

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs  
Administration****49 CFR Part 107**

[Docket No. RSPA-00-8439 (HM-208D)]

RIN 2137-AD53

**Hazardous Materials: Temporary  
Reduction of Registration Fees****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** Because there is an unexpended balance in the Hazardous Materials Emergency Preparedness grants fund, RSPA proposes to temporarily lower the registration fees paid by persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials. RSPA also proposes to require all not-for-profit organizations to pay the same registration fee as a small business and to refer to the size standards in the North American Industry Classification System (NAICS) as the criteria for a small business.

**DATES:** Comments must be received by February 2, 2001.

**ADDRESSES:** Submit written comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW., Washington, DC 20590-0001. You must identify the docket number, RSPA-00-8439 (HM-208D) at the beginning of your comments and submit two copies. If you wish to receive confirmation of receipt of your comments, include a self-addressed stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System website at <http://dms.dot.gov>. Click on "Help & Information" to obtain instructions for filing the document electronically.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the U.S. DOT at the above address. You can view public dockets between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. You can also view comments on-line at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366-4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, (202) 366-8553, Research and Special Programs Administration, U.S. Department of Transportation, 400

Seventh Street, SW, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:****I. Background and Summary of  
Proposal**

Since 1992, RSPA has conducted a national registration program for persons engaged in the offering for transportation or transporting certain categories and quantities of hazardous materials in intrastate, interstate, or foreign commerce. This program is carried out under the mandate in 49 U.S.C. 5108 and the authority delegated to RSPA at 49 CFR 1.53(b)(1). The purposes of the registration program are to (1) gather information about the transportation of hazardous material and (2) fund the Hazardous Materials Emergency Preparedness (HMEP) grants program which supports hazardous material emergency response planning and training activities by States, local governments, and Indian tribes and related activities. See 49 U.S.C. 5018(b), 5116.

Until 2000, the annual registration fee was set at the minimum level of \$250 provided in the statute (plus a processing fee of \$50), and the requirement to register applied only to those persons offering or transporting the categories and quantities for which registration was required by the law. 49 U.S.C. 5108(g)(2)(A). In each of the eight registration years from 1992-1993 through 1999-2000, RSPA received approximately 27,000 registration statements and an average of \$6.8 million to support the HMEP grants program, or less than 50% of the total \$14.3 million intended by Congress for training and planning grants and grant-related activities. See the discussion in the final rule published February 14, 2000 in Docket No. HM-208C (RSPA-99-5137), 65 FR 7297, 7299. In order to increase the funds collected from the registration program for the registration years beginning with 2000-2001, in the February 14, 2000 final rule, RSPA (1) expanded the requirement to register to all persons who offer for transportation or transport hazardous materials required to be placarded (with a limited exception for farmers), and (2) adopted a two-tiered fee schedule of \$275 (plus a \$25 processing fee) for persons meeting criteria of the U.S. Small Business Administration (SBA) for a "small business," and \$1,975 (plus a \$25 processing fee) for all other registrants. RSPA also allowed registration for one, two or three years under a single registration statement. 65 FR at 7309-10.

RSPA estimated that, by requiring persons to register if they offer for transportation or transport hazardous materials required to be placarded, the total number of registrants would increase to a number in the range of 42,000 to 45,000. 65 FR at 7308. Based on the registrations to date, RSPA now estimates that a total of approximately 40,000 persons will register for the 2000-2001 registration year, and that the number of registrants may increase slightly in the future. Based on a careful review of census data concerning establishments identified by Standard Industrial Classification (SIC) Codes corresponding to operations involving the likely manufacture, distribution, or sale (wholesale and retail) of hazardous materials, RSPA estimated that about 1,500 (3%) of the shippers, carriers, and offerors of hazardous materials would not qualify as a SBA small business. 65 FR at 7304. However, to date, approximately 5,800 (or more than 15%) of the registrants for the 2000-2001 registration year have paid the higher \$2,000 fee applicable to persons who are not small businesses.

