

**Summary and Analysis of Comments:
Control of Emissions of Air Pollution
from Locomotive Engines and Marine
Compression Ignition Engines Less than
30 Liters Per Cylinder**

**Chapter 7
Small Businesses/SBREFA Process**

Assessment and Standards Division
Office of Transportation and Air Quality
U.S. Environmental Protection Agency

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7. SMALL BUSINESSES/SBREFEA PROCESS

What We Proposed:

The comments in this section relate to the proposed provisions regarding small entities and the Small Business Regulatory Enforcement Fairness Act (SBREFA), described in Sections IV.A(14) and IX.C of the preamble to the proposed rule. A summary of the comments received, as well as our response to those comments, are located below.

7.1 Small Railroad Definition

What Commenters Said:

The Northeast States for Coordinated Air Use Management (NESCAUM) noted the request for comments regarding possible revision of the definition of small railroad to ensure that intercity passenger, commuter, and larger regional freight railroads (i.e., those with annual revenues exceeding \$25 million) become subject to locomotive remanufacture requirements. NESCAUM commented that it believes that, while this approach will improve upon emission reductions available under current regulations, it fails to take full advantage of a very cost-effective strategy to reduce locomotive emissions from the in-use fleet. The commenter instead urged EPA to extend the remanufacture requirements to include all freight railroads, in addition to intercity passenger and commuter railroads. Under the present definition of small railroad (line-haul with 1500 or fewer employees; local and terminal with 500 or fewer employees), the U.S. railroad statistics (see docket number OAR-2003-0190-0551.1, p.3) show that only the relative few Class I freight railroads clearly are subject to remanufacture requirements by virtue of not qualifying for the small railroad exemption. NESCAUM noted that on average, commuter, regional, local, and switch railroads fall well below the employee thresholds, thereby avoiding remanufacture requirements. Applying a \$25 million annual revenue threshold as the factor for defining small railroads would have the effect of bringing the ‘average’ regional railroad into the remanufacturing program (average revenue of \$49 million, according to the table on page 3 of their comments), but would exclude many smaller regional freight railroads and likely almost all local and switch railroads.

The New York State Department of Environmental Conservation expressed that it does not agree with the proposal to exempt small railroads from Tier 0 remanufacturing requirements. The commenter stated that it does not see a disproportionate cost burden associated with small railroads complying with the remanufacturing requirements, and it therefore urges EPA to limit the remanufacturing exemption to locomotives for which no remanufacturing kit has been

certified.

The New Jersey Department of Environmental Protection (NJDEP) noted that it has determined that all Class 2 and 3 railroad companies that operate in New Jersey will be excluded from the remanufacturing standards in EPA's proposed rule, if EPA retains SBA's definition of small railroad (500 or fewer employees for line-haul railroads, 500 or fewer employees for short-haul railroads). New Jersey has 11 small railroad companies that employ about 200 people and operate about 100 locomotives. As such, NJDEP suggested that, instead of defining a small railroad as one which has less than \$25,000,000 in annual revenues (as proposed in the alternate options section), EPA should subject all railroads to the remanufacture standards, regardless of annual revenue.

Environmental Defense, the Natural Resources Defense Council (NRDC), Puget Sound Clean Air Agency, et al. commented that they support EPA's proposed change to a revenue based definition for a locomotive small business. The commenters also stated that they are in full support of the proposed clarification that "intercity passenger or commuter railroads are not included as railroads that are small businesses because they are typically governmental or are large businesses."

Rail World commented that it believes EPA has rightly recognized that the compliance with the proposed standards should exempt small railroads as defined by the Small Business Administration (SBA). This is in harmony with the previous rules establishing locomotive emissions. Small railroads in the United States seldom have the financial ability to purchase or lease new locomotives. Past practices of these small railroads usually result in those railroads purchasing locomotives cascaded out of the fleets of the Class I railroads.

In addition, Rail World indicated that it believes the revenue threshold that EPA solicited comment on should not be implemented in the proposed rules for many reasons. Revenues do not equal earnings, nor do they guarantee a return on investment. Many small railroads as defined today (line-haul railroads with 1,500 or fewer employees, and short-haul railroads with 500 or fewer employees) are marginal as compared to their Class I partners. Rail World believes that using revenues to determine if a railroad fits the definition of a small railroad should be rejected and omitted. The commenter also noted that the use of a revenue threshold of less than \$25 million per year would be in conflict with other government agencies—the Surface Transportation Board (STB) and SBA's definitions; STB defines a Class I railroad as one with annual revenues of \$250 million or more. Lastly, the commenter noted that in the NPRM, small railroads as recognized by the STB (revenues of less than \$250 annually) would be placed into the same category as the Class I railroads if their revenues (and earnings) exceeded \$25 million per year.

