

Congress of the United States

Washington, DC 20515

May 14, 2024

The Honorable Joseph Goffman
Assistant Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Docket ID No. EPA-HQ-OAR-2023-0574

Mr. Goffman:

We write regarding California's request for authorization under section 209(e) of the Clean Air Act for its In-Use Locomotive Regulation (hereafter, "the regulation"). Last year, the California Air Resources Board (CARB) finalized the regulation with the intent of reducing emissions from the rail sector. In order for the regulation to go into full effect, CARB must first receive authorization from the U.S. Environmental Protection Agency (EPA). As you and your staff review this authorization request, we ask that EPA fully consider the supply chain, technological, and environmental implications associated with the regulation being authorized.

The regulation attempts to reduce emissions from the rail sector by preventing older locomotives from operating in the state of California. Starting in 2030, locomotives operating in California must be less than 23 years old based on the original manufacture date. In addition, starting in 2030 for locomotives operating within rail yards and 2035 for line haul locomotives, any new locomotive operating in California must operate in a zero-emissions (ZE) configuration. Presently, there are no commercially available freight locomotives that could comply with the ZE requirements of the regulation.¹ This calls into question the technological feasibility of the regulation. According to the Association of American Railroads' (AAR) recent response to a Request for Information from the U.S. Department of Energy on Rail Sector Decarbonization, one would need a battery capacity of 80 to 100 MWh to fully replace a diesel engine in a locomotive; however, the largest batteries being built for use in North America today hold less than 10 MWh of energy.² Combined with supply chain difficulties in acquiring the technology and the delays associated with obtaining the requisite environmental permits for the support infrastructure, it is unlikely that railroads would be able to comply with the regulation in the timelines envisioned.

The regulation also requires that railroads open 'spending accounts', and deposit funds based on the total emissions each locomotive releases in California in the prior year. Funds from this account could only be spent on ZE locomotives or supporting ZE infrastructure. According to estimates by AAR, the two Class I railroads (BNSF and Union Pacific) with operations in California would each be required to deposit up to \$800 million

¹ Comments of the Association of American Railroads Before the United States Department of Energy, Office of Energy Efficiency and Renewable Energy. Request for Information, # DE-FOA-0003186, Progression to Net-Zero Emission Propulsion Technologies for the Rail Sector, at 13.

² *Id* at 14.

annually.³ For context, BNSF anticipates spending \$3.9 billion on capital investments in 2024,⁴ while Union Pacific anticipates spending \$3.4 billion.⁵ With the required deposits amounting to over twenty percent of the planned annual capital expenditures for these Class I railroads, the regulation threatens other large scale projects envisioned by the railroads. For example, BNSF has announced plans to construct a new 4,500-acre state-of-the-art integrated rail facility in Barstow, California at a cost of over \$1.5 billion.⁶ This type of project, which will reduce highway and port congestion while maximizing rail and freight distribution efficiency regionally and across the U.S. supply chain, is in jeopardy if EPA grants authorization for the regulation.

Short line railroads would similarly be impacted by the regulation. While the estimates vary for short line railroads operating in California, the American Short Line and Regional Railroad Association anticipates that some short lines in California would be unable to pass along the compliance costs associated with the regulation and would therefore cease operations.⁷ It is clear the spending account provisions of the regulation would impose significant financial obligations on railroads of all sizes.

Railroads remain the most environmentally friendly method of transporting freight over land.⁸ Greenhouse gas (GHG) emissions from the rail sector account for less than two percent of the transportation related GHG emissions in the U.S. and approximately one-half of a percent of the total U.S. GHG emissions.⁹ Even so, railroads have committed to emissions reduction targets and have made correlating investments to reduce the impact their operations have on the environment and surrounding communities.¹⁰ Despite these positive steps, CARB's regulation has the potential to undermine the progress made by the railroads. Forcing the adoption of unproven technology could inadvertently move freight from the rail sector to heavy-duty trucking sector. With the trucking sector accounting for approximately ten times the amount of GHG emissions as the rail sector, any modal shift associated with EPA's approval of CARB's regulation could result in a net increase in emissions.

