



Regulatory Announcement

Federal Preemption of State and Local Control of Locomotives

The Environmental Protection Agency (EPA) has established regulations to implement section 209(e) of the Clean Air Act (CAA), which prohibits certain state and local controls for locomotives. These regulations were developed in conjunction with new emission standards for locomotives and locomotive engines, which were established under section 213 of the CAA.

Clean Air Act Preemption Requirements

In section 209(e) of the CAA, Congress preempted state and local governments from adopting or enforcing “any standard or other requirement relating to the control of emissions from ...new locomotives or new engines used in locomotives.” (Given the nature of locomotive remanufacturing, EPA is defining “new locomotives and new engines used in locomotives” to include existing locomotives when they are remanufactured.) EPA has established regulations that implement this preemption consistent with Congressional intent to prevent unreasonable burdens on interstate commerce.

Prohibited Controls

The regulations prohibit state and local governments from adopting or enforcing any controls that significantly affect a locomotive manufacturer’s or remanufacturer’s design. EPA also is defining by

regulation a period during which state and local governments are explicitly prohibited from adopting three categories of controls that EPA has determined would affect a manufacturer's or remanufacturer's design: 1) emission standards (and related requirements); 2) non-federal in-use testing programs; and 3) emission control retrofit requirements. This period is equivalent to 1.33 times useful life, where useful life is the average period during which a locomotive is operated before it is remanufactured (typically about 6 years). Locomotives are also required to be in compliance with the federal emission standards throughout the useful life.

Comparison to Other Mobile Sources

The preemption regulations are based on the same principles applied to other mobile sources. Most significantly, this preemption is based on a U.S. District Court decision (*Allway Taxi Inc. v. City of New York*)¹ that stated that state controls on emissions of non-new motor vehicles are preempted by the Clean Air Act if those controls have an effect on manufacturers of new motor vehicles. Since the Clean Air Act preemption provisions for nonroad vehicles and engines are similar to those for motor vehicles, EPA has consistently applied this principle to other nonroad sources, although the application of this principle varies somewhat from industry to industry. These regulations for locomotives do differ significantly from previous regulations dealing with preemption in that they include a codification of the principle outlined in the Allway court case (i.e., the explicit preemption period for certain types of controls). This was done to provide more certainty to all parties involved, and because unique features of locomotives and railroads made it appropriate.

Environmental Impacts of Preemption

The preemption regulations will not have any adverse impacts on the environment because of EPA's aggressive control program that is designed to achieve the maximum possible environmental benefits. EPA has established emission standards that will apply both when a locomotive or locomotive engine is originally manufactured and each time that it is remanufactured. The new standards will achieve a two-third reduction in oxides of nitrogen emissions. Standards were also adopted that will ultimately reduce locomotive hydrocarbon and particulate emissions in half. EPA has established an extensive compliance program, including

in-use testing, to ensure that the projected emission reductions are achieved. Without preemption, on the other hand, there is more of a potential for some shift of freight traffic to more polluting forms of transportation that could occur if the costs of rail transportation increased significantly due to a patchwork of state and local regulations. (For example, transport by rail causes about one-third of the pollution as transport by truck per ton-mile of freight.)

Benefits of a Strong Federal Program

Given the inherent interstate nature of the railroad industry, EPA believes that a strong federal program that addresses manufacturing, remanufacturing and in-use compliance best achieves the necessary emissions reductions. This is especially true since many state governments lack the resources to control emissions from locomotives. Since EPA has established such a strong federal program, there is little that any state could do to further reduce locomotive emissions. Also, a patchwork of state and local regulations would be inefficient, and could hinder EPA's ability to implement a uniform national control program.

For More Information

The final rule and other documents on locomotives are available electronically from the EPA Internet server at:

<http://www.epa.gov/OMSWWW/locomotv.htm>

Document information is also available by contacting Russ Banush at:

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¹ *Allway Taxi, Inc. v. City of New York*, 340 F.Supp.1120 (S.D.N.Y.), aff'd 468 F.2d. 624 (2d. Cir. 1972).