The American Short Line and Regional Railroad Association (ASLRRA) urged EPA to maintain the proposed remanufacturer exemption for small railroads. The commenter noted that at the May 10, 2007 hearing NESCAUM suggested that the remanufacturing requirements

should apply to small railroads because they provide significant freight service to the six New England states, but that action would be short-sighted. ASLRRA stated that it believes that exemption is the right course not only for the health of the class II and class III railroads that now provide the only rail service to that region, but also because doing otherwise would not have the intended effect of reducing emissions.

ASLRRA noted that a recent history of railroad service in New England shows that, decades ago, class I railroads provided the freight rail service now offered by smaller class II and class III carriers. Over time, the lack of significant traffic resulted in abandonments of many lines, and other marginal lines were spun off as independent small railroads whose lower costs could sustain operations with light density traffic. This has resulted in these lower-cost carriers providing the only service to five of the six New England states. These carriers operate on extremely thin margins (compared to their class I predecessors they are often undercapitalized and lack access to the lower cost public financial markets); and they purchase older, second hand equipment because that is the only equipment they can afford to buy. ASLRRA stated that freight traffic in much of New England continues to wane, and that requiring costly retrofitting of the equipment small railroads operate will “plunge many barely viable lines into the red”, and those lines will be quickly abandoned. Freight rail service will disappear just as it has in the past when market conditions could not sustain it. Consequently, increased movement of freight by truck resulting from the decline of small railroads will exacerbate, not decrease, emissions in the region.

Also, ASLRRA commented that it does not agree with the imposition of a burdensome rule on small railroad businesses nationally to address the concerns of a single region. It is best to resolve local issues locally, and stated that a workable model exists to do so. California has adopted the Carl Moyer Grant Program to provide funds for small railroads to retrofit their locomotives to meet the stringent emission standards that California desires.

Rail World, Inc. expressed that it believes that the term “existing fleet” could be subject to interpretation—in the extreme, the term could be applied in a manner that only those locomotives in the existing fleet of a small railroad at the time of the implementation of the rule are exempt. As such, any future purchases of used locomotives by a small railroad could be subject to the proposed rules. Thus, to insure that the rule is clear and unambiguous, it should be stated in the rule that the term “existing fleet” as it applies to the exemption for small railroads is defined in part as being any and all locomotives built after 1972 and in existence at the time the rule is made effective, regardless of the ownership on that date. This will allow for the used units to be economically purchased and placed into service by small railroads.

Letters:

American Short Line and Regional Railroad Association (ASLRRA) OAR-2003-0190-0560.1

Environmental Defense, et al. OAR-2003-0190-0592.1

New Jersey Department of Environmental Protection, Air Quality Management (NJDEP)

OAR 2003-0190-0562.2

New York State Department of Environmental Conservation, OAR-2003-0190-0583.1
Northeast States for Coordinated Air Use Management (NESCAUM) OAR-2003-0190-0551.1

Ozone Transport Commission (OTC) OAR-2003-0190-0633.1

Puget Sound Clean Air Agency OAR-2003-0190-0484 (hearing)

Rail World, Inc. OAR-2003-0190-0474

Our Response:

As described in section IV.A.(13) of the rulemaking (*Small Business Provisions*), we are limiting the category of small railroads which are exempt from the Tiers 0, 1 and 2 remanufacturing requirements for existing fleets to those railroads that qualify as Class III railroads and that are not owned by a large parent company. Under the current Surface Transportation Board classification system, this exemption is limited to railroads having total revenue less than \$25.5 million per year. This change requires that all Class II railroads, when remanufacturing their locomotives, meet the new standards finalized for existing fleets.

We believe that continuing to exempt Class III railroads with annual revenues under \$25.5 million while including all Class II railroads (Class II railroads have from \$25.5 million to \$319.3 million in yearly revenues) in the existing fleet program is a reasonable approach that addresses both industry concerns regarding costs while also recognizing that small railroads do contribute to air pollution in areas they service including nonattainment areas throughout the U.S. Most but not all Class II and III freight railroads qualify as small businesses, and the majority of freight rail in some regions of the country is Class II and III. Thus, exempting Class II railroads that qualify as small businesses would lead to limited emission benefits for these regions.