The regulation also has the potential to disrupt supply chains across the country. The freight rail industry operates as an interconnected network that spans over 144,000 track miles in the U.S., Canada, and Mexico. Freight rail operations are intrinsically an interstate form of transportation; for that reason, Congress has passed numerous statutes stating that regulation of the rail industry must occur at the federal level.¹¹ Federal-level regulation has enabled the railroads to interoperate, ensuring the overall fluidity of the freight rail network.

³ Association of American Railroads. *CARB's In-Use Locomotive Regulation Rule Will Hurt the American Economy* [Fact Sheet]. February 2024. <https://www.aar.org/wp-content/uploads/2024/02/AAR-CARB-EPA-Fact-Sheet.pdf>

⁴ BNSF Railway. (2024, January 24). *BNSF announces plan for 2024 capital investments*. <https://www.bnsf.com/news-media/news-releases/newsrelease.page?releid=bnsf-announces-plan-for-2024-capital-investments>

⁵ Union Pacific Railroad. (2024, February 21). *Union Pacific to Invest \$3.4 Billion in Capital for Safe Operations, Growth with Customers*. <https://www.up.com/media/releases/investing-safety-growth-nr-240221.htm>

⁶ BNSF Railway (2024). *Barstow International Gateway (BIG)*. <https://bnsfcalifornia.com/projects/barstow-international-gateway-big/>

⁷ American Short Line and Regional Railroad Association. (2023, May 1). *ASLRRRA Disappointed with CARB's Decision to Risk Short Line Viability in California* [Press Release]. <https://www.aslrra.org/aslrra/document-server/?cfp=aslrra/assets/File/public/news/2023/aslrra-disappointed-with-carb-decision-to-risk-short-line-viability-in-ca.pdf>

⁸ Association of American Railroads. *Freight Rail & Climate Change* [Fact Sheet]. February 2024. <https://www.aar.org/wp-content/uploads/2023/06/AAR-Climate-Change-Fact-Sheet.pdf>

⁹ U.S. Environmental Protection Agency. (2023, October 31). *Fast Facts on Transportation Greenhouse Gas Emissions*. <https://www.epa.gov/greenvehicles/fast-facts-transportation-greenhouse-gas-emissions>

¹⁰ *Supra* note 5.

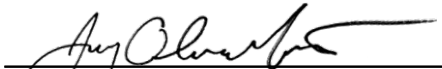
¹¹ See Clean Air Act section 209(e)(1) (42 U.S.C. 7543(e)(1)) and the ICC Termination Act of 1995 section 102 (49 U.S.C. 10502).

Attempts to create a ‘state-specific’ fleet, such as what California envisions with their regulation, would threaten interoperability.

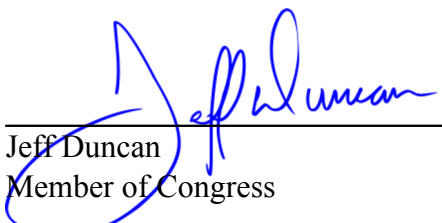
The impacts associated with EPA authorizing CARB’s regulation would only be the first wave, given that other states would then be allowed to adopt their own regulations. The operational requirements and spending account provisions would multiply across the states, further straining the budgets of the railroads and the negative impacts on supply chains. For these reasons, EPA must continue to be the sole regulatory authority on emissions from locomotives. Despite having the authority to regulate emissions from locomotives, EPA has not updated those regulations since 2008.¹² Rather than ceding regulatory authority to California on locomotive emissions, EPA should work collaboratively with industry to update those regulations if appropriate.

We appreciate the opportunity to weigh in on this important regulatory proceeding. The freight rail sector is vital to the overall health of the economy, and changes to the regulatory landscape such as those being considered here should be approached thoughtfully. As EPA determines whether to authorize this regulation, it is imperative that the environmental, technological, and supply chain ramifications are fully considered.


