

**BEFORE THE
CALIFORNIA AIR RESOURCES BOARD**

**COMMENTS ON THE PROPOSED IN-USE LOCOMOTIVE
REGULATION**

**SUPPLEMENTAL COMMENTS OF
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

The American Short Line and Regional Railroad Association (“ASLRRA”), on behalf of itself and its member railroads, respectfully submits these follow-up comments on the California Air Resources Board’s (“CARB”) Proposed In-Use Locomotive Regulation (“Proposed Rule”).¹ ASLRRA previously submitted comments in response to the Proposed Rule.²

ASLRRA files these supplemental comments in order to correct a mischaracterization stated by CARB staff during the public hearing. It was stated that the Consolidated Rail Infrastructure and Safety Improvements (“CRISI”) Program provides an opportunity for \$1.4

¹ ASLRRA is an incorporated, nonprofit trade association representing the owners and operators of short line and regional freight railroads throughout North America. Short line railroads play a vital role in the transportation network, often providing the first-mile and/or last-mile connection between farmers, energy producers, manufacturers, industrial shippers of all stripes, and the national freight rail network. Approximately 25 short line railroads own (or lease) and operate locomotives within the state of California as part of the national freight rail network, giving ASLRRA and its members a significant interest in these proceedings.

² ASLRRA Comments, November 7, 2022. Available at www.arb.ca.gov/lists/com-attach/33-locomotive22-UjMAdVc6ACEHcwlo.pdf.

billion in federal grant money for railroads in California to transition to zero emission locomotives. This is incorrect.

The CRISI Program funds projects that improve the safety, efficiency, and reliability of intercity passenger and freight rail.³ ASLRRA welcomed the 2022 Notice of Funding Opportunity (“NOFO”) for the CRISI Program, announced at \$1.4 billion, over four times the resources in 2021, and the highest amount ever provided.⁴ Enabled by the Bipartisan Infrastructure Law, the CRISI Program will also accelerate progress in building up infrastructure resilience and strengthening the supply chain, which in turns makes it less expensive to transport goods. As aptly stated by U.S. Department of Transportation Secretary, Pete Buttigieg, “freight rail is a critical part of our supply chains, and when shipping costs come down, families pay less for goods.”⁵

However, it is mischaracterization to say, as was shared by the CARB staff, that the entire \$1.4 billion announced in the CRISI NOFO can go towards new locomotives in California.

³ See Section 11301 of the Fixing America’s Surface Transportation (FAST) Act, Pub. L. 114-94 (2015); 49 U.S.C. § 22907. Funding under this program was made available by the Consolidated Appropriations Act, 2022, Div. L, Tit I, Public Law 117-103 (2022 Appropriation) and the advanced appropriation in the Infrastructure Investment and Jobs Act, Division J, Title II, Pub. L. 117-58 (2021). The FY 2022 CRISI NOFO also includes funds for eligible projects under the Magnetic Levitation Technology Deployment Program (Maglev Grants Program) authorized under and funded in the Consolidated Appropriations Act, 2021, Div. L, Tit I, Pub. L. 116-260 (2021 Appropriation), consistent with the language in section 1307(a) through (c) of Pub. L. 109-59 (SAFETEA-LU), as amended by section 102 of Pub. L. 110-244 (Technical Corrections Act) (23 U.S.C. 322 note).

⁴ 87 Fed. Reg. 54,278 (September 2, 2022).

⁵ FRA. (2022, September 1). *Biden-Harris Administration, USDOT Make an Unprecedented \$1.4 Billion in Rail Grants Available Through Bipartisan Infrastructure Law*. [Press release]. <https://railroads.dot.gov/newsroom/press-releases/biden-harris-administration-usdot-make-unprecedented-14-billion-rail-1>

Per the Federal Railroad Administration (“FRA”), projects eligible for funding under this grant program include, but are not limited to:⁶

- Deployment of railroad safety technology;
- Capital projects, as defined in section 49 U.S.C. § 24401(2) for intercity passenger rail service, except that a project under this NOFO is not required to be in a state rail plan;
- Capital projects that:
 - address congestion challenges affecting rail service,
 - reduce congestion and facilitate ridership growth along heavily traveled rail corridors, and/or
 - improve short-line or regional railroad infrastructure;
- Highway-rail grade crossing improvement projects;
- Rail line relocation and improvement projects;
- Regional rail and corridor service development plans and environmental analyses;
- Any project necessary to enhance multimodal connections or facilitate service integration between rail service and other modes;
- The development and implementation of a safety program or institute;
- The development and implementation of measures to prevent trespassing;
- Any research that the Secretary considers necessary to advance any particular aspect of rail related capital, operations, or safety improvements;

⁶ U.S. FRA, *Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program*, last updated October 28, 2022. Available at: <https://railroads.dot.gov/grants-loans/competitive-discretionary-grant-programs/consolidated-rail-infrastructure-and-safety-2>.

- Workforce development and training activities, coordinated to the extent practicable with the existing local training programs supported by the Department of Transportation, the Department of Labor, and the Department of Education;
- Research, development, and testing to advance and facilitate innovative rail projects;
- Preparation of emergency plans for communities where hazardous materials are transported by rail;
- ***Rehabilitating, remanufacturing, procuring or overhauling locomotives for emissions reduction (emphasis added);*** and
- Deployment of Magnetic Levitation Transportation Projects.

Also, the CRISI NOFO explained that there are funding amounts set-aside for a number of purposes including:⁷

- \$376 million for projects in rural areas
- \$150 million for projects that support the development of new intercity passenger rail service routes
- \$25 million for the development and implementation of measures to prevent trespassing
- \$2 million for the development of magnetic levitation transportation projects.

So, while projects that address rehabilitating, remanufacturing, projecting, or overhauling locomotives, provided that such activities result in a significant reduction of emissions are eligible to apply for funding under the CRISI Program, they are only one type of eligible project, among a lengthy list. Additionally, the federal share of total costs for any CRISI Program project funded under the NOFO shall not exceed 80 percent, with a preference to a proposed

⁷ 87 Fed. Reg. at 54,281.

project for which the proposed federal share does not exceed 50 percent.⁸ This cost-share provision can also be problematic for small railroads to engage in extremely ambitious projects, because, as we shared extensively in our comments, these small businesses often operate at often razor-thin margins.⁹ When coupled with the additional funding set-asides, it is completely incorrect and inappropriate to suggest that railroads can use \$1.4 billion in federal funds from the CRISI Program to upgrade their locomotives.

ASLRRA and its member railroads share CARB's goal of improving the air quality. Many of our member railroads participate in projects funded by the CRISI Program and others, including the Carl Moyer Memorial Air Quality Standards Attainment Program and the U.S. Environmental Protection Agency's Diesel Emission Reduction Act Funding. However, ASLRRA cautions CARB from assuming, based upon erroneous statements from its staff, that the CRISI Program or any other programs will provide short line railroads with all of the funds that they will need to move to zero emission locomotives.

ASLRRA urges CARB to either withdraw its Proposed Rule or completely exempt short line railroads from its requirements.

Respectfully submitted,



Sarah G. Yurasko
General Counsel
American Short Line and Regional Railroad Association
50 F Street NW Suite 500
Washington, DC 20001

November 18, 2022

⁸ Id. at 54,282 and 49 U.S.C. § 22907(e), *Project selection criteria*.

⁹ ASLRRA Comments, *supra* at 2.