other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. The provisions of this interim final rule may apply specifically to all businesses using pipelines to transport hazardous liquids, gas, and LNG in interstate commerce. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $155,000,000 or more, adjusted for inflation, in any year for either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least-burdensome alternative that achieves the objective of the rule.

H. Paperwork Reduction Act

This interim final rule imposes no new requirements for recordkeeping or reporting.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4375), requires federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of these amendments. Specifically, PHMSA evaluates the risk of release and resulting environmental impact; risk to human safety, including any risk to first responders; if the proposed regulation would be carried out in a defined geographic area; and the resources, especially in environmentally sensitive areas, that could be impacted by any proposed regulations.

This interim final rule would be generally applicable to pipeline operators, and would not be carried out in a defined geographic area. The adjusted, increased civil penalties listed in this interim final rule may act as a deterrent to those violating the Federal Pipeline Safety Laws, or any PHMSA regulation or order issued thereunder. This may result in a positive environmental impact as a result of increased compliance with the Federal Pipeline Safety Laws and any PHMSA regulations or orders issued thereunder. Based on the above discussion, PHMSA concludes there are no significant environmental impacts associated with this interim final rule.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or online at *https://www.federalregister.gov/articles/2000/04/11/00–8505/privacy-act-of-1974-systems-of-records* or *https://www.gpo.gov/fdsys/pkg/FR–2000–04–11/pdf/00–8505.pdf.*

K. Executive Order 13609 and International Trade Analysis

Sections 3 and 4 of Executive Order 13609 direct an agency to conduct a regulatory analysis and ensure that a proposed rule does not cause unnecessary obstacles to foreign trade. This requirement applies if a rule constitutes a significant regulatory action, or if a regulatory evaluation must be prepared for the rule. This interim final rule is not a significant regulatory action, but a regulatory action under Section 3(e) of Executive Order 12866. PHMSA is not required under Executive Orders 12866 and 13563 to submit a regulatory analysis.

L. 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 the spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action in the Unified Agenda.

List of Subjects in 49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

In consideration of the foregoing, PHMSA is amending 49 CFR part 190 as follows:

PART 190—PIPELINE SAFETY ENFORCEMENT AND REGULATORY PROCEDURES

■ 1. The authority citation for part 190 is revised to read as follows:

Authority: 33 U.S.C. 1321(b); 49 U.S.C. 60101 *et seq.;* 49 CFR 1.97; Pub. L. 114–74, section 701; Pub. L. No: 112–90, section 2; Pub. L. 101–410, sections 4–6.

■ 2. Section 190.223 is amended by revising paragraphs (a) though (d) to read as follows:

§ 190.223 Maximum penalties.

(a) Any person found to have violated a provision of 49 U.S.C. 60101 *et seq.,* or any regulation or order issued thereunder is subject to an administrative civil penalty not to exceed $205,638 for each violation for each day the violation continues, except that the maximum administrative civil penalty may not exceed $2,056,380 for any related series of violations.

(b) Any person found to have violated a provision of 33 U.S.C. 1321(j) or any regulation or order issued thereunder is subject to an administrative civil penalty under 33 U.S.C. 1321(b)(6), as adjusted by 40 CFR 19.4.

(c) Any person found to have violated any standard or order under 49 U.S.C. 60103 is subject to an administrative civil penalty not to exceed $75,123, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

(d) Any person who is determined to have violated any standard or order under 49 U.S.C. 60129 is subject to an administrative civil penalty not to exceed $1,194, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR Part 1.97.

Marie Therese Dominguez,

Administrator.

[FR Doc. 2016–15529 Filed 6–29–16; 8:45 am]

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SURFACE TRANSPORTATION BOARD

49 CFR Chapter X

[Docket No. EP 719]

Small Entity Size Standards Under the Regulatory Flexibility Act

AGENCY: Surface Transportation Board (Board or STB).

ACTION: Final statement of agency policy.

