



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

General Counsel

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Washington, D.C. 20590

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The Honorable Daniel R. Elliott III
Chairman
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423

**Re: Docket No. FD 35803
United States Environmental Protection Agency -- Petition For
Declaratory Order**

Dear Chairman Elliott:

The United States Department of Transportation (DOT or Department) and the Federal Railroad Administration (FRA), an operating administration of DOT, submit this comment on the United States Environmental Protection Agency's (EPA) Petition for a Declaratory Order. The question before the Board is whether the Interstate Commerce Commission Termination Act (ICCTA), 49 USC § 10101, would preempt two proposed rules issued by the South Coast Air Quality Management District (SCAQMD) addressing locomotive idling restrictions if those rules were approved into the California State Implementation Plan under the Clean Air Act (CAA). See 42 U.S.C. §7401 et seq. The Department has an interest in this proceeding because it is responsible, through FRA, for administering the nation's Federal railroad safety laws. See 49 USC ch. 201 et seq., 241 et seq., 261 et seq.; 49 CFR 1.89.

The Department understands that there are significant air quality issues in the South Coast Air Basin and that locomotive emissions are a contributing source of pollutants. Additionally, the Department and FRA recognize that SCAQMD's Proposed Rules 3501 and 3502 are intended to reduce these emissions. However, the safe and efficient operation of the national rail network is a priority for the Department. As such, it is necessary to strike the appropriate balance between the legitimate environmental concerns in California and the equally important safety and

operational issues that are raised by the proposed rules.¹ FRA previously raised certain concerns in its September 27, 2013, letter to EPA Regional Administrator Jared Blumenfeld. In that letter FRA offered to discuss the safety and operational issues with EPA and we are still willing to engage in such dialogue about those issues and the potential path forward.

The Department and FRA request that the Board consider the following potential impacts of the proposed rules:

- **Causing confusion within the regulated community because the proposed locomotive idling rules define “unattended” in a manner that potentially conflicts with FRA’s definition of “unattended equipment” in 49 CFR 232.103(n).** The potential conflict arises because the proposed rules would treat a locomotive as being unattended in any instance where a crewmember is not actually on board the locomotive. See Proposed Rule 3502(c)(16). In contrast, FRA’s rule does not require presence on board the locomotive for a locomotive to be attended, as long as a qualified person is in position to readily control the locomotive. It is likely that the same railroad employees will be asked to comply with both FRA’s regulation and the proposed locomotive idling rules when operating in the South Coast Air Basin. In addition, as a result of the difference in definitions, the proposed locomotive idling rules would likely increase the situations where the application of handbrakes to secure “unattended” equipment will be necessary. There are worker safety implications – as with any other type of physical activity – associated with the manual setting and releasing of handbrakes. For the most recent 5-year period (2009-2013),² there were approximately 502 reportable incidents associated with the setting and releasing of handbrakes.
- **Limiting operations where a railroad uses remote control locomotives.** In these situations, the train crewmember(s) will usually be on the ground performing switching movements with the locomotive, with the crewmember(s) in a location that is remote from the locomotive cab. Nearly all remote control operations occur in railroad yards. It does not seem that the proposed locomotive idling rules account for these situations.

¹ Neither FRA nor DOT has received a formal request for an opinion on whether the SCAQMD locomotive idling rules are preempted or superseded by Federal law. By this submission, FRA and DOT do not intend to express an opinion on whether ICCTA preempts or supersedes the CAA as it relates to these locomotive idling rules that may be adopted into the California State Implementation Plan. Further, although the issue has been raised by certain interested parties to the STB proceeding, FRA and DOT are not expressing an opinion on whether the SCAQMD locomotive idling rules would be preempted or superseded by the Federal Railroad Safety Statutes or regulations. 49 USC ch. 201 et seq.; 49 CFR Part 200 et seq.

² The data for Year 2013 only covers the months of January through November.