As a result of the much greater than anticipated number of persons paying the higher registration fee applicable to larger businesses, RSPA has collected more than \$21 million in registration fees. (This total includes registration fees received since October 1, 1999 for prior registration years, but it does not include the fees paid for future registration years, 2001-2002 and 2002-2003.) In addition, another \$1.5 million is available in the account established under 49 U.S.C. 5116(i) to fund the HMEP grants and related activities primarily from funds not used by States. Because the current annual grants program obligations are limited to the \$14.3 million designated by Congress, this leaves a surplus (or unexpended balance) of approximately \$8.5 million in the account established under section 5116(i). The law requires DOT to adjust the amount of the annual registration fee "to reflect any unexpended balance in the account established under section 5116(i)," but it does not require refunds if there is a surplus in that account. 49 U.S.C. 5116(g)(2)(B).

For the reasons discussed below, RSPA is proposing to lower the registration fee for all registrants for the next six registration years (2001-2002 through 2006-2007) in order to eliminate the unexpended balance (or surplus) in the HMEP grants fund. During this period, small businesses and non-profit organizations (regardless of their size) would pay \$250 (plus a \$25 processing fee), and all other persons required to register would pay \$475

(plus a \$25 processing fee). Any person who has already registered for future registration years (2001–2002 and 2002–2003) would receive a refund of the excess paid for those future registration years. RSPA is also proposing to amend its reference to the SBA small business criteria to reflect SBA's recent replacement of the Standard Industrial Classification (SIC) code system with the North American Industry Classification System (NAICS). In addition, RSPA proposes to allow payment by additional credit cards than previously authorized.

## II. Temporarily Reducing the Registration Fees

As explained more fully in a preliminary regulatory evaluation placed in the public docket, RSPA has considered the following alternatives for temporarily adjusting the registration fees in accordance with 49 U.S.C. 5108(g)(2)(B):

- (1) Temporarily reduce the registration fee for all persons required to register.
- (2) Temporarily reduce the registration fee for those persons who do not meet the SBA's criteria for a small business.
- (3) Temporarily reduce the fee to eliminate the surplus and establish a permanent fee for future years.
- (4) Revise the registration criteria by temporarily eliminating the requirement that all persons who offer for transportation or transport hazardous materials required to be placarded be registered.
- (5) Provide a refund or a credit for future registrations.
- (6) Temporarily revise the fee structure so that everyone pays the same fee.

We invite comments from interested parties on these alternatives, the most appropriate time period, and other possible methods for eliminating the unexpended balance in the HMEP grants fund. All comments should be as detailed as possible with estimates of the total amount that would be collected based on the number of registrants and the registration fee.

In the final rule in Docket No. HM–208C, we concluded that the registration program should: (1) Be simple, straightforward, and easily implemented and enforced; (2) employ an equity factor that reflects the differences between the risk imposed on the public by the business activities of large and small businesses; (3) ensure the adequacy of funding for the HMEP grants program; and (4) be consistent with the law. See 65 FR at 7303. We found that the most appropriate way to

meet these objectives was to expand the category of persons required to register to include all persons who offer for transportation or transport hazardous materials that require placarding (with a limited exception for farmers) and to adopt a two-tiered fee schedule under which persons meeting the SBA criteria for defining a small business would pay a lower fee than larger businesses.

For all the reasons discussed in the February 14, 2000 final rule, we still believe that these findings and conclusions are justified and should be followed in adjusting registration fees to reflect the unexpended surplus in the HMEP grants fund. All persons who offer or transport in commerce a quantity of hazardous materials that requires placarding should be required to register and pay a registration fee. It would not be appropriate to revert to a “flat” fee for all registrants, unless the number of registrants increases to a level that \$14.3 million would be collected by charging all registrants the minimum \$250 fee. So long as there is a significant unexpended balance in the HMEP grants fund, any person that is a small business should pay the minimum \$250 fee. We have also concluded that all non-profit organizations, regardless of their size, should pay the same lower registration fee as paid by those for profit businesses meeting the SBA criteria for a small business, as explained in Section III. The SBA size criteria are the most appropriate for determining a small business and, as discussed in Section IV, we propose to replace our reference to SIC codes with a reference to NAICS because SBA recently changed its regulations in this regard.