In regard to the comments on intercity passenger or commuter railroads, we are clarifying our definition that these railroads are not included as railroads that are small businesses because they are typically governmental or are large businesses. Due to the nature of their business, these entities are largely funded through tax transfers and other subsidies. Thus, the only passenger railroads that could qualify for the small railroad provisions will be small passenger railroads related to tourism.

In response to Rail World, Inc.'s specific comments on rejecting the \$25.5 million per year revenue threshold, we believe that this annual revenue limit is the most appropriate criteria to determine which small railroads are exempt from the remanufacturing requirements for existing fleets. As stated above, it exempts fewer railroads and reduces emissions in nonattainment areas in the nation while addressing industry's cost concerns – as compared to the thresholds of 1,500 employees for line-haul railroads and 500 employees for short-haul railroads (which are the same definitions as those used by SBA) or the \$250 million annual revenue criteria cited by the commenter. In addition, annual revenue is a more appropriate criteria

compared to either earnings or return on investment (ROI), which were mentioned by the commenter, since data on these latter two items is limited, especially for small businesses. Using earnings or ROI as a threshold would require us to estimate these items where there are currently insufficient data. Thus, the \$25.5 million annual revenue threshold is the preferred criteria.

For Rail World, Inc.'s comment on clarifying the term "existing fleet," it is important to note that within the definition of "new" in §1033.901 (*Definitions*) of the regulations -- paragraph (2)(ii), it specifies that "Locomotives that are owned or operated by a small railroad and that have never been remanufactured in a certified configuration are not considered to become new when remanufactured." Thus, if a small railroad's (Class III railroads that are not owned by a large parent company) locomotive has not been previously remanufactured into a certified configuration or certified to EPA emission standards, it would be exempt from the remanufacturing requirements. However, if its locomotive was previously remanufactured into a certified configuration, it must comply with the requirements. Refer also to §1033.610 (*Small railroad provisions*) of the regulations. In addition, paragraph (2)(i) of the definition of new states that "Locomotives and engines that were originally manufactured before January 1, 1973 are not considered to become new when remanufactured unless they have been upgraded" Thus, for the purpose of the locomotive requirements, an existing fleet locomotive is indeed considered to be any and all locomotives built after 1972 and in the fleet when the regulations become effective, irrespective of ownership.

7.2 Exemptions for Small Locomotive Remanufacturers

What Commenters Said:

General Electric Transportation (GE) noted that the proposed rule included an exemption for small remanufacturers from production line and in-use testing until 2013 (72 FR 15995). EPA's rationale that the small businesses in the locomotive remanufacturing and railroad industry do not tend to have the financial resources or technical expertise to quickly respond to the requirements contained in the proposed rule is flawed. The commenter noted that, while it may have been true that it would be an unreasonable burden on small remanufacturers to meet testing requirements when the locomotive standards were first issued in 1998, the industry and availability of test facilities have advanced significantly since that time. The exemption is no longer justified and small remanufacturers should not be excused from testing requirements.

GE noted that in the early years of this program, EPA is requiring Tier 0 locomotives to meet Tier 1 standards and Tier 1 locomotives to meet Tier 2 standards; thus, the test facilities for Tier 1 and 2 emissions standards should already be in place, so a delay in test requirements could only serve to place at risk the compliance of locomotives being introduced into commerce. To ensure the integrity of the program, EPA should impose the same testing requirements on all remanufacturers - large and small. The commenter also noted that the proposed rule pointed out that the phase-in of test requirements also applied for small remanufacturers in the original

locomotive emission regulations under part 92. At the time those rules were issued, even the OEMs had not developed their own test equipment, so it was understandable that smaller businesses might have difficulty obtaining test time at Southwest Research Institute or another, new test location. Today, there are numerous test facilities across the country. GE also commented that it has its own facilities, and those facilities could be contracted to small businesses for testing—GE believes that the costs are no longer prohibitive and do not present a barrier to market entry. GE urges EPA to, given the increased availability of testing, strike the balance in favor of emissions reductions to ensure the promised rule benefits.

In its comments, MotivePower, Inc. requested that the proposed definition of “small manufacturer” (§1033.901) be changed to exclude the parent company and that the basis be changed to annual sales less than \$500 million. In all of Part 1033, this definition is germane only under §1033.150(a)(4)(d) -- Small manufacturer/remanufacturer provisions within *Interim provisions* section of regulations, which delays production-line and in-use testing requirements until January 1, 2013 for small manufacturers. The commenter believes that in this context, the amount of locomotive work performed is most relevant in determining whether a delay in meeting testing requirements is warranted, and therefore, the annual sales of the manufacturer, excluding the parent company data in determining the status of small manufacturer.

