft, Advanced Clean Cars II, and In-Use Off-Road Diesel-Fueled Fleets regulations.

QUESTIONS TO HEATHER ARIAS, CHIEF, TRANSPORTATION AND TOXICS DIVISION, CALIFORNIA AIR RESOURCES BOARD, FROM HON. DOUG LAMALFA

Question 1. In questioning the scope of the CARB In-Use Locomotive Regulation, you stated that military traffic and shipments by rail are "exempt" from the regulation. You reiterated this point many times.

Although military owned and operated locomotives are exempted, military equipment is often transported across the country by commercial shippers, including Union Pacific and BNSF, that are most definitely not exempt from the In-Use Locomotive Regulation. In a national emergency, the military will contract with these private shippers to move millions of tons of military vehicles, armaments, and associated equipment via road and rail through California to airports and shipping ports for deployment. As equivalent zero emission locomotive technology does not exist, this would have very negative ramifications for our national security. CARB's own analysis determined that the Regulation would impact the nationwide fleets of BNSF and Union Pacific.

Question 1.a. Given this reality, does CARB stand by its claim that all military rail traffic is exempted?

ANSWER. Military locomotives are exempt from the Locomotive Regulation, and it will not affect military rail traffic in a national emergency. While military rail traffic served by private operators is not explicitly listed as an exemption, the Locomotive Regulation has flexibility that would allow for emergency military rail traffic to continue without requiring the operator transporting the military cargo to meet Locomotive Regulation requirements. Please see part b below for details.

Question 1.b. How would CARB exempt military rail shipments moving on private carriers from the Regulation?

ANSWER. Operators carrying military rail shipments during national emergencies and unable to comply with the Locomotive Regulation during this time would be able to obtain a Temporary Operating Extension under Section 2478.6(a)(2) of the regulation. Temporary Operating Extensions are available for emergency events beyond an operator's control, including, but not limited to, "fires, floods, earthquakes,

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[23] Hricko et al., Global Trade, Local Impacts: Lessons from California on Health Impacts and Environmental Justice Concerns for Residents Living near Freight Rail Yards, February 2014. (Weblink: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3945577/)

[24] U.S. Census Bureau., American Community Survey, 2012. (weblink: https://data.census.gov)

[25] *See* Cal. Code Regs., tit. 13, § 2478.4(g)(4).

embargoes, epidemics, quarantines, war, acts of terrorism, riots, strikes, or lockouts". National military emergencies would qualify as an emergency event beyond an operator's control.

Question 1.c. In the 2022 CARB Staff Report: Initial Statement of Reasons, CARB explained that it was "necessary to exempt military locomotives from the Proposed Regulation as it may limit military operators' ability to maintain surge capacity to respond to emergencies and security threats." Please elaborate on the specific technical findings by your agency that led you to conclude that the regulation could limit DOD's freight transportation capacity relative to the operational requirements that must be met by their locomotive fleet.

ANSWER. The Locomotive Regulation does not limit DOD's ability to respond to emergencies and security threats when it comes to freight transportation capacity. Please see part b above for details on how emergency military rail traffic does not need to meet In-Use Locomotive Regulation requirements.

Question 1.d. How many military locomotives in California fall under this exemption, and what EPA emissions tiers do those locomotives meet?

ANSWER. Data from the latest Military and Industrial Locomotive Emission Inventory shows there are 13 military locomotives operating in California. All 13 military locomotives are Pre-Tier 0.[26]

Question 1.e. During the development of the Regulation, did you consult with the Department of Defense (DoD) on the issue of military locomotives being subject to the Regulation? If so, please provide all communications with DoD on this issue.

ANSWER. As the DoD's military locomotives are categorically exempt under the Regulation, it was not necessary for CARB to discuss the details of the Regulation with DoD. DoD did not submit comments during any of the public comment periods for the Regulation or otherwise contact CARB regarding any concerns about the Regulation. DoD likewise did not submit comments during EPA's comment period on CARB's authorization request, although other federal agencies did so.

Question 1.f. Please provide a summary of CARB's understanding of the role that freight locomotives, subject to the regulation, play in the transportation of military cargo in California. Approximately what proportion of military cargo moving by rail in the state are carried by trains hauled by locomotives that are *not* exempt from your regulation? It is our understanding that a significant amount of military cargo moves on railroads that would be subject to this Regulation.

ANSWER. CARB understands that private freight operators may occasionally transport military cargo. However, quantitative information about military cargo in California and military cargo that private operators transport in California is not publicly available. Such information was not provided—either by DoD or any of the railroads who commented—during the public comment periods or pre-rulemaking outreach for the Locomotive Regulation. It is notable that, concerns about military cargo traffic were not raised by private rail operators who otherwise commented extensively on the Regulation. CARB would welcome any new information the railroads would like to provide—including quantitative information regarding military cargo transport—and would consider that information as appropriate and relevant.

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[26] CARB, 2022 Military and Industrial Locomotive Emission Inventory, July 2022. (Weblink: https://ww2.arb.ca.gov/sites/default/files/2022-07/2022%20MI%20Locomotive%20Emission%20Inventory%20Document%2007112022%20ADA%20Checked.pdf).