

Proposed Regulation Order

Adopt, title 13, California Code of Regulations (CCR), Chapter 9, Article 8, Sections 2478 through 2478.16 to read as follows:

(Note: The entire text of sections 2478 through 2478.16 set forth below is new language in "normal type" proposed to be added to title 13, CCR.)

§ 2478. In-Use Locomotive Regulation

Section 2478 is the "In-Use Locomotive Regulation" or "Locomotive Regulation."

§ 2478.1. Applicability

- (a) This Locomotive Regulation applies to any Locomotive Operator that Operates a Locomotive in the State of California.
- (b) A Locomotive Operator may, through execution of a legally binding agreement between the Locomotive Operator and the Locomotive Owner, delegate one or more requirements of this Locomotive Regulation to the Locomotive Owner. In the event of the delegation of one or more requirements of this Locomotive Regulation, those delegated requirements would apply to the Locomotive Owner and be enforceable against the Locomotive Owner in addition to the Locomotive Operator.
- (c) This Locomotive Regulation applies to Operators of any of the following types of Locomotives operated in the State of California:
 - (1) Line Haul Locomotives operated by Class I Locomotive Operators;
 - (2) Switch Locomotives operated by Class I Locomotive Operators;
 - (3) Line Haul Locomotives operated by Class II Locomotive Operators;
 - (4) Switch Locomotives operated by Class II Locomotive Operators;
 - (5) Line Haul Locomotives operated by Class III Locomotive Operators;
 - (6) Switch Locomotives operated by Class III Locomotive Operators;
 - (7) Industrial Locomotives;
 - (8) Passenger Locomotives; and
 - (9) Historic Locomotives.

NOTE: Authority cited: sections 39600, 39601, 39658, 39659, 39666, 39667, 43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.2. Exemptions

This Locomotive Regulation does not apply to:

- (a) Locomotives propelled by engines with a total rated power of less than 1,006 horsepower (hp).
- (b) Locomotives owned by an accredited college, technical institute, or university used for “hands-on experience” certification required for mechanics and Locomotive engineers. The Locomotive cannot be used for any other purposes, such as to haul freight or passengers.
- (c) Military Locomotives.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.3. Definitions

- (a) For the purposes of sections 2478 through 2478.16, the following definitions apply:

“Automatic Engine Stop/Start (AESS)” means the automatic engine shut down/start up system that controls the engine by stopping or starting it without operator action described in Code of Federal Regulations, title 40, section 1033.115.

“Calendar Year” means the period beginning on January 1 through December 31 of a single year.

“California Air District” means one of the local air pollution control districts or air quality management districts established under Health and Safety Code sections 4,0000 et seq.

“California Air Resources Board (CARB)” means the agency of the State of California established and empowered to regulate sources of air emissions.

“Class I, Class II, or Class III Railroad” is defined by the Surface Transportation Board pursuant to Title 49, Code of Federal Regulations, section 1201 Railroad Companies, 1-1 Classification of carriers, which is incorporated by reference; the class is based on the carrier’s annual operating revenues.

“Cleaner Locomotive” means any Locomotive with exhaust emission levels that are equal to or lower than the most current U.S. EPA Locomotive emission standards for all U.S. EPA certified emission standard levels and is lower for at least one measured emission level.

“Disadvantaged Community (DAC)” means a community which suffers from a combination of economic, health, and environmental burdens. These burdens include poverty, high unemployment, air and water pollution, presence of hazardous wastes as well as high incidence of asthma and heart disease. DACs are designated by the California Environmental Protection Agency for the purposes of Senate Bill 535 (De León, Stats. 2012, Ch. 830), and their boundaries are identified by census tract numbers in CalEnviroScreen, an analytical tool developed by the Office of Environmental Health Hazard Assessment (OEHHA) and available at <https://oehha.ca.gov/calenviroscreen/sb535>, which is incorporated by reference.

“Enforceable Emission Reductions” means emission reductions for which CARB has authority to hold a particular party or parties liable and to take enforcement action if the emission reductions claimed are not achieved.

“Engine Tier” means the Locomotive Engine emission level as defined by U.S. EPA in Code of Federal Regulations, title 40, section 1033.101.

“Executive Officer” means the Executive Officer of CARB, or their designee.

“Fair Market Value” means the amount of money that property would sell for if offered for sale in the open market where the buyer and the seller have access to the same information.

“Freight Line Haul Locomotive” means a locomotive that does not meet the definition of a Switch, Industrial, Historic, Passenger, or Military Locomotive.

“Five-Year Verification Period” means the span of time an Alternative Compliance Plan may be implemented. The Five-Year Verification Period commences on the start date stated in the Executive Order approving the Alternative Compliance Plan and ends five years later unless an earlier end date is specified in the Executive Order.

“Greenhouse Gas” (GHG) means carbon dioxide, methane, nitrogen trifluoride, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, perfluorocarbons, and other fluorinated greenhouse gases.

“Head End Power” means power used for passenger cabin comforts such as heating and cooling.

“Historic Locomotive” means a Locomotive that is owned or Operated by a Historic Railroad and meets all the following requirements:

- (1) Does not haul freight;
- (2) Is used solely for education, preservation, or historical experience; and
- (3) The use of the Locomotive in its original configuration is key to the educational, preservation, or historical experience.

“Historic Railroad Fleet” means all applicable Historic Locomotives used by a Historic Railroad operating under a Historic Railroad Low-Use Exemption throughout the reporting period.

“Historic Railroad” means any entity that has the primary purpose of exhibiting or operating one or more Historic Locomotives.

“Idling” means the Locomotive Engine is running while the locomotive is stationary. A Locomotive Operating in a zero emission (ZE) Configuration is exempted from this definition.

“Industrial Locomotive” means a Locomotive Operated by an Industrial Operator.

“Industrial Operator” means a Locomotive Operator that Operates Locomotives to move their company products but doesn't provide rail services to other companies or to passengers.

“Locomotive” means a self-propelled piece of on-track equipment designed for moving or propelling cars that are designed to carry freight, passengers, or other equipment, but which itself is not designed or intended to carry freight, persons (other than those operating the Locomotive), or other equipment. This definition does not include equipment designed for operation both on roads and on rails.

“Locomotive Engine” means an engine that propels or provides power to propel a Locomotive. For Locomotives propelled by two or more engines, the total rated power is the sum of the rated power of each engine.

“Locomotive Operator (Operator)” means the Person that is responsible for Operating in California one or more Locomotives. A Locomotive Owner, lessee or rentee is a Locomotive Operator if they are responsible for Operating in California one or more Locomotives.

“Locomotive Owner” means the Person that is identified as the owner of the Locomotive by the records that demonstrate ownership for that Locomotive.

These records include: bill of sale, title of ownership, or record of Surface Transportation Board filing of security agreement.

“Military Locomotive” means a Locomotive owned by the United States government and operated by a branch of the military.

“Operate” means to start, cause to function or otherwise control, fuel, or keep in operation.

“Original Engine Build Date” means the date of final assembly of the Locomotive Engine, prior to any Remanufacture of the Locomotive Engine.

“Oxides of Nitrogen (NOx)” means compounds of nitric oxide, nitrogen dioxide, and other oxides of nitrogen. Nitrogen oxides are typically created during combustion processes and are major contributors to smog formation and acid deposition.

“Particulate Matter (PM)” means any airborne finely divided material, except uncombined water, which exists as a liquid or solid at standard conditions (e.g., dust, smoke, mist, fumes, or smog).

“Passenger Locomotive” means a Locomotive designed and constructed for the primary purpose of propelling passenger trains and providing power to the passenger cars of the train for such functions as heating, lighting, and air conditioning as set forth in Code of Federal Regulations, title 40, section 1033.901.