The Puget Sound Clean Air Agency suggested that anti-idle technology (automatic engine stop/start (AESS)) be required for remanufactured existing locomotives even if they are owned by small businesses.

The New York State Department of Environmental Conservation commented that it agrees with EPA’s decision to limit the railroad in-use testing program to Class I railroads.

The Association of American Railroads (AAR) expressed that it is possible that there will not be a remanufacturing system available for all of the older engine families. For example, the railroads questioned whether there will be a remanufacturing system for the over 2,000 EMD SD-2 locomotives in service on Class I railroads. The proposed §1033.610 (*Small railroad provisions*) of the regulations authorizes EPA to exempt locomotives owned by small railroads from the obligation to remanufacture locomotives to EPA standards if there is no remanufacturing system available for the locomotives. AAR commented that it believes there is no reason to exempt only small railroads in such an instance. The commenter further stated that it believes that all railroads should be entitled to an exemption if there is no remanufacturing system available.

Letters:

Association of American Railroads (AAR) OAR-2003-0190-0566.1

General Electric Transportation (GE) OAR-2003-0190-0590.1

MotivePower, Inc OAR-2003-0190-0613

New Jersey Department of Environmental Protection, Air Quality Management (NJDEP)
OAR-2003-0190-0562.2

Our Response:

In regard to the GE comments on not exempting small remanufacturers from production line and in-use testing until 2013, we continue to believe it is important to provide flexibility to these small entities to minimize the burden on small businesses that need added flexibility to meet the standards, while ensuring the greatest emissions reduction achievable. Although this rule will not have a significant impact on a substantial number of small entities (refer to section IX.C – *Regulatory Flexibility Act* – of the rulemaking), we will try to reduce the impact of this rule on such entities. We understand that there may be increased availability of test facilities, but as we stated in the proposed rule (72 FR 15938, April 3, 2007), some small remanufacturers still may not have the financial resources or technical expertise to quickly respond to the new requirements. In addition, we are finalizing the amendment to this provision that small remanufacturers are no longer exempt from in-use testing for the entire useful life of a locomotive or a locomotive engine. By providing additional time to comply with this amendment, the burden for small remanufacturers would likely be reduced. As described in section IV.A.(13) of the rulemaking (*Small Business Provisions*), this amendment ensures that small remanufacturers comply with the standards in-use, and subsequently, the public is assured of receiving the air quality benefits of this rule. Finally, we believe that this 5-year delay will not provide any significant competitive advantage to small remanufacturers, and thus it should not have a significant adverse impact on the larger business entities.

In response to the MotivePower, Inc. comment that the proposed definition of “small manufacturer” be changed to exclude the parent company and that the basis be changed to annual sales less than \$500 million, we refer back to the intent of the flexibility provisions for small entities as described above and in the proposed rule. Small entities in the locomotive remanufacturing and railroad industry tend not to have the financial resources or technical expertise to quickly respond to the requirements contained in the rule. Therefore, the flexibility provisions are designed to minimize regulatory burdens on small businesses needing added flexibility to comply these requirements, while still while ensuring the greatest emissions reductions achievable. Extending the same flexibilities to entities affiliated with large parent companies would be providing relief to those entities that do indeed typically have the financial resources and technical expertise to respond quickly to the new emission standards, which is contrary to the intent of flexibility provisions for small entities. Moreover, we need to ensure emissions decrease based on the new regulations, and expanding flexibility provisions to large entities (and more companies) will likely hinder this objective. Therefore, we will include the employees from the parent company in the determining whether an entity qualifies as a small manufacturer.

As for revising the small business threshold to \$500 million in annual sales for small manufacturer or remanufacturer, it is essential to realize that the 1,000 employee threshold is

based on the small business definition provided by the Small Business Administration's (SBA) regulations at 13 CFR 121.201 (according to the NAICS codes 333618, *Other Engine Equipment Manufacturing*, and 336510, *Railroad Rolling Stock Manufacturing*, for manufacturers and remanufacturers of locomotive engines). Section 601 of the Regulatory Flexibility Act (RFA) permits you to establish an alternative definition of small for the entities subject to a rule when the definition is "appropriate to the activities of the agency." In general, a situation such as SBA's size standards not being most appropriate for considering impacts on small entities is when we can consider establishing an alternative definition. However, we believe there has not been sufficient information provided by the commenter to show that SBA's 1,000 employee threshold is not the most appropriate criteria – and that the \$500 million in annual sales would be more fitting. Also, setting an alternative definition for small entities requires notice and opportunity for public comment, and as stated earlier, we do not believe enough new information has been brought forward to demonstrate a need for an alternative definition and/or notice and comment on such an alternative. In addition, including the parent company (as we responded earlier) more aligns with a 1,000 employee limit. Thus, we believe that the 1,000 employee criterion is still the best indicator of what is a small versus large manufacturer (or small versus large business).

