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California Air Resources Board (CARB)
Board of Directors
1001 I Street
Sacramento, CA 95814
[Submitted via Comments to Board Website]

RE: Comments on Proposed In-Use Locomotive Regulation

Dear CARB Board of Directors:

I represent certain railroad operators that are currently evaluating their compliance options regarding the above-captioned regulation (the "Regulation"). Of particular concern is the interplay between the Regulation's Alternative Fleet Milestone Option ("AFMO") and the potential availability of Carl Moyer Program ("CMP") funding. The below comments and questions are timely and appropriate in that CARB has identified the availability of grant funding (item #12 in the Summary of Proposed Modifications) and changes to the AFMO provisions (item #50) as significant modifications to the regulation.

To assist my clients in their decision making, I would appreciate responses to the following questions:

1. In the Initial Statement of Reasons (page 56), CARB states regarding CMP funding, "On the date a regulation is approved by the Board, project life requirements for any new grants are altered: the project life must be entirely prior to the regulatory requirement." The phrase "the regulatory requirement" does not appear to be defined. What is meant by "the regulatory requirement" as it would apply to the AFMO? Since the AFMO has varying requirements for the years 2030, 2035, 2042 and 2047, does each of these years constitute a separate "regulatory requirement"?
2. The AFMO requires submittal to CARB of an application demonstrating how an operator will achieve each of the baseline milestones in years 2030, 2035, 2042 and 2047. If an operator were to take additional actions beyond those required in the application (for example, by replacing additional diesel locomotives with zero emission locomotives), would those additional actions be viewed as "cleaner-than-required" and therefore potentially subject to CMP grant funding?

3. Upon CARB approval of the AFMO baseline application, can this document then be relied upon by local air districts when determining for CMP purposes whether a new locomotive is “cleaner-than-required” by the Regulation (i.e., beyond what is required in the approved application)?
4. By way of example, a rail operator has elected compliance using AFMO and has a total fleet of 10 Tier 1 units. Prior to the January 1, 2030 compliance date, the operator applies for a CMP grant to purchase 10 Tier 4 or ZE locomotives. The operator commits to place the locomotives in service in 2027 operate them for 10 years, seven years beyond initial January 1, 2030 regulatory milestone. Can the operator include the emissions reductions from the Tier 1 baseline for all locomotives for all 10 years it commits to operate for the purposes of calculating the maximum CMP grant award?
5. An operator, as of the 2030 compliance date, has a fleet of 10 locomotives, six of which are Tier 4 locomotives and four are Tier 3, and meets the January 1, 2030 requirement (50 percent of a Locomotive Operator’s annual fleet Usage in California being from Cleaner Locomotives, ZE Locomotives, ZE Capable Locomotives, or ZE Rail Equipment). The operator decides to apply for CMP funding to obtain a zero-emission locomotive to replace a Tier 3 locomotive. Since this is “cleaner-than-required,” can this operator potentially obtain CMP funding? Would the life of the project potentially be through 2047, when the 100% ZE locomotive fleet requirement comes into effect?
6. Where the operator of a fleet of 10 Tier 4 locomotives meets its AFMO 2035 milestone (100 percent of a Locomotive Operator’s annual fleet Usage in California shall be from Cleaner Locomotives, ZE Locomotives, ZE Capable Locomotives, or ZE Rail Equipment) but goes further by replacing several Tier 4 locomotives with ZE locomotives, will such replacements be classified as “cleaner-than-required” and therefore potentially subject to CMP funding?
7. Where an operator utilizes the offset provisions of the AFMO to demonstrate compliance, and yet desires to replace additional older diesel locomotives with ZE locomotives, will those replacements be classified as “cleaner-than-required” and therefore potentially subject to CMP funding?

Thank you in advance for responding to these queries.

Sincerely,
/s/ Robert S. Nicksin
Robert S. Nicksin