Sincerely,




Jay Obernolte
Member of Congress




Jeff Duncan
Member of Congress



John Joyce, M.D.
Member of Congress




Dan Newhouse
Member of Congress

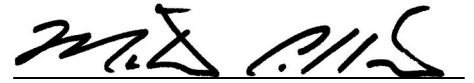


Troy E. Nehls
Member of Congress

¹² U.S. Environmental Protection Agency. (2024). *Regulations for Emissions from Locomotives*. <https://www.epa.gov/regulations-emissions-vehicles-and-engines/regulations-emissions-locomotives>



Neal P. Dunn, M.D.
Member of Congress



Mike Collins
Member of Congress



Darrell Issa
Member of Congress



A. Drew Ferguson IV
Member of Congress



Guy Reschenthaler
Member of Congress



Mariannette Miller-Meeks, M.D.
Member of Congress



Richard Hudson
Member of Congress



Morgan Luttrell
Member of Congress



Troy Balderson
Member of Congress



Michael Guest
Member of Congress



Lisa C. McClain
Member of Congress



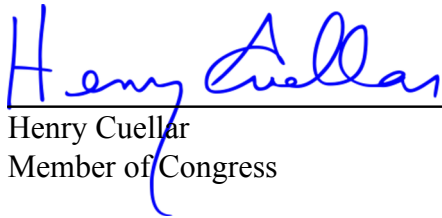
KEN CALVERT
Member of Congress



David G. Valadao
Member of Congress



Michael C. Burgess, M.D.
Member of Congress



Henry Cuellar
Member of Congress



Brett Guthrie
Member of Congress



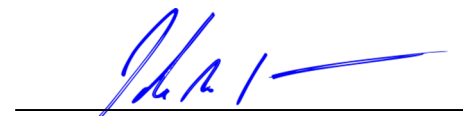
Lloyd Smucker
Member of Congress



Lance Gooden
Member of Congress



Ronny L. Jackson
Member of Congress



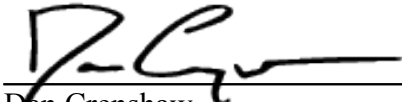
John R. Curtis
Member of Congress



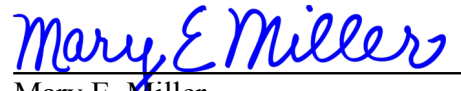
Tom McClintock
Member of Congress



Chuck Edwards
Member of Congress



Dan Crenshaw
Member of Congress



Mary E. Miller
Member of Congress



Michelle Steel
Member of Congress



Tim Walberg
Member of Congress



Pat Fallon
Member of Congress



John R. Moolenaar
Member of Congress



Burgess Owens
Member of Congress



Mike Carey
Member of Congress

Carol D. Miller

Carol D. Miller
Member of Congress

John S. Duarte

John S. Duarte
Member of Congress

Russ Fulcher

Russ Fulcher
Member of Congress

Randy K. Weber

Randy K. Weber, Sr.
Member of Congress

Kelly Armstrong

Kelly Armstrong
Member of Congress

Jen A. Kiggans

Jen A. Kiggans
Member of Congress

August Pfluger

August Pfluger
Member of Congress

Diana Harshbarger

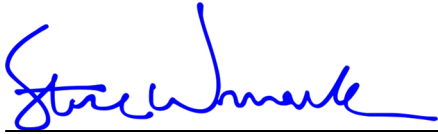
Diana Harshbarger
Member of Congress

Doug LaMalfa

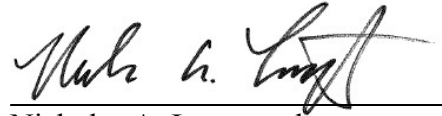
Doug LaMalfa
Member of Congress

Clay Higgins

Clay Higgins
Member of Congress



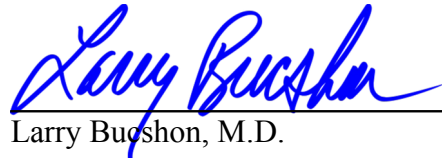
Steve Womack
Member of Congress



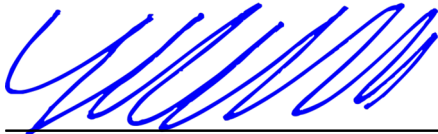
Nicholas A. Langworthy
Member of Congress