In response to the comment from Puget Sound Clean Air Agency on requiring anti-idle technology - AESS - for small entities' remanufactured existing locomotives, it is important to note that, as described in section III.B.1(c) of the rulemaking (*Reduction of Locomotive Idling Emissions*), it is widely accepted that for most locomotives, the fuel savings that result in the first few years after installation of an AESS system will more than offset the cost of adding the system to the locomotive. Given these short payback times for adding idle reduction technologies to a typical locomotive, normal market forces have led several small railroads -- as well as many large railroads -- to retrofit a number of their locomotives with these technologies. However, some railroads have determined that the fuel savings is not enough to justify the cost of the retrofit. Thus, we are requiring that at least an AESS be used on all new Tier 3 and Tier 4 locomotives, and also installed on all existing locomotives that are subject to the new remanufactured engine standards, at the point of first remanufacture under the new standards. As described earlier, only small railroads -- Class III railroads that are not owned by a large parent company -- are now exempt from the remanufacturing requirements (unless their locomotives were previously certified to EPA emission standards). Thus, this AESS provision will only apply to Class I and II railroads -- not most Class III railroads (nearly all Class III railroads are small businesses). Even though many Class II railroads are small businesses, these entities will now need to adhere to this AESS provision. This is a reasonable step to address the above comment on small entities. In addition, for Class I and II railroads, we expect there to be significant emission reductions, as well as longer term fuel savings, from applying AESS. However, for Class III railroads, we project that there would be relatively small emission reductions (and longer term fuel savings) from this provision in comparison to the Class I and II railroads.

Ultimately, we have decided to exempt only small railroads (or Class III railroads as

discussed above) from the remanufacturing requirements, and thus, we will not require idle reduction technologies for small or Class III railroads. Market forces will likely lead to more Class III railroads utilizing these technologies in the future, and we do not want to create a burden for these entities for a relatively small emission reduction. Also, we are committed to minimizing the economic impact of the regulations on small business entities.

In regard to the AAR comments that all railroads (not only small railroads) should be entitled to an exemption from remanufacturing requirements if there is no remanufacturing system available, we have decided to continue to only provide this exemption for small railroads. For small railroads, potentially no remanufacturer will certify a system for very old locomotive models that make up a small fraction of the fleet and are remanufactured infrequently. Such a situation is high unlikely for a large railroad, who will likely have a much different fleet make up.

7.3 Exemptions for Marine Small Volume Manufacturers

What Commenters Said:

NESCAUM commented that it concurs with EPA's position that the five-year compliance delay for small-volume manufacturers of recreational marine diesel engines, as provided in current regulations, is unnecessary for the purpose of meeting the Tier 3 standards. The commenter however noted that, because it is taking the position that smaller marine engines should be subject to the Tier 4 standards, it does recognize that it may be appropriate to allow small-volume manufacturers some additional time to meet the Tier 4 standards.

Letters:

Northeast States for Coordinated Air Use Management (NESCAUM) OAR-2003-0190-0551.1

Our Response:

We are not finalizing Tier 4 standards for recreational marine engines at this time. However, for the Tier 3 standards that we are adopting for these engines, we will not provide the five-year delay for complying with the standards. As discussed in section IV.A.13.b(iii) of the rulemaking (*Small Business Provisions*), the Tier 3 standards for recreational marine engines are expected to be engine-out standards which do not require the use of aftertreatment – similar to the existing Tier 1 and Tier 2 standards. Also, Tier 3 engines are expected to require far less in terms of new hardware, and in fact, are expected to only require upgrades to existing hardware (i.e., new fuel systems). In addition, manufacturers have experience with engine-out standards from the existing Tier 1 and Tier 2 standards, and thus, they have learned how to comply with such standards. Thus, small-volume manufacturers of recreational marine diesel engines do not need more time to meet the new standards. For small post-manufacture marinizers of

recreational marine diesel engines, the one-year delay described in the rule will provide enough time for these entities to meet the new standards.