With a two-tier fee system and approximately 40,000 registrants, it will take more than one year to eliminate the unexpended balance in the HMEP fund. Stretching this process over several years also will give RSPA better information on how many persons are required to register and whether a substantial number of registrants have paid the larger (non-small business) fee by mistake. Therefore, RSPA is proposing to eliminate the unexpended balance over six years, by reducing the registration fees for all registrants by amounts that will enable RSPA to collect approximately \$12.8 million in registration fees in each of the next six registration years. (This assumes that RSPA will continue to collect \$1.3 million per year in prior year registrations.) In other words, registration fees would be set at amounts that would produce an annual deficit of approximately \$1.5 million from the \$14.3 million authorized for

HMEP grants and related purposes (*i.e.*, \$14.3 million – \$1.5 million = \$12.8 million in annual collections). This would be accomplished by lowering the annual registration fee, for six years, to:

- \$250 (plus a \$25 processing fee) for persons who meet the definition of a small business or a not-for-profit entity, and
- \$475 (plus a \$25 processing fee) for all other persons who are required to register.

In response to requests from industry, in the February 14, 2000 final rule in Docket No. HM–208C, RSPA provided that a person could register for up to three years in one registration statement. 49 CFR 107.612(c), 65 FR at 7309–10. To date, approximately 5,000 persons have elected to register for multiple years. If RSPA lowers the registration fee for the 2001–2002 and 2002–2003 registration years, each person who has already registered for one or both of those years at the higher fee level will receive a refund of the difference.

Though RSPA is temporarily lowering the registration fees for six years, we realize that a permanent change may be required after the surplus is expended. RSPA is not making a permanent change to the registration fees at this time because of uncertainty in the final registration numbers in terms of total registrants and the percentage of large and small businesses. Instead, within three years, RSPA will reevaluate the registration fee levels to determine what changes are needed in future years based on any remaining surplus, changes in the number of registrants, the number of registrants that are not a small business, and other relevant factors.

## III. Not-for-Profit Organizations

The SBA criteria for small business size standards apply to business entities organized for profit. 13 CFR 121.105(a). Therefore, non-profit organizations do not technically qualify as a small business. RSPA decided for registration purposes to apply SBA size criteria for appropriate SIC Codes to non-profit organizations. However, nearly all of the non-profit organizations that are currently registered, which are mostly educational institutions and hospitals, exceed the SBA size standards for a small business. Because non-profit organizations generally are operated for educational, religious, charitable and other similar purposes, RSPA is interested in helping them to minimize their costs of operation. Accordingly, for registration year 2001–2002 and thereafter, RSPA is proposing to establish the fee level for a non-profit

organization at the same level as for a small business operated for a profit, *i.e.*, \$250.00 (plus a \$25 processing fee) for the next six registration years, and \$275 (plus a \$25 processing fee) thereafter. RSPA is proposing to define a not-for-profit organization as an organization exempt from taxation under 26 U.S.C. 501(a). RSPA is asking for comments on the appropriateness of this definition, in particular as to whether this definition is broad enough or there is a more appropriate definition that RSPA should adopt.

#### IV. Definition of a Small Business

In the February 14, 2000 final rule in Docket No. HM-208C, RSPA referenced SBA's size standards as they existed at that time, which were based on the SIC code system. At that time, RSPA noted that SBA had proposed to change from SIC codes to the NAICS, and we indicated that this change should not result in many instances in which an entity would lose its status as a small business. 65 FR at 7304.

On May 15, 2000, SBA published a final rule in the **Federal Register** that adopted a new table of small business size standards for industries as defined in NAICS. 65 FR 30836. SBA published a corrected table in the **Federal Register** on September 5, 2000, which became effective on October 1, 2000. 65 FR 53533. Our further review of the SIC codes and NAICS confirms our earlier conclusion that very few entities would lose their small business status; however, we invite comments on the effect of changing from SIC codes to NAICS. Accordingly, for registration year 2001-2002 and thereafter, RSPA is proposing to change the reference in 49 CFR 107.612 from the SIC code system to NAICS to correspond to the current SBA regulations.

