

GUEST COLUMN

Turning from roads to rails: CARB approves In-Use Locomotive Regulation

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The In-Use Locomotive Regulation is the first of its kind in terms of state regulation of in-use locomotives. But the regulation faces challenges, including potential litigation over CARB's authority to regulate interstate railroad operations.

On April 27, the California Air Resources Board (CARB) approved the In-Use Locomotive Regulation, making California the first U.S. state to set emission reduction requirements for in-use locomotive fleets. This new regulation requires locomotive operators to set aside funds for reduced or ZE locomotive technologies and establishes fleet usage requirements based on emission levels. Requirements are scheduled to begin taking effect in 2024 with idling restrictions, and registration and reporting requirements. The new regulation accelerates CARB's push toward creating new standards for low-and zero-emission (ZE) transportation technologies in California fleets - even while these technologies are still under development.

Regulation of locomotive emissions

Locomotive emissions have historically been subject to federal regulation under the Clean Air Act (CAA) through emissions standards for new locomotives and new locomotive engines. Section 209(e) of the

CAA provides that state and local governments, including California, are prohibited from enforcing "any standard or other requirement relating to the control of emissions from ... new locomotives or new engines used in locomotives."

The U.S. Environmental Protection Agency (EPA) most recently updated federal locomotive emissions standards in 2008. Those standards created more stringent requirements for nitrogen oxides (NOx), particulate matter, and hydrocarbon emissions based on a Tiered system (Tiers 0-4) with Tier 4 locomotives being the newest and subject to the strictest requirements. In 2017, CARB petitioned EPA via letter, part of its push towards zero-emission transportation and more stringent emis-

sions requirements for vehicles operating within California. CARB requested that EPA increase standards for locomotives and cited concerns about environmental justice, public health impacts, and California's ability to meet state and federal emissions goals. Responding in November 2022, EPA committed to re-examine the current federal emissions standards and "undertake a notice and comment rulemaking process to reconsider [its] existing locomotive preemption regulations to ensure they don't inappropriately limit California's and other states' authorities under the CAA to address their air quality issues."

CARB meanwhile has proceeded with preparing its own requirement. While CARB has a long

history of regulating other in-use vehicle and equipment emissions - such as from trucks and off-road equipment - the new regulation is CARB's first attempt at regulating in-use locomotive emissions.

Who is CARB regulating?

The In-Use Locomotive Regulation applies state-wide to locomotive operators, operating in California. Those subject to the new regulation include operators of freight railroads (Class I, II, and III), industrial railroads, passenger railroads, and historic railroads. The two major categories of locomotives that operate on these railroads are switch locomotives (on and around railyards) and line haul locomotives (with more horsepower than switch locomotives).

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Locomotives not subject to the new regulation include those propelled by engines below a certain horsepower rating, locomotives used for educational purposes, and military locomotives, with additional exceptions for low-use historic railroads and small business operators.

What are the key components?

CARB's regulation sets requirements through the use of a mandatory spending account as well as in-use operational restrictions.

First, the rule requires locomotive operators to create a spending account by **July 1, 2024**. Operators will be required to deposit an annual amount based on the level of emissions created by their locomotive operations in California, and the funds will be used for upgrading to lower emitting locomotive technologies. Higher emission levels (as determined by the locomotive Tier) mean that more funds must be set aside, calculated via a funding formula. Until 2030, operators may take advantage of a credit program based on use of ZE and certain other locomotives, as well as apply spending account funds to purchase, lease, or rent

(or to remanufacture or repower) Tier 4 or cleaner locomotives. Beginning in 2030, spending account funds may be used only for specified ZE locomotives and related equipment.

Second, the rule establishes in-use operational requirements. In general:

Beginning in **2024**, a 30-minute idling limit takes effect (subject to specific exceptions). Reporting and recordkeeping requirements also take effect, which include reporting to CARB certain locomotive activity, emission levels, and idling data.

Beginning in **2030**, any locomotive 23 years or older (based on the original build or remanufacture date) is prohibited from operating in California.

Switch and passenger engines with an original build date after 2030 must be operated in a ZE configuration. Line haul engines with an original build date after **2035** must be operated in a ZE configuration.

Locomotive operators may satisfy requirements through direct compliance, or through either of two flexible alternatives with CARB's

approval. The alternatives are based on equivalent or greater emission reductions by the operator or by transitioning to a ZE fleet sooner than otherwise required.

Limited flexibility measures have been built into the regulation. These include temporary operating extensions, small business hardship extensions, and unavailability, manufacture and installation delay extensions. Extensions based on manufacturing delays may take center stage in coming years depending on the development of the ZE technologies that are the premise for this regulation.

The bigger picture

The regulation is one component of CARB's broader push toward zero emission transportation in California. Following the public meeting to approve the regulation (on April 27, 2023), CARB issued a press release quoting CARB Chair Liane Randolph, stating, "Locomotives are a key part of California's transportation network, and it's time that they are part of the solution to tackle pollution and clean our air." CARB has also recently issued other regulations that apply

to mobile sources such as trucks and off-road equipment. The day after CARB approved the In-Use Locomotive Regulation it approved the Advanced Clean Fleets regulation, which sets ZE requirements for heavy-duty trucks and other vehicles.

The In-Use Locomotive Regulation is the first of its kind in terms of state regulation of in-use locomotives. But the regulation faces challenges, including potential litigation over CARB's authority to regulate interstate railroad operations. And there are practical challenges too, as the regulation rests on the development of battery, hydrogen, and other ZE technologies keeping pace with CARB's schedule for a phased fleet transition.

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