“Person” has the meaning set forth in Health and Safety Code section 39047.

“Primary Engine” means the Locomotive Engine that propels the Locomotive. If the Locomotive is propelled by more than one Locomotive Engine, for any provisions of this Locomotive Regulation which use the Primary Engine’s age, the age shall be based on the Original Engine Build Date of the oldest Locomotive Engine.

“Quantifiable Emission Reductions” means reductions in emissions accurately measured and calculated, in a reliable and replicable manner.

“Railcar” means a rail-mounted container also known as a “car” designed to carry freight or passengers.

“Real Emission Reductions” means reductions in emissions resulting from a demonstrable action or set of actions, quantified using the applicable Carl Moyer Program Guidelines quantification methodology, which is incorporated by reference; or another methodology specified in the Executive Order approving an Alternative Compliance Plan.

“Remanufacture” has the meaning set forth in Code of Federal Regulations, title 40, section 1033.901.

“Repower” has the meaning set forth in Code of Federal Regulations, title 40, section 1033.901.

“Responsible Official” means an individual with the authority to certify that the Locomotive complies with the requirements of this Locomotive Regulation.

“Spending Account” means a trust, where all funds, including any interest earned on those funds, remain in the possession and control of the Locomotive Operator; are dedicated solely to compliance with the Spending Account requirements; and are not comingled with any other funding source in this account.

“Spending Account Owner” means an individual with the authority to access and control data and funds in the Spending Account.

“Switch Locomotive” or “Switcher” means a Locomotive that is powered by an engine with a maximum rated power (or a combination of engines having a total rated power) of 2,300 hp or less and that does not meet the definition of Industrial or Passenger Locomotive.

“Train” means the combination of Locomotive(s) pulling freight or passenger Railcars, or non-operational Locomotives.

“United States Environmental Protection Agency (U.S. EPA) Locomotive Engine Certification Data (U.S. EPA Locomotive ECD)” means the duty cycle weighted emission test results after deterioration factor and all other applicable adjustments have been applied, used by the U.S. EPA to certify the Locomotive.

“Verifiable Emission Reductions” means claims of emission reductions that are accurately, truthfully documented, and transparent such that one is able to objectively review and reproduce such claims.

“Wayside Power” means an electric utility supplied power system designed to provide power from the electric utility to a Locomotive, while the Locomotive is stationary.

“Zero Emission (ZE) Capable Locomotive” means a Locomotive that can be switched to Zero Emission Configuration. To qualify as a ZE Capable Locomotive for a given Calendar Year, the Operator shall demonstrate that, when operating in California, the Locomotive was always Operated in a ZE Configuration during that Calendar Year. A ZE Capable Locomotive that has been Operated outside of a ZE Configuration within California at any point during a Calendar Year shall not qualify as a ZE Capable Locomotive for that Calendar Year and shall be treated as an emitting Locomotive based on the

U.S. EPA Tier of its engine for the purposes of this Locomotive Regulation for that Calendar Year. To qualify as a ZE Capable Locomotive, the Operator shall accurately track the configuration of Operation when in California and shall report that tracking data to CARB annually, pursuant to sections 2478.10(a)–(b).

“Zero Emission (ZE) Configuration” means a Locomotive that Operates in a zero emission capacity in California. ZE Locomotives always fall under this definition. ZE Capable Locomotives can operate in a ZE Configuration. To be considered as Operating in ZE Configuration, the Locomotive shall not emit any criteria pollutant, toxic pollutant, or greenhouse gas from any onboard source of power at any power setting when operated in a ZE Configuration. For purposes of this definition, “onboard source of power” includes any propulsion power that is connected to and moves with the Locomotive when it is in motion.

“Zero Emission (ZE) Infrastructure” means infrastructure that provides the appropriate fuel type or power to support the operation of a ZE Locomotive or ZE equipment. ZE Infrastructure shall not use a local (on-site or near-site) combustion engine or combustion generator for main power or for backup power.

“Zero Emission (ZE) Locomotive” means a Locomotive that never emits any criteria, toxic pollutant, or greenhouse gas from any onboard source of power at any power setting. For purposes of this definition, “onboard source of power” includes any propulsion power that is connected to and moves with the Locomotive when it is in motion.

“Zero Emission (ZE) Rail Equipment” means equipment capable of on-track operation whose main function is the same as a Freight Line Haul, Switch, Industrial, or Passenger Locomotive, but does not meet the definition of Locomotive and that never emits any criteria, toxic pollutant, or greenhouse gas from any onboard source of power at any power setting. For purposes of this definition, “onboard source of power” includes any propulsion power that is connected to and moves with the ZE Rail Equipment when it is in motion.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.4. Spending Account

- (a) By July 1, 2024, each Locomotive Operator not exempted from this section shall establish a Spending Account to be held in the name of the Responsible Official. Locomotive Operators may elect to use an Alternative Compliance Plan instead of a Spending Account, in which case they shall follow the requirements in section 2478.7 instead of section 2478.4.

- (b) *Annual Deposit Obligation.* On or before July 1, 2024, and every July 1 thereafter, a Locomotive Operator that has Operated one or more Locomotives in California during the previous Calendar Year shall deposit funds into their Spending Account. Funds are to be solely dedicated to compliance with the Spending Account requirements. No other funding sources shall be comingled in this account.
- (c) Funds required to be deposited in the Spending Account shall be calculated using the following formula:

$$\begin{aligned}
 &\text{Total Funds Deposited} \\
 &= \sum_{\text{All Locomotives}} (\text{Funding Requirement per Locomotive}) \\
 &\quad - \sum_{\text{ZE Locomotives and ZE Capable Equipment}} (\text{ZE Credit per ZE Locomotive or ZE Capable Equipment})
 \end{aligned}$$

- (1) The funding requirement per Locomotive is set forth in subsection (e).
- (2) The ZE Credit per Locomotive is set forth in subsection (f)(3).
- (d) Funds deposited in a Spending Account and any interest earned on funds held in a Spending Account shall only be used as follows:
 - (1) Until January 1, 2030, Spending Account funds may be used for the purchase, lease, or rental of Tier 4 or Cleaner Locomotive(s), or for the Remanufacture or Repower to Tier 4 or Cleaner Locomotive(s).
 - (2) At any time, Spending Account funds may be used for the purchase, lease, or rental of ZE Locomotive(s), ZE Capable Locomotive(s), ZE Rail Equipment, or to Repower to ZE Locomotive(s) or ZE Capable Locomotive(s).
 - (3) At any time, Spending Account funds may be used to purchase ZE Infrastructure intended to support ZE Locomotives, ZE Capable Locomotives or ZE Rail Equipment.
 - (4) At any time, Spending Account funds may be used to pilot or demonstrate ZE Locomotives or ZE Rail Equipment technologies.
- (e) *Funding Requirement.*
 - (1) For the year 2023, the funding requirement shall be calculated from the effective date of this Locomotive Regulation through

December 31, 2023. For all subsequent years, the funding requirement shall be calculated starting on January 1st of that year and run through December 31st of that year.