7.4 Other

What Commenters Said:

National Maintenance & Repair, Inc. commented that it believes that original equipment manufacturers (OEMs) have a built-in advantage, and the regulations as proposed would only add to this advantage. Many small companies will be adversely affected by the regulations, possibly to the point of bankruptcy; and the commenter urged that EPA take small business concerns into consideration.

Chromium Corporation expressed that it believes the proposed certification and kit concept strongly favors a monopoly of repair and replacement parts by the OEMs. The fresh or remanufactured engine certificate requires that at all components essential to meeting emission requirements are included in the kit. These types of certificates are extraordinarily expensive to develop and test, which puts the certificates out of reach for most small companies.

Kaydon commented that with the 2007 proposed standards to reduce both NO_x and PM, it believes the OEMs are again in the process of establishing that every component in a power assembly, turbocharger, and air-cooling equipment is a 'critical component' regardless of its impact on the combustion process or oil consumption. (The commenter noted that following as examples of non-critical components: bolts, gaskets, valve springs, rocker arm bearings, piston pins, piston rods, etc.) OEMs are again trying to dominate the proceedings and eliminate the small businesses from market participation. Kaydon stated that it believes the result of permitting every component to be classified as 'critical' is a repeat of the same problems experienced with the original locomotive emissions implementation in 2002. This will eliminate many small business manufacturers from the marketplace, and will seriously damage local economies around the country and promote an engine parts monopoly for the locomotive OEMs.

Coalition of Aftermarket Rail and Marine Engine Suppliers (CARMES) -- particularly the CARMES company or member UNIPAR, Inc. -- commented that they believe the proposal floated by locomotive OEMs is to eliminate Tier 0 regulations adopted in 2000 and to mandate that these locomotives now comply with Tier 1 or 2 regulations. The OEMs have stated that they can comply with this proposal and that they have the technology. In 1999 the locomotive aftermarket met with the EPA, FRA, and others to express their concerns, which are basically the same today. Some of these concerns are listed below:

- What benefit is there for small business? This will put many people and companies out of business, and the OEMs know this.
- EPA should realize this for what it is and stop this attempt to hurt small business. If

the OEMs can't win in the marketplace by providing the quality product and service demanded for by the end user, they should quit trying to have the government do it for them by legislating meaningless propositions.

Letters:

Chromium Corporation OAR-2003-0190-0651

Coalition of Aftermarket Rail and Marine Engine Suppliers (CARMES) OAR-2003-0190-0650

Kaydon Ring & Seal, Inc. (Kaydon) OAR-2003-0190-0654

National Maintenance & Repair, Inc. OAR-2003-0190-0655

Our Response:

Refer to section 4.10.3 - *Non OEM Remanufacturing and Part Suppliers* - of this Summary and Analysis of Comments document for a response to the above comments on the effect this rule would have on OEMs in comparison to aftermarket suppliers. However, for the comments pertaining to the impact of the rulemaking on small entities, it is important to note that we have taken steps to identify the regulatory burden of the rule on small businesses and to involve them in the regulatory process. Toward this end, EPA requested comment on several provisions designed to ease the regulatory burden on small locomotive entities. In the final rule, EPA has attempted address these comments and to minimize the economic burden of compliance on small business entities wherever possible. As described below, we are providing flexibilities to small locomotive entities, and for a complete description of the flexibilities in the final rule, refer to section IV.A.(13) - *Small Business Provisions* – of the preamble to the final rule.

- Small locomotive remanufacturers are granted a waiver from production-line and-in-use testing for up to five calendar years after this program becomes effective.
- Class III railroads qualifying as small businesses are exempt from new Tier 0, 1, and 2 remanufacturing requirements for locomotives in their existing fleets.
- Railroads qualifying as small businesses continue being exempt from the in-use testing program.
- Locomotive entities, including those that are small businesses, have hardship relief provisions -- i.e., apply for additional time.

Even with these flexibilities, small locomotive remanufacturers will still need to ensure that they are not increasing emissions, and thus, they must comply with some of the new program requirements. However, by finalizing the above flexibility options as well as the compliance provisions discussed in Chapter 4 of this Summary and Analysis of Comments document, we have taken into account the concerns expressed by aftermarket suppliers for our regulatory approach. In addition, as described earlier, the final rule will not have significant adverse

impacts on a substantial number of small entities.