Rick W. Allen
Member of Congress



Larry Bucshon, M.D.
Member of Congress



Mike Garcia
Member of Congress



Robert E. Latta
Member of Congress



Kat Cammack
Member of Congress



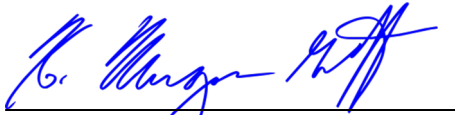
Young Kim
Member of Congress



Ron Estes
Member of Congress



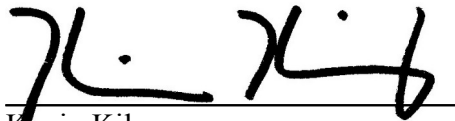
Greg Pence
Member of Congress



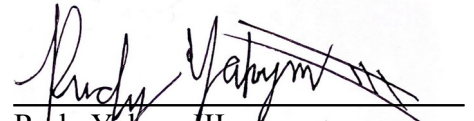
H. Morgan Griffith
Member of Congress



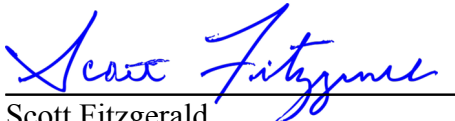
Gus M. Bilirakis
Member of Congress



Kevin Kiley
Member of Congress



Rudy Yakym III
Member of Congress



Scott Fitzgerald
Member of Congress



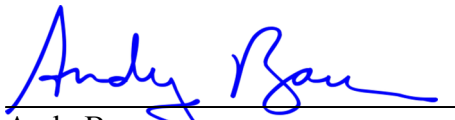
Dan Meuser
Member of Congress



Claudia Tenney
Member of Congress



Michelle Fischbach
Member of Congress



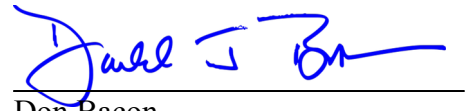
Andy Barr
Member of Congress



Jake LaTurner
Member of Congress



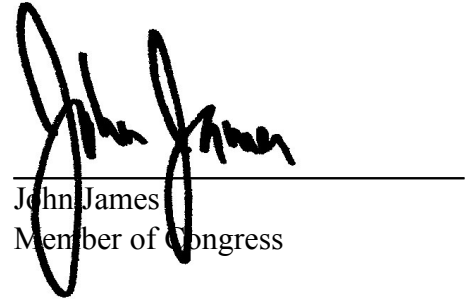
Gary J. Palmer
Member of Congress



Don Bacon
Member of Congress



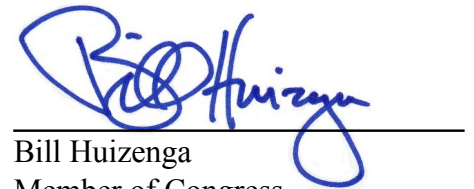
Mike Ezell
Member of Congress



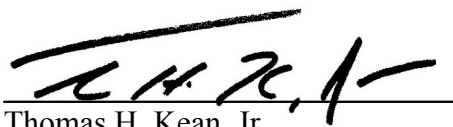
John James
Member of Congress



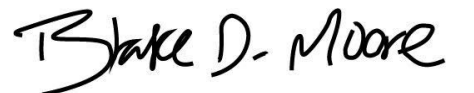
Debbie Lesko
Member of Congress



Bill Huizenga
Member of Congress



Thomas H. Kean, Jr.
Member of Congress



Blake D. Moore
Member of Congress



John H. Rutherford
Member of Congress