- (2) For each Locomotive Operated in California during the prior Calendar Year, the Locomotive Operator shall use the following formula to calculate the Spending Account funding requirement for that Locomotive:

$$\text{Funding Requirement [\$]} = \{(\text{Weighted Factor}) \times (\text{PM EF [g/bhp-hr]}) + (\text{NOx EF [g/bhp-hr]})\} \times (\text{Annual Factor}) \times (\text{Usage [MWhs]})$$

- (A) Weighted Factors can be found in Table 1 for the corresponding Calendar Year.
- (B) The PM Emission Factor (EF) is the Locomotive PM certification level as shown in the U.S. EPA Locomotive ECD.
- (C) The NOx EF is the Locomotive NOx certification level as shown in the U.S. EPA Locomotive ECD.
- (D) When a Locomotive Operator does not have EF information, the Locomotive Operator shall use the following emission factors, as applicable.
1. For Freight Line Haul and Passenger Locomotives: 0.32 g/bhp-hr for PM and 13.0 g/bhp-hr for NOx emission factors.
 2. For Switch and Industrial Locomotives: 0.44 g/bhp-hr for PM and 17.4 g/bhp-hr for NOx emission factors.
- (E) Annual Factors are found in Table 1 for the corresponding Calendar Year.

Table 1: Weighted Factors and Annual Factors by Year

Year	Weighted Factor	Annual Factor
2023	13.1	82.3
2024	13.1	85.6
2025	13.1	89.0
2026	13.1	92.6
2027	13.1	96.2
2028	13.1	99.9
2029	13.1	103.8
2030	13.1	107.3
2031	13.1	111.4
2032	13.1	115.8
2033	13.1	120.4
2034	13.2	125.1
2035	13.2	130.1
2036	13.2	135.1
2037	13.2	140.6
2038	13.2	146.4
2039	13.2	152.1
2040	13.2	158.5
2041	13.2	164.8
2042	13.2	171.5
2043	13.2	178.5
2044	13.2	185.7
2045	13.2	193.3
2046	13.3	201.2
2047	13.3	209.6
2048	13.4	218.5
2049	13.4	228.0
2050+	13.5	238.1

(F) Usage is the total Megawatt-hours (MWh) each Locomotive was Operated in California for the applicable Calendar Year.

1. Locomotives that are equipped with a MWh meter shall determine usage by taking the reading of the MWh meter from December 31 of the Calendar Year and subtracting it from the MWh meter reading on January 1 of the Calendar Year. If the MWh meter needed to be replaced or reset for maintenance purposes, the old MWh reading shall then be added to the total reading from the new MWh meter to determine the current MWh for that Calendar Year. A properly functioning Locomotive MWh meter shall not be

removed, tampered with, disabled, or turned off except for maintenance.

2. Locomotives that are not equipped with a MWh meter shall either install a MWh meter or, if they have operated 100 percent in California for the year being reported, use Table 2 and the following formula for the purpose of converting annual fuel usage to MWh:

$$\text{Usage [MWhs]} = \text{Annual Fuel Usage [gallons]} \times \text{Conversion Factor [MWh/gallon]}$$

Table 2: Fuel Usage Conversion Table

Locomotive Type	Rated Horsepower	Conversion Factor
Freight Line Haul	≥4,000	0.0155 MWh/gallon
Freight Line Haul	2,301 hp-3,999	0.0137 MWh/gallon
Switcher	≤2,300	0.0113 MWh/gallon
Industrial	All	0.0113 MWh/gallon
Passenger	All	0.0155 MWh/gallon

- (f) ZE credit per Locomotive. From the effective date of this Locomotive Regulation to December 31, 2029, Operation of ZE Locomotive(s), ZE Rail Equipment, or use of Wayside Power by the Locomotive Operator in California may result in credits that reduce a Locomotive Operator’s Annual Spending Account Deposit.
 - (1) A ZE Locomotive, ZE Rail Equipment, or use of Wayside Power may only result in ZE Credit if the usage is prior to January 1, 2030, or in excess of any legal mandate requiring its use. A legal mandate may include any federal, state, or local rule or regulation, settlement agreement, or mitigation requirement.
 - (2) Starting July 1, 2024, ZE Credits shall be reported to CARB as set forth in section 2478.10(d)(6).

- (3) For each ZE Locomotive, ZE Rail Equipment, or use of Wayside Power reported for ZE Credit, the ZE Credit shall be determined according to the following formula:

$$\text{ZE Credit } [\$] = \{0.16 \times (\text{Weighted Factor}) + 6.5\} \\ \times (\text{Annual Factor}) \times (\text{Usage [MWh]})$$

- (A) The Weighted Factor and Annual Factor are found in Table 1 for the corresponding Calendar Year.
- (B) Usage means total MWh of ZE Locomotive, or ZE Rail Equipment operations in California for the previous Calendar Year.
- (4) A non-ZE Locomotive that is connected to Wayside Power may claim ZE credit by reporting the MWhs provided to the Locomotive through the connection.
- (5) Prior to January 1, 2030, for each ZE Locomotive or ZE Rail Equipment Operating in a DAC or for Wayside Power connections made in a DAC, the ZE credit as provided in subsection (f)(3) shall be multiplied by two for the usage within a DAC.
- (6) If, for a given Calendar Year, a Locomotive Operator has a negative funding requirement due to ZE credits, the negative balance may be banked and applied to any subsequent Calendar Year prior to expiration of the ZE credit.
- (7) All ZE Credits expire on January 1, 2030, if not used by that date.
- (8) ZE Credits do not constitute property or a property right and have no monetary value. Credits are not tradeable.
- (g) CARB and any CARB designee, including but not limited to the California Department of Finance, may audit a Spending Account at any time. The Spending Account Owner shall give CARB and any CARB designee access to documents and information required to conduct an audit of the Spending Account upon CARB request.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.5. In-Use Operational Requirements

- (a) *California In-Use Locomotive Operations Requirement.* Beginning January 1, 2030, all Locomotives with a Primary Engine Original Engine Build Date prior to January 1, 2007, shall not Operate in California. Upon each subsequent January 1 after 2030, any locomotive that is 23 years or older, based on the Primary Engine's Original Engine Build Date, shall not Operate in California.
- (1) If the Locomotive is Remanufactured or Repowered to Tier 4 or a Cleaner Locomotive prior to January 1, 2030, the Original Engine Build Date will be based on the first year the Primary Engine was Remanufactured or Repowered to a Tier 4 or Cleaner Locomotive.
 - (2) A Locomotive may continue to Operate in California beyond the age specified in subsection (a) if at least one of the following applies:
 - (A) The Locomotive's Primary Engine MWh has not exceeded a total of (rated hp) x (20.25) MWh of operation since its Original Engine Build Date; or
 - (B) The Locomotive is Operated in a ZE Configuration at all times while in California.
- (b) *Switch, Industrial, and Passenger Locomotive Zero Emission Operational Requirement.* Beginning January 1, 2030, any Switch, Industrial, or Passenger Locomotive with an Original Engine Build Date of 2030 or newer shall Operate in a ZE Configuration at all times while in California.
- (1) By December 1, 2027, CARB staff shall publish an assessment of the progress made in ZE technologies for use with Freight Line Haul, Switch, Industrial, and Passenger Locomotives, as well as the status of infrastructure improvements that may be needed to support ZE Locomotives and make the assessment available for public review at least 30 calendar days prior to presenting the report to the Board at a public meeting. If staff finds that the compliance deadlines under this Locomotive Regulation need to be adjusted forward or backward in time, the report will include recommendations to initiate staff's development of potential formal regulatory amendments.
- (c) *Freight Line Haul Locomotive Zero Emission Operational Requirement.* Beginning January 1, 2035, any Freight Line Haul Locomotive Engine with an Original Engine Build Date of 2035 or newer shall Operate at all times in a ZE Configuration while in California.
- (1) By December 1, 2032, CARB staff shall publish an assessment of the

progress, since the 2027 assessment, made in ZE technologies for use with Freight Line Haul Locomotives, as well as the status of infrastructure improvements that may be needed to support ZE Locomotives and make it available for public review at least 30 calendar days prior to presenting the report to the Board at a public meeting. If staff finds that the compliance deadlines under this Locomotive Regulation need to be adjusted forward or backward in time, the report will include recommendations to initiate staff's development of potential formal regulatory amendments.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.6. Temporary Locomotive Operating Waiver