SUMMARY: On July 11, 2013, the Board issued a notice of proposed size standards for purposes of the Regulatory Flexibility Act, along with a request for public comment. This decision discusses the comment received in response to the proposed size standards

and adopts the proposed standard as the final statement of agency policy concerning the definition of ''small business.''

DATES: This policy statement is effective June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245–0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) requires agencies to consider the impact of their regulations on small entities,[1] analyze effective alternatives that minimize the impact to small entities, and make their analyses available for public comment. The Small Business Administration (SBA) developed ''size standards'' to clarify the term small business and to carry out the purposes of the Small Business Act. Agencies can then use the SBA's size standards for purposes of defining ''small entities'' to comply with the RFA. However, an agency may establish other definitions for small business that are appropriate to the agency's activities after consultation with the SBA's Office of Advocacy and after opportunity for public comment. 5 U.S.C. 601(3). The SBA has promulgated regulations that classify ''Line-Haul Railroads'' with 1,500 or fewer employees and ''Short Line Railroads'' with 500 or fewer employees as small businesses. 13 CFR 121.201 (industry subsector 482).

On July 16, 2013, the Board served a notice proposing its own small entity size standards for purposes of the RFA, along with a request for comment. 78 FR 42,484 (July 16, 2013). After consulting with the SBA's Office of Advocacy, the Board proposed to establish a small entity size standard based on its longstanding classification system, which classifies freight railroads as Class I, Class II, or Class III based on annual operating revenues.[2] Specifically, the Board proposed to define ''small business'' as only those rail carriers that would be classified as Class III carriers. The Board stated that it believed that this definition is more realistic and useful than the general definitions previously established by the SBA. The Board also noted that this would create consistency with the Federal Railroad Administration (FRA), which in 2003 adopted the Class III standard as its definition of a small business.

The American Short Line and Regional Railroad Association (ASLRRA) submitted a comment on August 5, 2013, opposing the Board's proposal. ASLRRA agrees with the SBA's current definition of small business, which uses the number of employees, rather than revenue, as the relevant metric. It maintains that revenue is an unreliable metric for determining whether a railroad is a small business because railroads are ''so capital intensive their revenues must provide a return on that huge investment or they cannot stay in business'' and because ''small railroad revenues are driven largely by the types of commodities they happen to carry.'' (ASLRRA Comment 3) ASLRRA argues that changing the definition would exclude many Class II railroads from the small business designation, and would thus ''strip them from the financial impact review that is the right of small entities during the rulemaking process pursuant to the Regulatory Flexibility Act.'' (*Id.*) Finally, ASLRRA claims that Class II railroads have little in common with Class I railroads and share more characteristics with the smaller Class III railroads. (*Id.* at 4.)

Despite ASLRRA's objection to the use of our revenue classifications over employee counts to define a small business, we find that it is the more appropriate basis for doing so. Even if, as ASLRRA argues, there is some variation between carriers of similar employment levels due, in part, to the types of commodities being shipped, that alone does not mean that employment level represents the better approach to defining a small business. As the Board explained in the notice, the system of classifying railroads based on revenue is used pervasively by the Board and the railroad industry. The agency has used revenue to classify rail carriers since as early as 1911, and the agency's governing statute, precedent, and regulations often impose different requirements depending on the class of carrier involved. The validity of using revenues to define carrier size has thus been sufficiently demonstrated over time. ASLRRA has not demonstrated that using a size standard based on employment levels is superior to the revenue basis the agency and railroad industry have used for decades.

We now address whether the definition of small business should or should not include Class II carriers. The Board acknowledges ASLRRA's concerns regarding Class II rail carriers and recognizes the differences between Class I, Class II, and Class III railroads. However, the Board does not believe that Class II carriers should be classified as small businesses. Under the Board's governing statutes and regulations, special exceptions are made for Class III carriers, but not Class II carriers.[3] The Board's decision to limit the definition of small business solely to Class III carriers is therefore consistent with the broader regulatory scheme and merely formalizes what is already a common understanding of a small business in the railroad industry.