A list of size criteria under NAICS is provided on the SBA Internet site at: <http://www.sba.gov/size/NAICS-matched-with-size-stds-umbrella.htm>.

A keyword search engine for NAICS is provided by the U.S. Census Bureau at its Internet site at: <http://www.census.gov/epcd/naics/framesrc.htm>.

Additional information on NAICS, including tables showing the correspondences between the two numbering systems is provided at: <http://www.census.gov/epcd/www/naics.html>.

Registrants unfamiliar with NAICS should find these sites useful in determining the appropriate code.

#### V. Petition from the Petroleum Marketers Association of America (PMAA)

On October 12, 2000 we received a Petroleum Marketers Association of America (PMAA) petition (P-1405) asking that intrastate marketers of petroleum and heating oil whose activities are within SIC codes 5171, 5172, and 5983 be excepted from the requirement to register and that the registration fee for all interstate carriers be reduced to the minimum \$250. In accordance with 49 CFR 106.33(c), RSPA denies PMAA's petition.

In its petition, a copy of which is made part of this docket, PMAA stated that it continues to believe that a "clear reading" of the statute exempts intrastate carriers. PMAA states that "commerce" is defined as "trade or transportation in the jurisdiction of the United States between a place in a State and a place outside of the State; or that affects trade or transportation between a place in a State and place outside of the State." (49 U.S.C. § 5102(1)(A)(B)). PMAA contends that, "in this section, it seems Congress has defined "commerce" as interstate operations to which the fee applies." PMAA also states that the "hazardous materials (hazmat) transportation program was designed to allow interstate carriers to travel between states without paying each state's hazmat fee and was designed to preempt state taxes." PMAA stated that RSPA will still be able to meet its HMEP grants funding levels if it maintains the two-tiered fee system and removes petroleum marketers from the registration program.

RSPA disagrees with PMAA's statements that Congress intended "to include only interstate carriers in the hazardous materials fee program" and that "the overfunding resulting from this extension to small, local carriers of propane, diesel and heating oil ensured overfunding of the program." In the July 9, 1992 final rule in Docket No. HM-208, RSPA found that the registration provisions now set forth in 49 U.S.C. 5108(a)

make no distinction between interstate and intrastate carriers and shippers of hazardous materials. Further, it would be illogical to presume that intrastate offerors and carriers are excepted from the registration program when they will be primary recipients of the enhanced emergency response capabilities derived from the national emergency response training and planning grant program for States and local governments. 57 FR at 30622.

Moreover, RSPA has received registration statements from only about 3,900 persons in the three SIC codes specified in PMAA's request. This represents less than \$1.1 million in

registration fees (not including the \$25 processing fee), or a small fraction of the unexpended balance in the HMEP fund (assuming that all these persons are "small, local carriers of propane, diesel and heating oil" as characterized by PMAA). PMAA's separate suggestion that "all interstate carriers" should pay only the \$250 minimum registration fee conflicts with RSPA's finding that the amount of the fee should not be the same for small and other than small businesses.

PMAA's statement that interstate carriers are somehow insulated from paying "each state's hazmat fee" or "state income or other local taxes" seems to ignore the fact that the registration program under 49 U.S.C. 5108 "has no preemptive effect" on the ability of "States, local governments or Indian tribes to impose their own fees or registration or permit requirements on interstate, intrastate or foreign offerors or carriers of hazardous materials." 57 FR at 30626. Preemption of non-Federal hazardous material registration or permit requirements is governed by the criteria set forth in 49 U.S.C. 5125.

#### VI. Rulemaking Analysis and Notices

##### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule, if adopted, would not be considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget. This proposed rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). RSPA has prepared a preliminary regulatory evaluation which is available for review in the public docket.