- (a) Prior to planned operation of a Locomotive that would be prohibited from Operation in California under section 2478.5, a Locomotive Operator may submit a request to the Executive Officer to temporarily Operate the Locomotive in California. The Operator shall submit the request to the Executive Officer at least seven (7) business days prior to the temporary Operation of the Locomotive within California. The Executive Officer shall approve the request provided that:
 - (1) The request contains all of the information required in subsection (c);
 - (2) The request is submitted as specified in section 2478.14;
 - (3) The request demonstrates to the satisfaction of the Executive Officer that the period of Operation specified in the request is no longer than necessary to perform the task specified in subsection (4); and
 - (4) The request demonstrates to the satisfaction of the Executive Officer that the purpose of the temporary Operation is to either:
 - (A) Remove a Locomotive from California; or
 - (B) For maintenance.
- (b) If a Locomotive Operator cannot meet the requirements of section 2478.5 due to emergency events beyond their reasonable control, including fires, floods, earthquakes, embargoes, epidemics, quarantines, war, acts of terrorism, riots, strikes, or lockouts, the Locomotive Operator may submit a request for a Temporary Locomotive Operating Waiver before or during the temporary

Operation. The Executive Officer may approve the request provided that:

- (1) The request contains all of the information required in subsection (c);
 - (2) The request is submitted as specified in section 2478.14; and
 - (3) The request demonstrates to the satisfaction of the Executive Officer that temporary Operation of the Locomotive is necessary during the period of Operation.
- (c) To obtain a Temporary Locomotive Operating Waiver, a Locomotive Operator shall submit all of the following information to CARB:
- (1) Locomotive Operator/company name;
 - (2) Locomotive ID number;
 - (3) Reason for waiver;
 - (4) Specified period of Operation;
 - (5) An explanation of why temporary Operation of the Locomotive is necessary during that period;
 - (6) Location(s) of Operation (i.e., route);
 - (7) An attestation meeting the requirements of subsection 2478.14(a)(2) that the information contained in the application is true, accurate and complete; and
 - (8) An attestation that the Locomotive Operator shall resume meeting the requirements specified in section 2478.5 immediately following the temporary period of Operation.
- (d) *Notice of Deficiency.* If the request does not include all the information required in subsection (c), the Executive Officer shall issue a notice of deficiency identifying the missing information within 3 calendar days of the date when a request for a temporary Locomotive Operating Waiver is submitted as specified in section 2478.14.
- (e) *Notice of Approval or Disapproval.* Within 3 calendar days of the date when a complete request for a Temporary Locomotive Operating Waiver is submitted as specified in section 2478.14, the Executive Officer shall issue an approval, or disapproval, or of the request for a Temporary Locomotive Operating Waiver.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 41511, 43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.7. Alternative Compliance Plan

- (a) From the effective date of this Locomotive Regulation through 2053, Locomotive Operators that wish to use an Alternative Compliance Plan (ACP) instead of complying with the requirements set forth in section 2478.4, section 2478.5, or both, shall apply to implement an ACP for a Five-Year Verification Period.
- (b) A Locomotive Operator that elects to implement an ACP shall reduce PM, NO_x, and GHG emissions in California in amounts equivalent to or greater than the reductions that would have been achieved during the Five-Year Verification Period by the Locomotive Operator following the requirements set forth in section 2478.4, section 2478.5, or both (as applicable), taking into account the assumptions listed below.
 - (1) For ACPs intended to replace the requirements set forth in section 2478.4, take into account the following assumptions when calculating the reductions that must be achieved by the ACP:
 - (A) Per the funding obligation calculated under the Spending Account Requirements in section 2478.4(c), all Spending Account funds would have been used to purchase, at Fair Market Value, Tier 4 or Cleaner Locomotives as specified by section 2478.4(d)(1)-(3).
 - (B) The Tier 4 or Cleaner Locomotives would have been introduced into use in California within one year of the sufficient accumulation of funds to purchase a Tier 4 or Cleaner Locomotive.
 - (C) Tier 4 Locomotives would Operate for 23 years prior to being removed from California service.
 - (2) For ACPs intended to replace the requirements set forth in section 2478.5, the amount of emission reductions the ACP must achieve is greater than or equivalent to the reductions of PM, NO_x, and GHGs that would have been achieved during the Five-Year Verification Period if the applicable locomotives were removed from Operation in California as required by section 2478.5. Therefore, incorporate the following assumptions when calculating the reductions that must be achieved by the ACP:

- (A) Beginning January 1, 2030, the Locomotive Operator's Locomotives with a Primary Engine whose Original Engine Build Date is 23 years and older would no longer be Operated in the California as specified in section 2478.5(a).
 - (B) Beginning January 1, 2030, any Switch, Industrial, or Passenger Locomotive Operating in California with an Original Engine Build Date of 2030 or newer would always be Operated in a ZE Configuration in California as specified in section 2478.5(b).
 - (C) Beginning January 1, 2035, any Freight Line Haul Locomotive Engine operating in California with an Original Engine Build Date of 2035 or newer would be always be Operated in a ZE Configuration in California as specified in section 2478.5(c).
- (3) For ACPs intended to replace the requirements set forth in both section 2478.4 and section 2478.5, incorporate all the assumptions set forth in subsections (1) and (2) when calculating the reductions that must be achieved by the ACP.
- (c) ACP emission reductions shall be achieved at or within three miles of California railyard facilities or within three miles of railyard facilities or railroad tracks where locomotives operate in California.
- (d) Applicants seeking approval of an ACP shall submit their applications to the Executive Officer at least six months prior to the requested start date of the ACP, following the requirements set forth in section 2478.14. The Locomotive Operator shall submit the following information in the ACP application:
- (1) Locomotive Operator/company name;
 - (2) Whether the ACP is meant to apply to the Spending Account, the In-Use Operational Requirements, or both;
 - (3) A detailed demonstration of the methods to be implemented that will reduce PM, NO_x, and GHG emissions in California in amounts equivalent to or greater than the reductions that would have been achieved by the Locomotive Operator following the requirements set forth in section 2478.4, section 2478.5, or both (as applicable) throughout the Five-Year Verification Period, taking into account the assumptions set forth in subsection (b);
 - (4) A detailed explanation of the information and calculations used to demonstrate that the ACP will achieve Real, Quantifiable, Verifiable, and

Enforceable emission reductions from the Locomotive Operations covered by the ACP in the amount required by subsection (b);

- (5) A detailed explanation of the information and calculations used to take into account the applicable assumptions set forth in subsection (b);
 - (6) A detailed description of the emission calculation methodologies, proposed recordkeeping, annual reporting, and monitoring that the applicant plans to use to demonstrate that the emission reductions satisfy the requirements of subsection (b) throughout the Five-Year Verification Period;
 - (7) A statement explaining whether the ACP is intended to span five-years or a lesser timeframe; and
 - (8) An attestation statement pursuant to section 2478.14(a)(2).
- (e) *Notice of Deficiency.* If an ACP application is incomplete or inaccurate, the Executive Officer will notify the applicant of the deficiency in writing within 45 calendar days of the submission of the application to the Executive Officer. The applicant shall correct any deficiency identified and submit an updated ACP application within 30 calendar days from the notice of deficiency unless the Executive Officer states in writing that additional time will be allowed for submittal of the update. If the updated application ACP application does not adequately address the deficiencies in the initial submittal, the application shall be denied. If CARB does not receive the updated ACP application within 30 calendar days of the notice or within the alternative timeframe specified in writing by the Executive Officer, the application shall be denied.
- (f) *Approval.* The Executive Officer may approve an ACP application that satisfies the requirements for submittal only upon finding all the following:
- (1) The ACP application complies with the applicable requirements set forth in subsection (b) and (c);
 - (2) The ACP application complies with the requirements set forth in subsection (d) and provides all of the applicable information listed in subsection (d);
 - (3) The ACP application provides sufficient information to accurately project emission reductions that would have been achieved through compliance with the Spending Account section or the In-Use Operational Requirements section, or both (as applicable) in the amounts required by subsection (b), including a detailed explanation of the information and

calculations used to determine the amount of emission reductions that must be achieved by the ACP throughout the Five-Year Verification Period;

