



# Environmental Fact Sheet

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## Federal Preemption of State and Local Control of Locomotives

*The Environmental Protection Agency (EPA) is proposing regulations to implement section 209(e) of the Clean Air Act (CAA), which prohibits certain state and local controls for locomotives. These regulations are being proposed in conjunction with new emission standards for locomotives and locomotive engines, which are being proposed 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 is proposing regulations that would implement this preemption consistent with Congressional intent to prevent unreasonable burdens on interstate commerce.

### Prohibited Controls

The proposed regulations would 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 proposing to define by regulation a period during which state and local governments would be

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 would be equivalent to 1.25 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 would also be required to be in compliance with the federal emission standards throughout the useful life.

## **Comparison to Other Mobile Sources**

The preemption being proposed is 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*) 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. The proposed 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 proposed preemption regulations would not have any adverse impacts on the environment because of EPA's proposed aggressive control program that is designed to achieve the maximum possible environmental benefits. EPA is proposing 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 NOx emissions. Standards are also being proposed that will ultimately reduce locomotive hydrocarbon and particulate emissions in half. EPA is proposing 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 can best achieve the necessary emissions reductions. This is especially true since many state governments lack the resources to control emissions from locomotives. Since EPA is proposing such a strong federal program, there would be 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**

Information on the proposed rule for locomotive standards is available electronically via the EPA Internet server via the dial-up modem on the Technology Transfer Network (TTN), an electronic bulletin board system (BBS).

World Wide Web:<http://www.epa.gov/OMSWWW>

TTN BBS: 919-541-5384 (1200-1440 bps, no parity, 8 data bits, 1 stop bit); voice helpline 919-541-5384.

For further information on the proposed rule, please write to:

U.S. Environmental Protection Agency  
Engine Programs and Compliance Division  
2565 Plymouth Road  
Ann Arbor, MI 48105

or call: (313) 668-4333