ASSOCIATION OF
AMERICAN RAILROADS

Alice Koethe
Counsel – Environmental and Hazmat

March 19, 2018

Mary Nichols, Chair
California Air Resources Board
1001 "I" Street
Sacramento, CA 95814
Submitted via www.arb.ca.gov "freightfacilities18"

Re: AAR Comments on Informational Update on Concepts to Minimize the Community Health Impacts from Freight Facilities

Dear Chair Nichols and Boardmembers:

The Association of American Railroads ("AAR") and its members appreciate this opportunity to provide comments on the California Air Resources Board's ("ARB") consideration of potential actions to minimize emissions from freight facilities. AAR takes pride in freight rail's strong record of efficient and environmentally-friendly operations, and we look forward to collaborating with ARB to the extent possible. AAR's members have long worked successfully with federal and state agencies to achieve significant voluntary reductions in air pollution. AAR's members would like to help ensure that any new requirements are feasible, cost-effective, and within ARB's legal authority.

ARB is considering possible amendments to existing transportation refrigeration unit ("TRU"), cargo handling equipment ("CHE"), and drayage truck regulations, as well as new controls on non-preempted locomotives and idle emissions at rail yards. For the reasons described in the attached summary, AAR members urge ARB to take into consideration the areas where it is legally constrained and craft any proposed requirements so as to remain within ARB's areas of legal authority. We do not believe that the public interest would be well served by the adoption of regulations likely to be held legally invalid, and we would rather focus our attention on more collaborative and successful efforts.

Real progress has been achieved to date through the railroads' efforts to voluntarily reduce emissions. This progress came as the result of cooperative work and did not require direct regulation. AAR believes that this cooperative work should continue.

Sincerely,

Alice Koethe, AAR

Attachment

425 3rd Street SW; Ste 1000 I Washington, DC 20024 I **P** (202) 639-2509 I akoethe@aar.org

March 19, 2018

Attachment

Summary of Authority Concerns Regarding ARB's Proposed Actions

California's authority is limited when it comes to the regulation of railroads and rail operations. The United States Constitution enumerates interstate commerce as an area of federal authority. Railroads operate an interconnected national network, and state-specific rules and regulations would impermissibly burden interstate commerce. In the Interstate Commerce Commission Termination Act of 1995 (ICCTA), Congress affirmed this longstanding principle with the broad preemption standard of 49 U.S.C. § 10505(b). Under ICCTA, states cannot directly regulate or unduly interfere with rail operation or specifically target or discriminate against rail operations. Furthermore, the Clean Air Act expressly preempts states from adopting emission standards for new locomotives.

AAR has concerns that the scope of some of the possible actions being considered by staff directly target rail operations, could have the effect of limiting or impeding rail operations (or even preventing rail operation unless compliance with the regulation is achieved), and could thus constrain the regulatory flexibility accorded to rail operation under federal law.

ARB's Consideration of Amendments to the CHE, TRU and Drayage Truck Regulations

As you know, AAR's members voluntarily comply with ARB's CHE, TRU, and drayage truck regulations notwithstanding issues of preemption and ARB's authority to regulate in these areas. AAR's members have achieved substantial emissions reductions through their voluntary compliance and remain open to future discussions with ARB regarding possible rule amendments.

ARB's Consideration of Idle Reduction Regulations

Any proposals to directly regulate idling and locomotive air emissions constitute direct regulation of rail operations and are thus not permitted under federal law. Such regulations – which would directly and specifically target rail operations – would unquestionably impact timely and efficient rail operations both within and outside California, could force railroads to potentially delay or even cancel scheduled rail transportation that otherwise complies with federal regulations, and/or could compromise safety or other requirements of federal law concerning locomotive idling. Such regulations also could have the effect of creating *de facto* emissions requirements for new locomotives operated in California, another area categorically outside ARB's regulatory authority.

We would also note that locomotive idling rules cannot be adopted or enforced by local air districts. In fact, federal court and Surface Transportation Board decisions specifically prohibited the imposition of locomotive idling rules in the South Coast Air Quality Management District. *See AAR v. South Coast Air Quality Management Dist*., Case No. CV-06-01416-JFW (C.D. Cal. Apr. 23, 2007) (entering permanent injunction against SCAQMD prohibiting enforcement of locomotive idling rules), *aff'd*, 622 F.3d 1094 (9th Cir. 2010); Surface Transp. Bd., Decision (No. FD 35803), Dec. 30, 2014 (denying EPA petition for declaratory order and finding that locomotive idling rules would interfere with rail operations and directly conflict with the ICCTA and EPA's own locomotive regulations).

425 3rd Street SW; Ste 1000 **I** Washington, DC 20024 **I** **P** (202) 639-2509 **I** akoethe@aar.org