- (4) The ACP application provides sufficient information to verify that the applicable assumptions set forth in subsection (b) were properly applied, including a detailed explanation of the information and calculations used in applying these assumptions;
 - (5) The ACP application demonstrates that the ACP will achieve reductions of PM, NO_x, and GHG emissions equivalent to or greater than the level that would have been achieved by following the requirements set forth in section 2478.4, and section 2478.5 (as applicable) using the assumptions set forth in subsection (b) and demonstrates that these reductions will be Real, Quantifiable, Verifiable, and Enforceable, including a detailed explanation of the information and calculations used to demonstrate that the emission reductions to be achieved by the ACP will satisfy the requirements of subsection (b) throughout the Five-Year Verification Period; and
 - (6) The ACP application includes an attestation statement pursuant to section 2478.14(a)(2).
- (g) *Notice of Approval or Disapproval.* Within 45 calendar days of the date when a complete application is submitted, the Executive Officer shall issue an Executive Order approving the ACP application or notifying the Locomotive Operator in writing of the disapproval of the ACP application, unless a notice of deficiency is issued pursuant to subsection (e).
- (1) The Executive Officer's approval of an ACP shall not serve as a substitute for any other approvals that may be required by the federal, state, or local government. Approval is contingent on the ACP's compliance with all applicable laws, ordinances, and regulations, including obtaining any permits or approvals necessary to undertake the activities constituting the ACP, and complying with all environmental review requirements associated with such activities.
 - (2) If the ACP is approved, upon the start date for the ACP listed in the Executive Order approving the ACP and until expiration or revocation as described in subsection (h), the Operator shall be exempt from its regulatory obligations under the Spending Account, the In-Use Operational Requirement, or both, as indicated in the Executive Order.
- (h) *Expiration and Revocation.* An ACP that has expired or has been revoked shall

not be used for compliance with this Locomotive Regulation as of the date of expiration or revocation.

- (1) An approved ACP is only valid for the Five-Year Verification Period as specified in the Executive Order and shall expire after the Five-Year Verification Period.
 - (2) An approved ACP may be revoked at any time by the Executive Officer for any of the following reasons:
 - (A) The Locomotive Operator fails to meet the requirements of section 2478.7, including but not limited to the submittal of a complete, accurate, and timely annual report.
 - (B) The Locomotive Operator fails to meet the requirements set forth in the ACP's Executive Order, including but not limited to the reductions required to be achieved by the ACP.
 - (C) The ACP is not in compliance with approvals that may be required by the federal, state, or local government, or with applicable laws, ordinances, or regulations, or the Locomotive Operator did not obtain the permits or approvals necessary to undertake the activities constituting the ACP, or the Locomotive Operator has not complied with all environmental review requirements associated with the ACP.
 - (3) If any of the circumstances listed in section 2478.7 subsections (h)(2)(A) through (h)(2)(C) occur, the Locomotive Operator shall submit a notification to CARB following the requirements for submittals set forth in section 2478.14 within 15 Calendar Days of the date when the Locomotive Operator discovers or reasonably should have discovered that one of these circumstances has occurred.
 - (4) CARB will provide notice of the revocation, including the date of the official revocation, to the applicant in writing at least 30 calendar days prior to the official revocation.
- (i) *Reapplication.* If an applicant would like to continue to use an ACP for another Five-Year Verification Period without any gaps in time between the expiration of the previous Five-Year Verification Period and the start date of the subsequent Five-Year Verification Period, they must submit a reapplication for the ACP at least six months prior to the expiration of the ACP. The requirements set forth in section 2478.7 apply to reapplications.

- (j) *Annual ACP Reports.* Locomotive Operators using an approved ACP shall annually report any activity under the approved ACP. These reports shall be submitted no later than July 1 of each year throughout the Five-Year Verification Period pursuant to the applicable requirements specified in section 2478.10.
- (k) *Severability.* If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or portion of this Locomotive Regulation, or the application thereof to any person or circumstances, is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction (referred to here as the "invalidated requirement or application"), ACPs shall no longer be required to achieve equivalent emission reductions for the invalidated requirement or application. Thus, for ACPs currently in effect, the Locomotive Operator shall no longer be responsible for any portion of that ACP solely devoted to achieving equivalent or greater emission reductions than would have been required by the invalidated requirement. The regulated party shall continue to be responsible for all other portions of the ACP. If a portion of an ACP is devoted in part, but not wholly, to achieving equivalent emission reductions as would have been required by the invalidated requirement, the regulated party shall continue to be responsible for that portion of the ACP.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 41511, 43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.8. Idling Requirements

- (a) A Locomotive Operator shall ensure an AESS equipped Locomotive Engine is shut off no more than 30 minutes after the Locomotive becomes stationary. A Locomotive may only exceed 30 minutes of idling for the following reasons:
 - (1) To prevent engine damage such as to prevent the engine coolant from freezing;
 - (2) To maintain air pressure for brakes or starter system, or to recharge the Locomotive battery;
 - (3) To perform necessary maintenance; or
 - (4) To otherwise comply with federal or state regulations.
- (b) A properly functioning AESS shall not be removed, tampered with, or disabled unless for maintenance.

- (c) A Locomotive Operator with an AESS equipped Locomotive shall ensure the AESS is functional at all times during the Locomotive's Operation.
 - (1) A Locomotive Operator shall replace or repair a malfunctioning or broken AESS no later than 30 days after discovering the initial malfunction or break.
 - (2) For the time an AESS is inoperative, the Locomotive shall be manually shut off no more than 30 minutes after the Locomotive becomes stationary unless the Locomotive is operating under one of the listed exceptions in subsections (a)(1) through (4).
- (d) Locomotives equipped to connect to Wayside Power shall turn off all engines, including separate engines providing Head End Power, and use Wayside Power if idling for longer than 30 minutes and if Wayside Power is available.
- (e) The Locomotive Operator shall annually report all the information described in section 2478.10(f) for each Locomotive that they have Operated in California during the past year. This report shall be submitted to CARB following the requirements in section 2478.14 no later than July 1, of the year following the Calendar Year for which the information is reported.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 41511, 43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.9. Registration Requirements

- (a) By July 1, 2024, the Locomotive Operator shall register each Locomotive that Operates in California by submitting the following information as per the requirements in section 2478.14:
 - (1) For each Locomotive Operator the following information:
 - (A) Locomotive Operator/company name;
 - (B) Address of Company or Operator Headquarters;
 - (C) Tax Identification Number;
 - (D) Responsible Official title and name;
 - (E) Responsible Official phone number; and
 - (F) Responsible Official email address.

