

a public highway or street; on private property without the consent of the person in charge of the property; or within 300 feet of a bridge, tunnel, dwelling, or place where people work or congregate unless for brief periods when parking in such locations is unavoidable. ATF has expressed some concern that explosives stored incidental to their movement in transportation and, thus, falling within the § 845(a) exception, may present potential safety and security risks. For example, ATF suggests that such explosives could be stored close to non-related residential and commercial structures, as well as to highways and roadways that are commonly traveled by the general public. ATF is concerned that unsafe amounts of explosives could be stored in one location and may not be adequately secured. Because the HMR do not contain a restriction on the amount of time explosives may be stored incidental to movement, ATF sees these regulatory deficiencies as especially problematic. Moreover, the fact that explosives lost or stolen while in transit do not have to be promptly reported as lost or stolen could hinder law enforcement in preventing harm and gathering intelligence.

We recognize there is a need to evaluate and address these issues in the regulation of explosives stored incidental to movement. However, this final rule is not the appropriate vehicle for imposing safety and security requirements on explosives stored incidental to movement. This final rule addresses specific situations, activities, and operations to which the HMR apply, not what the safety and security standards should be when the HMR do apply. In order to enhance the safety and security of hazardous materials, including explosives, stored incidental to transportation, we intend to propose additional requirements for hazardous materials stored incidental to transportation. We intend to consider industry and government standards, including the ATF regulations in part 555, for guidance in formulating our proposals with respect to explosives.

Finally, ATF also has concerns about "safe havens." The FMCSRs permit explosives to be stored for an indefinite period in a "safe haven." ATF has found that safe havens have been located next to major highways and used for extended periods to store explosives. Because the issue of safe havens is addressed in the advance notice of proposed rulemaking issued jointly by RSPA and FMCSA under docket HM-232A on July 16, 2002 (67 FR 46622), we will not address it in this final rule.

However, we will address these concerns in the near future.

IV. Revisions to § 174.67

On September 14, 1992, we published an NPRM under Docket HM-212 (57 FR 42466), proposing several changes to the HMR as they apply to loading and unloading of hazardous materials from rail tank cars and cargo tanks. We proposed to amend the following sections of the HMR:

- Section 174.67(i) pertaining to unloading of tank cars and § 177.834(i) pertaining to the loading of cargo tanks to provide for the use of signaling systems to meet attendance requirements.
- Sections 174.67(i) and 174.67(j) to allow a tank car containing hazardous materials, under certain conditions, to remain standing with the unloading connections attached when no hazardous material is being transferred.
- Section 177.834 to remove a requirement that an attendant must be within 25 feet of the cargo tank motor vehicle during loading operations that are monitored by a signaling system.

Our goals were to provide tank car and cargo tank operators the flexibility to design loading and unloading procedures appropriate to specific facilities and circumstances, to accommodate new technologies in the current regulatory scheme, and to incorporate certain exemptions into regulations of general applicability. We received about forty (40) comments in response to the NPRM from manufacturers, distributors, shippers, carriers, and industry associations. Overall, commenters supported the proposed rule, stating that it provides flexibility and economic relief to industry with no diminution in safety.

The HM-223 NPRM proposed to delete the rail tank car unloading requirements in § 174.67, except for certain provisions related to protection of train and engine crews, because changes in the way rail tank cars are unloaded made the § 174.67 requirements obsolete. As discussed above, however, we have reconsidered the proposal in light of comments suggesting the transloading operations should be regulated under the HMR. Therefore, in this final rule, we are adopting certain changes to § 174.67 to update and clarify requirements and to incorporate the provisions of certain exemptions into the HMR. This final rule specifies that the requirements in § 174.67 apply to transloading operations. As discussed above, actions that assure that a tank car that is being loaded or unloaded does not inadvertently enter transportation or

endanger transportation personnel (i.e., posting warning signs, setting brakes, blocking wheels) are regulated under the HMR. Unloading of rail tank cars by consignees after delivery by the carrier is not regulated under the HMR, except as described in this paragraph. As stated previously in this preamble, unloading of rail cars at a facility after delivery by and departure of the rail carrier is subject to OSHA regulations applicable to worker protection and safety.

This final rule incorporates revisions to § 174.67 applicable to: (1) Securing tank cars during unloading to prevent movement of the tank cars and entry to the unloading area by other rail equipment; (2) written safety procedures; (3) monitoring of tank car unloading; and (4) permitting tank cars to remain standing with unloading connections attached. Except for those applicable to monitoring of tank car unloading, the revisions proposed in this interim final rule are currently authorized under over 80 exemptions granted to operators of tank car unloading facilities.

The revisions to the tank car unloading monitoring requirements incorporate procedures that are currently permitted by interpretation. The HM-212 NPRM included a proposal to permit monitoring of tank car unloading by use of a signaling system that includes surveillance equipment (television monitors and video cameras) and remote shut-off equipment. A number of commenters suggested that the proposal should be expanded to authorize systems other than television or video surveillance equipment, noting that sensors coupled with alarms can be as effective as visual surveillance in detecting unintentional releases. Indeed, in the case of a hazardous material that exists as a gas under ambient conditions, a sensor is more effective than visual surveillance. After further consideration of general industry practices, we determined that a signaling system need not be equipped with television monitors and video cameras to effectively meet the attendance requirements as was proposed in the NPRM. Other types of signaling systems are also acceptable. This final rule reflects this change and is consistent with letters of clarification issued over the past several years applicable to monitoring of tank car unloading.

This final rule revises § 174.67 as follows:

1. Paragraph (a)(2) incorporates provisions, currently required under exemptions, relevant to blocking the wheels of tank cars during unloading.