- **Impacting the ability of train crews or other railroad personnel to conduct safety critical tests and inspections that are required by FRA regulations.** For instance, to perform the Class I brake test required under 49 CFR 232.205, the locomotive will need to be in idle mode.³ In many instances, there will not be a crewmember or other railroad personnel in the locomotive cab during the brake test. Instead, they will be walking the train to make certain the air brakes are operating as intended for each car in the train. In the freight context, a train consist can easily exceed 100 cars, and it would likely take more than 30 minutes to conduct a Class I brake test on a train that size. The proposed rules appear to negate the ability of train crewmembers – particularly with respect to longer trains – to perform these required tests. This is because the SCAQMD definition of “maintenance or diagnostic purposes” is limited to work performed by a mechanic. See Proposed Rule 3502(c)(10). FRA does not require that the Class I brake test be performed by a mechanic, but rather, it must be performed by a “qualified person”. A qualified person could be a train crewmember or a mechanical department employee; however, in many situations a train crewmember is the qualified person performing the Class I brake test. The proposed locomotive idling rule could have an unintended effect of substantially transferring the responsibility to perform Class I brake tests away from train crewmembers.
- **Increasing the length of time that equipment is removed from a source of compressed air, which can negatively impact the integrity and operation of the brake system on a vehicle or train.** For reasons related to train brake integrity, FRA requires a Class I brake test whenever a train is not attached to a source of compressed air for more than four hours. One effect of the proposed rules is that they likely will increase the number of locomotives that will be “off air” for more than four hours. In its November 14, 2013 letter to EPA the SCAQMD responded to FRA’s concern by stating that this could be avoided by sending someone to sit in the cab before 30 minutes expires or to restart the locomotive before it reaches the four-hour limit. FRA sees a potential operational inefficiency with SCAQMD’s proposed solution in that it will likely take railroad personnel away from other assigned duties. Additionally, under the proposed rules SCAQMD would consider it a violation if a locomotive is moved solely for the purpose of preventing a locomotive from reaching the 30-minute idling limit. See Proposed Rule 3502(h). FRA is unclear as to how it would be acceptable under the proposed rule to allow a railroad to circumvent the anti-idling requirement by sending someone to sit on the locomotive so that it is no longer “unattended,” when the text of the proposed rule clearly states that it would be unacceptable for a railroad to send a person

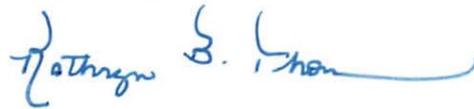
³ The same is true of the daily locomotive inspection that is required by 49 CFR 229.21. While the daily inspection generally takes a limited amount of time for a single locomotive, where multiple locomotives within the consist require a daily inspection, this will substantially increase the amount of time needed to do the inspection. There could be situations where the first locomotive in a multiple locomotive consist needs to be left on idle for more than 30 minutes while the additional units receive their daily inspection.

to board the locomotive (thereby making the locomotive no longer unattended) and move it solely in order to circumvent the anti-idling requirement.

- **Creating time delays and operational inefficiencies when restarting a locomotive where it is necessary to allow the air brake systems to recharge after the locomotive is shut down.** Depending on the length of time that the locomotive is shut down and the number of cars and other locomotives coupled to it, the time needed for the air brake system to fully recharge can easily exceed 30 minutes. Moreover, as noted above, if a train is off air for more than four hours, there will be testing requirements before the train can be placed in service for use. Therefore, FRA foresees the SCAQMD proposed rules having the potential to create substantial delays for freight railroads in the South Coast Basin and would expect those delays to ripple outward into the broader rail system.

We hope that the Board finds this information helpful. If DOT or FRA can be of any further assistance in this proceeding or provide additional information about the issues raised herein, please let us know.

Respectfully,

A handwritten signature in blue ink that reads "Kathryn B. Thomson". The signature is written in a cursive style with a long horizontal flourish at the end.

Kathryn B. Thomson

Certificate of Service

I certify that on this 14th day of April, 2014, I caused a copy of the foregoing to be served upon all Parties of Record.



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