- (2) For each Locomotive:
 - (A) Locomotive road number;
 - (B) Locomotive serial number;
 - (C) Locomotive model number;
 - (D) Engine Tier;
 - (E) Engine family;
 - (F) Engine manufacturer name;
 - (G) Engine serial number;
 - (H) Original Engine Build Date;
 - (I) Engine power rating in horsepower;
 - (J) Latest Remanufacture date;
 - (K) Date acquired;
 - (L) U.S. EPA Locomotive ECD values for PM and NOx (if applicable);
 - (M) Whether it is a ZE Locomotive or a ZE Capable Locomotive;
 - (N) Whether the Locomotive is operating under a Small Business Hardship Extension;
 - (O) The total MWh of operation since the Locomotive's Original Engine Build Date, as of December 31 of the Calendar Year prior to the registration date; and
 - (P) Locomotive Operators shall submit photographic documentation that verifies the items in (2)(A)-(I).
- (b) If registration information listed in subsections (a)(1) or (a)(2)(A)–(N) for any Locomotive changes, then the Locomotive Operator shall submit updated information to CARB within 30 calendar days of the change(s) following the requirements in section 2478.14.
- (c) If a previously unregistered Locomotive is Operated in California after July 1, 2024, the Locomotive Operator shall register the Locomotive within 30 days of the first day when the Locomotive Operates in California.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 41511, 43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.10. Reporting and Recordkeeping Requirements

- (a) Each report submitted by a Locomotive Operator must follow the requirements in section 2478.14.
- (b) *General recordkeeping requirements.*
 - (1) The Locomotive Operator shall maintain all reporting records for three years after the report date unless another timeframe is provided herein.
 - (2) The Locomotive Operator shall make reporting records available to CARB or CARB's designee within 30 calendar days of CARB's or CARB's designee's request.
 - (3) The Locomotive Operator shall maintain the records for any Locomotive(s) that are removed from operations in California for three years after it is removed from California operations.
- (c) *Locomotive Emissions Annual Report.* Beginning in 2024, the Locomotive Operator shall submit an annual report to CARB no later than July 1 of each Calendar Year.
 - (1) The report shall include the following information for each Locomotive Operated in California during the prior Calendar Year:
 - (A) Locomotive Operator/company name.
 - (B) Locomotive Identifier:
 - 1. Locomotive road number; and
 - 2. Locomotive serial number.
 - (C) Total MWh Operated (or if allowed in section 2478.4(e)(2)(F) total fuel used) in each California Air District during the Calendar Year.
 - 1. If the MWh meter needed to be replaced or reset for maintenance purposes, the MWh meter reading of the old MWh meter shall be recorded and reported, along with the date it was replaced or reset. The total reading from the new MWh meter for that Calendar Year and the sum of the

old reading and the new reading shall be recorded and included in the report.

- (D) Total engine hours Operated in each California Air District during the Calendar Year.
 - (E) If section 2478.5(a)(2)(A) applies to the locomotive, include the total MWh of operation since the Locomotive's Original Engine Build Date.
- (2) Locomotive Operators are not required to include ZE Locomotives in their Locomotive Emissions Annual Report.
- (d) *Spending Account Annual Report.* No later than July 1 of each Calendar Year, Locomotive Operators subject to section 2478.4, the Spending Account, shall report the following:
- (1) Locomotive Operator/company name;
 - (2) The calculated Spending Account funding requirement for the previous Calendar Year, as described in section 2478.4(c);
 - (3) The total amount deposited in the Spending Account to meet the funding requirement in section 2478.4 for the previous Calendar Year;
 - (4) A list of all purchases made with Spending Account funds including:
 - (A) Item description;
 - (B) Item location if stationary; and
 - (C) Total funding expended for each item.
 - (5) The Spending Account balance on December 31 of the calendar year prior to the reporting date;
 - (6) *ZE Credits Report.* Operators of ZE Locomotives, ZE Rail Equipment and Operators of locomotives that connect to Wayside Power that wish to claim ZE credits applicable to the previous Calendar Year shall report the following:
 - (A) For each ZE Locomotive and ZE Rail Equipment Operated in California during the prior Calendar Year:
 - 1. Locomotive road number (or external identifier for ZE Rail

Equipment);

2. Locomotive or ZE Rail Equipment serial number;
3. Total MWhs Operated in each California Air District; and
4. If the Locomotive Operator wishes to receive double credit pursuant to subsection 2478.4(f)(5), the report must include the total MWh Operated within the boundaries of each DAC, along with identification of the DAC(s) in which this operation occurred.

(B) For each connection of a locomotive to Wayside Power in California during the previous year:

1. Time, date, location and duration of the connection to Wayside Power for each Locomotive;
2. Total MWhs provided to each Locomotive by Wayside Power; and
3. If the Locomotive Operator wishes to receive double credit pursuant to subsection 2478.4(f)(5), the report must include the total MWh provided to each Locomotive by Wayside Power within the boundaries of a DAC, along with identification of the DAC(s) in which this occurred.

(e) *Annual ACP Reports.* No later than July 1 of each Calendar Year, Locomotive Operators using an approved ACP shall annually report the information listed below each year throughout the Five-Year Verification Period:

- (1) The Locomotive Operator/company name.
- (2) A detailed explanation of the progress of the ACP for the prior calendar year.
- (3) A detailed accounting of the reductions achieved pursuant to the ACP for the prior calendar year, including all relevant calculations and values.
- (4) A detailed explanation as to how the reductions achieved by the ACP in the prior calendar year were Real, Quantifiable, Verifiable, and Enforceable.
- (5) The location(s) of the emissions reductions that were achieved by the ACP in the prior calendar year.

- (6) A detailed accounting of the emission reductions that would have been achieved pursuant to section 2478.4, 2478.5, or both (as applicable) for the prior calendar year.
- (A) For ACPs used as an alternative to section 2478.4, this includes the following:
1. The amount of Spending Account funds that would have been required to be deposited in the prior calendar year.
 2. The type of locomotives (Tier 4 or ZE) that these funds would have been used to purchase pursuant to section 2478.4.
 3. The Fair Market Value of the locomotives that would have been purchased, which was used to calculate the emissions reductions that would have been achieved by these purchases.
 4. Detailed calculations of the emissions reductions that would have been achieved through these purchases.
 5. Documentation and calculations demonstrating compliance with the required assumptions described in section 2478.7(b)(1).
- (B) For ACPs used as an alternative to section 2478.5, this includes the following:
1. For Annual ACP Reports covering the 2030 calendar year and any subsequent years, include a detailed description of all Locomotives with a Primary Engine whose Original Engine Build Date is 23 years and older that would otherwise be prohibited from Operating in California pursuant to section 2478.5(a) and the amount of excess emissions those Locomotives released by continuing to operate in California during the applicable Calendar Year.
 2. For Annual ACP Reports covering the 2030 calendar year and any subsequent years, include a detailed description of all Switch, Industrial, or Passenger Locomotive Operating in California with an Original Engine Build Date of 2030 or newer that would otherwise be prohibited from Operating in California pursuant to section 2478.5(b) and the amount

of excess emissions that Locomotive released in California during the applicable Calendar Year.