In addition, the Board also believes there is significant utility in maintaining consistency with the practices of the Federal Railroad Administration, which adopted the same definition of small entity for RFA purposes. *Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws,* 68 FR 24,891 (May 9, 2003); *see also Interim Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws,* 62 FR 43,024 (Aug. 11, 1997). Having two agencies that play complementary roles in railroad industry regulation use different definitions of small business could result in lack of uniformity in the adoption of Federal regulations. In particular, an entity could be considered a small entity for purposes of FRA rules but not a small entity for purposes of STB rules. Not altering the Board's definition of a small business would also perpetuate the incongruous situation of the FRA relying on the Board's classification system as a basis for defining a small business, but the Board not doing so itself.

For the reasons set forth above, the Board will define small business for the purpose of Regulatory Flexibility Act analyses to mean those rail carriers classified as Class III rail carriers under 49 CFR 1201.1–1.

It is ordered:

1. For the purpose of Regulatory Flexibility Act analyses, the Board adopts the definition of ''small business'' to mean those rail carriers

[1] The RFA defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6).

[2] Class III carriers have annual operating revenues of $20 million or less in 1991 dollars, or $38,060,383 or less when adjusted for inflation using 2014 data. Class II rail carriers have annual operating revenues of up to $250 million in 1991 dollars or up to $475,754,802 when adjusted for inflation using 2014 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its Web site. 49 CFR 1201.1–1.

[3] For example, the Board created a class exemption for acquisitions of rail lines by Class III carriers (49 CFR *Subpart E—Exempt Transactions Under 49 U.S.C. 10902 for Class III Rail Carriers);* Class III carriers are exempt from labor protective conditions for line acquisitions and mergers (49 U.S.C. 11326(c)); and Class III carriers are the only carriers allowed to file Feeder Line applications (49 U.S.C. 10907(a)).

classified as Class III rail carriers under 49 CFR 1201.1–1.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

3. Notice of this decision will be published in the **Federal Register**.

4. This decision is effective on June 30, 2016.

Decided: June 22, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman. Commissioner Begeman dissented with a separate expression.

Tia Delano,

Clearance Clerk.

COMMISSIONER BEGEMAN, dissenting:

I am a strong proponent of the notice and comment process and find it especially important given the Board's extreme ex parte communication restrictions. So when the only comments received are from the stakeholders most affected, and those stakeholders express strong opposition to a Board proposal, I think we are obligated to carefully consider the concerns expressed and reassess the wisdom of our approach. Upon doing so here, I have concluded this proposal should be withdrawn.

The American Short Line and Regional Railroad Association (ASLRRA), which represents 550 Class II and Class III rail carriers across the country, filed in strong opposition to the Board's July 2013 proposal to alter its small entity definition for Regulatory Flexibility Act (RFA) purposes. ASLRRA argued that the Board's proposal to use revenue rather than number of employees (the measure developed by the Small Business Administration that agencies can use to comply with the RFA) would effectively lump all Class II carriers with Class I carriers for RFA purposes, an unreasonable outcome given the significant differences between those carrier types. ASLRRA further argued that the Board's proposal would be ''detrimental to Class II carriers.'' I find ASLRRA's concerns alarming.

I am not convinced that the action the Board is taking today is necessary or somehow worth the potential harms described by ASLRRA. After all, the majority's decision does not dispute ASLRRA's claims. It appears the driving factor in this decision is the majority's desire to create ''consistency'' with the Federal Railroad Administration. While consistency may be fine, it certainly is not a very compelling reason since the two agencies have used different small business definitions for 13 years without issue.

There are a host of stale proceedings piled up at the Board and I am all for the Chairman moving the docket. But if (after three years) the majority was merely going to dismiss the only comment received from representatives of the parties affected, there was no real point in the Board inviting comment in the first place. I dissent.

[FR Doc. 2016–15437 Filed 6–29–16; 8:45 am]

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