

BEFORE THE SURFACE TRANSPORTATION BOARD

235683  
ENTERED

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY— PETITION FOR  
DECLARATORY ORDER

Office of Proceedings  
March 25, 2014  
Docket No. FD 35803 Part of  
Public Record

COMMENTS OF UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

The United States Environmental Protection Agency (EPA) files these comments in response to a decision of the Surface Transportation Board (Board or STB) instituting a declaratory order proceeding in response to a petition from EPA. *United States Environmental Protection Agency — Petition for Declaratory Order*, FD 35803 (STB served Feb. 26, 2014). As stated by the Board, the question presented in this proceeding is:

. . . whether two rules concerning railroad locomotive idling issued by the South Coast Air Quality Management District (SCAQMD) would be preempted by 49 U.S.C. § 10501(b), if those rules were approved into the California State Implementation Plan (SIP) under the Clean Air Act, 42 U.S.C. § 7401 et seq.

*Id.* at 1.

In reviewing the initial filings, EPA notes that a number of parties have raised issues that are not directly relevant to this question. In particular, parties have made arguments regarding preemption of state and local regulation of locomotives under the Clean Air Act (CAA). *See, e.g., American Association of Railroads (AAR) Reply at 7-8, 22-23; Union Pacific Railroad Company (UP) Reply at 7-8, 18.* In addition, parties have made assertions regarding EPA's authority to approve the rules into the California SIP. *See, e.g., AAR Reply at 19-21; BNSF Railway Company (BNSF) Reply at 22-23.*

EPA wishes to clarify that, as the Board recognized in its Decision, these arguments are outside of the scope of the issue presented by EPA's petition to the Board, which concerns only whether SCAQMD Rules 3501 and 3502, *if approved into the SIP*, would be preempted under 49

U.S.C. § 10501(b). Issues concerning EPA's ability to approve the rules into the California SIP under the CAA are not relevant to that question.<sup>1</sup> In particular, EPA notes that issues regarding preemption under CAA section 209(e), 42 U.S.C. § 7543(e), and the criteria for approval of SIPs under CAA section 110(a)(2), 42 U.S.C. § 7410(a)(2), are outside the scope of this proceeding and that the Board need not consider these issues.

### CONCLUSION

For the reasons set forth herein, EPA respectfully requests that any order issued by the Board in this matter address only the question presented in EPA's petition, namely, whether SCAQMD Rules 3501 and 3502, if approved by EPA into the California SIP, would be preempted under 49 U.S.C. § 10501(b).

Respectfully submitted,

3/21/14

Dated:



Jared Blumenfeld  
EPA Regional Administrator, Region 9

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<sup>1</sup> While SCAQMD has indicated that EPA is proposing to approve the rules into the SIP, SCAQMD Reply at 4, EPA has not yet proposed to take any action on the rules.

## CERTIFICATE OF SERVICE

I certify that I have this day served copies of document upon all parties of record in this proceeding, as listed below, by first-class mail.



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3-24-14

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