3. For Annual ACP Reports covering the 2035 calendar year and any subsequent years, include a detailed description of all Freight Line Haul Locomotives operating in California with an Original Engine Build Date of 2035 or newer that would otherwise be prohibited from Operating in California pursuant to section 2478.5(c) and the amount of excess emissions that Locomotive released in California during the applicable Calendar Year.
- (7) Any other information that is identified in the Executive Order as necessary for the evaluation of whether the Locomotive Operator has complied with the requirements of section 2478.7 and the requirements of the ACP itself (this information will be required to be provided in the terms and conditions contained in the Executive Order approving the ACP).
- (f) *Idling Annual Report.* No later than July 1 of each Calendar Year, Locomotive Operators shall report the following for each Locomotive that is not a ZE Locomotive Operated in California from the previous Calendar Year:
- (1) Whether the Locomotive has an AESS;
 - (2) The time, date, location, and duration of each instance when a Locomotive idled for longer than 30 minutes in California; and
 - (3) The reason for idling for each instance when a Locomotive idled for longer than 30 minutes in California.
- (g) *Historic Railroad Low-Use Exemption Annual Report.* No later than July 1 of each Calendar Year, Operators of Historic Locomotives that use an Historic Railroad Low-Use Exemption for the previous Calendar Year shall report the following:
- (1) An attestation that all Historic Locomotives used by a Historic Railroad operating under a Historic Railroad Low-Use Exemption throughout the prior Calendar Year satisfy the definition of a Historic Locomotive; and
 - (2) The gallons of fuel used by the Operator's entire Historic Railroad Fleet during the previous Calendar Year.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 41511, 43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.11. Administrative Payment

- (a) With each Locomotive Emissions Annual Report, Locomotive Operators shall annually submit to the Executive Officer a \$175 payment for each Diesel Locomotive or ZE Capable Locomotive they Operated in California during the previous Calendar Year by July 1, 2024 and by July 1 of every subsequent year. Historic Locomotives, ZE Locomotives, and ZE Rail Equipment are not subject to this requirement.
- (1) The payment shall be made via CARB's online payment system, or can be made by check, money order or cashier check payable to California Air Resources Board with reference to the In-Use Locomotive Regulation Administrative Payment.
- (A) Payments by mail shall be sent to:
- California Air Resources Board
Attn: Accounting, RM 20-25
P.O. Box 1436
Sacramento, CA 95812-1436
- (B) Payments by FedEx and UPS shall be sent to:
- California Air Resources Board
Attn: Accounting
1001 I Street, RM 20-25
Sacramento, CA 95814
- (b) *Severability.* If any part of this section or any other section of this Locomotive Regulation, or the application thereof to any person or circumstances, is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction as to any party, the Executive Officer shall continue to assess and collect payments pursuant to this section from all regulated entities that remain subject to any part of this Locomotive Regulation.

NOTE: Authority cited: sections 38560, 38597, 39600, 39601, 39658, 39659, 39666, 43013, 43018, 43019.1, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.12. Historic Railroad Low-Use Exemption

- (a) A Historic Locomotive Operator may seek an exemption from the requirements in sections 2478.4 and 2478.5 for their Historic Railroad Fleet if:
 - (1) The Locomotive Operator meets the definition of Historic Railroad in section 2478.3; and
 - (2) The Locomotive Operator's entire Historic Railroad Fleet does not use more than 10,000 gallons of fuel collectively during each Calendar Year.
- (b) *Historic Railroad Low-Use Exemption Application.* Locomotive Operators seeking the Historic Railroad Low-Use Exemption must submit an application at least 90 calendar days prior to when they would like the exemption to begin.
- (c) Historic Locomotive Operators shall apply for such exemption by submitting the following information following the requirements in section 2478.14:
 - (1) The Historic Locomotive Operators' company name.
 - (2) For each Historic Locomotive in the Historic Railroad Fleet, submit the following information:
 - (A) Locomotive serial number,
 - (B) Locomotive Engine serial number,
 - (C) Locomotive Engine rated horsepower,
 - (D) Average or predicted annual fuel usage.
- (d) *Notice of Deficiency.* If a Historic Railroad Low-Use Exemption Application is incomplete, inaccurate, or is not submitted as required by section 2478.14, the Executive Officer will notify the applicant of the deficiency in writing within 30 calendar days. The Historic Railroad Low-Use Exemption will be denied 30 calendar days following the notification of the deficiency unless the applicant corrects the deficiency and resubmits the application.
- (e) *Notice of Approval.* If CARB determines that the Historic Railroad submitted a complete, accurate and timely application as required by this section and section 2478.14, and all standards for eligibility listed in subsection (a) have been met, CARB shall approve a Historic Railroad Low-Use Exemption. The Executive Officer will notify the applicant of the approval in writing within 90 calendar days of the date the application is received by CARB.
- (f) *Notice of Denial.* If CARB determines that the application the Historic Railroad submitted is untimely or if the application does not demonstrate that all

standards for eligibility listed in subsection (a) have been met, CARB shall deny a Historic Railroad Low-Use Exemption. The Executive Officer will notify the applicant of the denial in writing within 90 calendar days of the date the application is received by CARB.

- (g) *Revocation.* An approved Historic Railroad Low-Use Exemption does not expire, but CARB may revoke the Exemption if at any time any Historic Locomotive within the applicant's Historic Railroad Fleet does not meet the requirements of the Historic Railroad Low-Use Exemption or violates any other requirement of this regulation. The Executive Officer will notify the applicant in writing of the revocation.
- (h) Historic Railroad Low-Use Exemptions apply starting on the date of the Notice of Approval in subsection (e) and continue unless and until the exemption is revoked.
- (i) *Annual Report.* By July 1 of each year, the Historic Railroad Operator shall report to CARB all the information described in sections 2478.10(c), (f), and (g).
- (j) Historic Railroads that Operate under an approved exemption shall comply with all other applicable sections in this Locomotive Regulation.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 41511, 43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.13. Small Business Hardship Extension

- (a) A Locomotive Operator whose gross revenue has not exceeded a gross revenue cap of an average of five million dollars annually, adjusted for inflation, in each year for the last three years may submit an application to the Executive Officer requesting a Small Business Hardship Extension following the requirements of section 2478.14 no later than March 1 of the year following the Calendar Year for which the extension is sought.
 - (1) Inflation adjustment shall be made annually using the following methodology: $\text{Inflation Adjusted Gross Revenue Cap} = \$5,000,000 * \frac{\text{U.S. Consumer Price Index [reference year]}}{\text{U.S. Consumer Price Index [2019]}}$.
 - (2) Gross revenue cap shall be adjusted annually using Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers.
- (b) Approval of a Small Business Hardship Extension may grant the applicant any of

the following (including any combination), as specified in the Executive Order approving the small business hardship extension:

- (1) Up to a three-year extension in the time required to set aside funds into the Spending Account.
 - (2) A reduction in the amount of funds required to be set aside in the Spending Account for up to three years.
 - (3) Up to a three-year extension of the time the Locomotive Operator is allowed to operate a Locomotive in California that does not comply with the In-Use Operational Requirements in section 2478.5.
- (c) *Small Business Hardship Extension Application.* Locomotive Operators that meet the requirements of subsection (a) may apply for a small business hardship extension by submitting an application as required in section 2478.14 that includes the following:
- (1) Financial documentation demonstrating gross revenue for the three Calendar Years prior to the submission of the application per subsection (a).
 - (2) An identification of the type of relief that the Locomotive Operator requests per subsection (b) and the following information:
 - (A) If the Locomotive Operator seeks the relief set forth in subsection (b)(1), provide the following:
 1. The amount of time requested for the extension.
 2. An explanation of why that additional time is needed.
 3. Evidence demonstrating that setting aside funds into the Spending Account by the deadline required by section 2478.4 will prevent the Locomotive Operator from meeting financial obligations that will cause bankruptcy or the closure of their business.
 - (B) If the Locomotive Operator seeks the relief set forth in subsection (b)(2), provide the following:
 1. The amount of reduction requested.
 2. The timeframe over which the applicant would like that reduction to apply.

