

for regulation as a transportation function under the HMR, in this final rule, we state that the unloading of a tank car by a consignee within its facility is not subject to the HMR. This approach is consistent with RSPA's current regulation of cargo tank unloading and takes into account the changes in industry rail tank car unloading practices since the regulations in Part 174 were promulgated. Transloading operations—that is, the transfer of a hazardous material at an intermodal facility directly from a rail tank car to a cargo tank motor vehicle for the purpose of continuing the movement of the hazardous material in commerce—would continue to be regulated under the HMR, as such operations currently are regulated.

FRA believes that unique features of rail tank car loading and unloading facilities and of rail tank cars themselves require continued application of certain HMR requirements related to the protection of train and engine crews operating within a shipper or consignee facility. FRA wants to assure that, at the point of physical interface between the general system of rail transportation and the facility rail system, rail crews do not make inappropriate assumptions about the status of a particular rail car or series of rail cars and attempt to move cars that are attached to facility storage tanks or manufacturing processes, thereby endangering rail crew safety or adversely affecting movement along the general system of rail transportation. Therefore, in this final rule, we retain current requirements for posting warning signs, setting hand brakes, and blocking the wheels of hazardous materials tank cars placed for unloading with closures open. We further require application of these protective measures whenever a tank car is placed for loading with a closure open. The risk to the general system of rail transportation and to rail crews operating within a facility is the same whether a hazardous materials tank car is placed for either loading or unloading with a closure open.

In this final rule, we have rewritten the regulations applicable to rail transloading operations in § 174.67 of the HMR. The final rule permits facilities to use signaling systems to monitor operations and incorporates certain exemptions provisions authorizing tank cars to stand with unloading connections attached during intermittent operations. Eliminating the need for exemptions and permitting facilities flexibility in monitoring operations will significantly reduce

operating costs for these facilities and will result in a reduction in administrative costs for the Federal government.

Identification of potentially affected small entities. For the most part, the selected alternative maintains the status quo in terms of applicability of the HMR, thus imposing no new compliance costs on the regulated industry. For rail tank car unloading facilities, the final rule reduces the costs of compliance with the HMR by eliminating the current requirement that rail tank car consignees comply with unloading requirements in § 174.67. For facilities at which rail tank cars are loaded with hazardous materials, because operators are currently posting warning signs, setting hand brakes, and blocking wheels of rail cars placed for loading as part of their standard operating procedures, the selected alternative imposes no costs of compliance related to preventing access to the tank car during loading.

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of “small business” has the same meaning as under the Small Business Act. Therefore, since no such special definition has been established, RSPA employs the thresholds published by SBA for industries subject to the HMR. Based on data for 1997 compiled by the U.S. Census Bureau, it appears that upwards of 95 percent of firms who are subject to the HMR are small businesses. These entities will incur no new costs to comply with the HMR under this final rule.

The Federal Railroad Administration estimates that there are 2,500 rail tank car loading and unloading facilities operated by manufacturers of chemicals and allied products. Since no special definition has been established, we employ the threshold of 500–1,000 employees published by SBA for manufacturers of chemicals and allied products (NAICS Subsector 325). Based on data for 1997 compiled by the U.S. Census Bureau, it appears that 93 percent of these firms are small businesses. The provisions in this final rule will not increase the costs of complying with HMR requirements related to preventing access to rail tank cars during loading operations and will reduce the cost of complying with the HMR unloading requirements.

Related Federal rules and regulations. OSHA issues regulations related to safe operations, including containment and transfer operations, involving hazardous materials in the workplace. These regulations are codified at 29 CFR Part

1910 and include requirements for process safety management of highly hazardous chemicals and for operations involving specific hazardous materials, such as compressed gases, flammable and combustible liquids, explosives and blasting agents, liquefied petroleum gases, and anhydrous ammonia. OSHA regulations also address hazard communication requirements at fixed facilities, including container labeling and other forms of warning, material safety data sheets, and employee training.

EPA issues regulations designed to prevent accidental releases into the environment of hazardous materials at fixed facilities, codified at 40 CFR Part 68. These regulations include requirements for risk management plans that must include a hazard assessment, a program for preventing accidental releases, and an emergency response program to mitigate the consequences of accidental releases. In addition, EPA regulations applicable to hazardous materials at fixed facilities address community right-to-know requirements; hazardous waste generation, transportation, storage, disposal, and treatment; and requirements to prevent the discharge of oil into or onto the navigable waters of the United States or adjoining shorelines.

Conclusion. We have determined that this final rule will impose no new costs of compliance with HMR requirements. This final rule will reduce the overall costs of compliance for companies that operate rail tank car unloading facilities. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small businesses.

This final rule has been developed in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Paperwork Reduction Act

This final rule does not impose any new information collection requirements.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-