##### B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). The registration requirements do not impair the ability of States, local governments, or Indian tribes to impose their own fees or registration or permit requirements on persons who offer or transport hazardous materials in commerce. RSPA encourages States, local governments, and Indian tribes to adopt and enforce requirements in the HMR and the Federal registration requirement, in order to enhance compliance with a nationally uniform set of regulations on the transportation of hazardous materials.

The consultation and funding requirements of Executive Order 13132 do not apply because this proposed rule would not adopt any regulation that:

- (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;
- (2) Imposes substantial direct compliance costs on State and local governments; or
- (3) Preempts state law.

#### C. Executive Order 13084

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

#### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities.

In the February 14, 2000 final rule in Docket No. HM–208C, RSPA certified that that final rule did affect a significant number of small entities, but that the economic impact on these small entities will not be significant. 65 FR at 7308–7309. This proposed rule affects the same small entities that Docket HM–208C did and, therefore, this proposed rule would affect a significant number of small entities. See 65 FR at 7307. Although this proposed rule is providing a \$25 reduction in the combined annual fee that small businesses must pay, that reduction does not constitute a significant economic impact on a substantial number of small entities. Therefore, RSPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

#### E. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not, if adopted, result in costs of \$100 million or more, in the aggregate, to any of the following: State,

local, or Native American tribal governments, or the private sector.

#### F. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), reporting and recordkeeping requirements pertaining to the registration rule are specifically excepted from the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### G. 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 number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

#### List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

### PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

2. In § 107.612, paragraph (b) is revised and new paragraphs (c) and (d) are added to read as follows:

#### § 107.612 Amount of fee.

\* \* \* \* \*

(b) *Registration year 2000–2001.* For the registration year 2000–2001, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 in effect prior to October 1, 2000 (see 13 CFR revised as of January 1, 1999), applicable to the standard industrial classification (SIC) code that describes that person's primary commercial activity, must pay an annual fee of \$275 and the processing fee required by paragraph (b)(3) of this section.

(2) *Other than a small business.* Each person that does not meet the criteria specified in paragraph (b)(1) of this section must pay an annual fee of

\$1,975 and the processing fee required by paragraph (b)(3) of this section.

(3) *Processing fee.* The processing fee is \$25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

\* \* \* \* \*

(c) *Registration years 2001–2002 through 2006–2007.* For registration years 2001–2002, 2002–2003, 2003–2004, 2004–2005, 2005–2006, and 2006–2007, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 in effect on or after October 1, 2000, applicable to the North American Industry Classification System (NAICS) that describes that person's primary commercial activity, must pay an annual fee of \$250 and the processing fee required by paragraph (c)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual fee of \$250 and the processing fee required by paragraph (c)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or a not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (c)(1) or (c)(2) of this section must pay an annual fee of \$475 and the processing fee required by paragraph (c)(4) of this section.

(4) *Processing fee.* The processing fee is \$25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

(d) *Registration years 2007–2008 and following.* For each registration year beginning with 2007–2008, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 in effect on or after October 1, 2000, applicable to the North American Industry Classification System (NAICS) that describes that person's primary commercial activity, must pay an annual fee of \$275 and the processing fee required by paragraph (d)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual fee of \$275 and the processing fee required by paragraph (d)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (d)(1) or (d)(2) of this section must pay an annual fee of \$1,975 and the processing fee required by paragraph (d)(4) of this section.

(4) *Processing fee.* The processing fee is \$25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

3. In § 107.616, paragraph (b) is revised to read as follows:

**§ 107.616 Payment procedures.**

\* \* \* \* \*

(b) Payment must be made by certified check, cashier's check, personal check, or money order in U.S. funds and drawn on a U.S. bank, payable to the U.S. Department of Transportation and identified as payment for the "Hazmat Registration Fee" or by a credit card

authorization completed and signed on the registration statement.

\* \* \* \* \*

Issued in Washington, DC, on December 1, 2000, under authority delegated in 49 CFR Part 106.

**Robert A. McGuire,**  
*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 00-31044 Filed 12-6-00; 8:45 am]

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