3. An explanation of why the reduction is needed throughout that timeframe.
 4. Evidence demonstrating that setting aside funds into the Spending Account as required by section 2478.4 will prevent the Locomotive Operator from meeting financial obligations that will cause bankruptcy or the closure of their business.
- (C) If the Locomotive Operator seeks the relief set forth in subsection (b)(3), provide the following:
1. The amount of time requested for the extension.
 2. An explanation of why that time is needed.
 3. Evidence demonstrating that the application of the applicable requirements from the In-Use Operational Requirements will prevent the Locomotive Operator from meeting financial obligations that will cause bankruptcy or the closure of their business.
 4. Identifying information about any Locomotives that would operate under the extension if approved, including:
 - a. Locomotive road number.
 - b. Locomotive serial number.
- (D) A minimum of three years the Locomotive Operator's tax data including one of the following:
1. Sole proprietorship or one-member LLCs/partnership's file Internal Revenue Service (IRS) Form 1040 ("U.S. Individual Income Tax Return") and Schedule C.
 2. S-corporations file IRS Form 1120S ("U.S. Income Tax Return for an S Corporation") and Schedule K-1.
 3. C-corporations file IRS Form 1120 ("U.S. Corporation Income Tax Return").
 4. Multi-member LLCs file IRS Form 8832 ("Entity Classification Election") and can elect to be treated as either an S- or C-corporation.

5. Multi-member partnerships file IRS Form 1065 ("U.S. Return of Partnership Income") and Schedule K-1.
 6. Governmental entities shall supply annual financial reports, bond prospectuses, and budgets.
 7. Not-for-profit entities shall provide IRS Form 990 if gross receipts are more than \$200,000 or assets greater than \$500,000 and annual financial reports.
- (E) Any other evidence necessary to demonstrate hardship, including, where applicable:
1. Financial statements prepared by an outside accounting firm.
 2. Budgets and year-to-date results.
 3. Asset ledgers.
 4. Real estate and property tax records.
- (d) If a complete and accurate application is timely submitted as required by section 2478.14, the Executive Officer shall evaluate the information and documentation submitted with the application in determining whether to approve the application for a Small Business Hardship Extension and in determining what relief is appropriate.
- (e) CARB will determine whether the financial hardship of the Locomotive Operator justifies an approval of an application for a Small Business Hardship Extension by analyzing the information provided using one of three financial computer models created by U.S. EPA:
- (1) ABEL will be used for S- or C-corporations or multi-member LLC/partnerships.
 - (2) INDIPAY will be used for individuals, sole proprietorships or one-member LLC/partnerships.
 - (3) MUNIPAY shall be used for government agencies.
- (f) *Notice of Approval or Disapproval.* Within 90 calendar days of the date when a complete and accurate Small Business Hardship Extension Application is submitted following the requirements of section 2478.14, the Executive Officer shall either issue an Executive Order approving the Small Business Hardship

Extensional or notify the Locomotive Operator in writing of the disapproval of the Small Business Hardship Extension.

- (1) An Executive Order approving an application will specify the type(s) of relief granted and the parameters of that relief, including the date when the extension begins to be applicable and the duration of the extension. In the event of an approval, the Locomotive Operator is only granted relief from the specific provisions identified in the Executive Order approving the extension according to the terms set forth therein.
 - (A) If the Executive Order approves an extension to the funding obligation under the Spending Account section per subsection (b)(1), the Executive Order will specify the date when the funds will be due.
 - (B) If the Executive Order approves a reduction in the funding obligation under the Spending Account section per subsection (b)(2), the Executive Order will specify the amount of any reduction granted.
 - (C) If the Executive Order provides relief to the in-use operational requirements in section 2478.5 per subsection (b)(3), the Executive Order will specify the timeframe, up to three years, the Locomotive(s) may continue to operate in California without penalty.
 - (2) Approval is contingent upon the submission of a complete, accurate, and timely application following the requirements of section 2478.14. An Executive Order approving an application will specify the type of relief granted and the parameters of that relief, including the timeframe and amount of any reduction granted, as applicable. The Executive Officer may disapprove of an application if the Locomotive Operator is out of compliance with the Locomotive Regulation.
- (g) *Notice of Deficiency.* If a Small Business Hardship Extension Application is inaccurate or incomplete, the Executive Officer shall notify the applicant of the deficiency within 90 calendar days of the submission of the application. A Small Business Hardship Extension Application will be deemed denied unless the applicant corrects the deficiency by submitting a reapplication that satisfies all applicable requirements within 30 calendar days following the date of the notification of the deficiency.
- (h) *Expiration and Revocation.* A Small Business Hardship Extension that has

expired or has been revoked shall not be used for compliance with this Locomotive Regulation.

- (1) An approved Small Business Hardship Extension is only valid for the time period specified in the Executive Order approving the extension and shall expire after the time period specified in the Executive Order.
- (2) An approved Small Business Hardship Extension may be revoked at any time by the Executive Officer for any of the following reasons:
 - (A) The Locomotive Operator fails to meet the requirements of section 2478.13, including but not limited to the requirements to submit complete, accurate, and timely annual reports as required by section 2478.10.
 - (B) The Locomotive Operator fails to meet the requirements set forth in the Executive Order granting the Small Business Hardship Extension.
 - (C) The Locomotive Operator is not in compliance with any other requirement in this Locomotive Regulation.
- (3) CARB will provide notice of revocation, including the date of the official revocation, to the applicant in writing at least 30 calendar days prior to the official revocation.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 41511, 43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.14. Submittals to CARB

- (a) All documentation submitted to CARB shall:
 - (1) Be written in the English language;
 - (2) Contain a Statement of Accuracy. All information required to be submitted to CARB pursuant to this Locomotive Regulation shall be accompanied by the following statement, signed by the Locomotive Operator or Responsible Official: "I certify under penalty of perjury under the laws of the State of California that the information provided is true, accurate, and complete."
 - (3) Be submitted to CARB:

- (A) By mailing to:
Chief, Transportation and Toxics Division
California Air Resources Board
1001 I Street, Sacramento, CA 95814;
 - (B) Through electronic means via an online reporting system; or
 - (C) Email to locomotives@arb.ca.gov.
- (4) If the submittal is via mail, the Locomotive Operator or Responsible Official shall notify CARB by emailing to the address listed above that the submittal is being mailed and shall identify the date the submittal was mailed.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 41511, 43013, 43018, Health and Safety Code; 2015.5, Code of Civil Procedure. Reference: section 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.15. Non-Compliance, Penalties, and Right of Entry

- (a) *Non-compliance.*
 - (1) Each individual violation of each section, subsection, or provision of this Locomotive Regulation is a separate offense.
 - (2) Each day during any portion of which a violation occurs is a separate offense.
 - (3) Each violation of sections 2478.4 through 2478.14 constitutes a separate offense for each Locomotive (as applicable) and for each day during any portion of which a violation occurs.
 - (4) Penalties are cumulative.
- (b) *Right of Entry.*
 - (1) CARB, upon presentation of proper credentials, has the right to enter and inspect any Locomotive, vehicle, vessel, or premises in California on which an air pollution source is located for the purposes of inspecting such source, including taking samples from the emission source.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 39674, 39675, 42400, 42400.1, 42400.2, 42400.3.5, 42402, 42402.2, 42410, 43008.6, 43016,

43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.

§ 2478.16. Severability

If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or portion of this Locomotive Regulation (or the application thereof to any person or circumstances) is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion or application shall be deemed separate, distinct, and independent, and such holding shall not affect the validity of the remaining portions of this Locomotive Regulation or the application of this Locomotive Regulation to other persons or circumstances.

NOTE: Authority cited: sections 38560, 39600, 39601, 39658, 39659, 39666, 43013, 43018, Health and Safety Code. Reference: sections 39650, 39659, 41511, 43013, and 43018, Health and Safety Code.