

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

[Docket No. RSPA-02-13328 (HM-208E)]

RIN 2137-AD74

Hazardous Materials: Miscellaneous Revisions to Registration Requirements**AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

SUMMARY: RSPA (we) is amending its regulations concerning registration of persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials. We are adopting the North American Industry Classification System (NAICS) to determine whether an entity is a small business, consistent with actions taken by the Small Business Administration (SBA). We are also revising the requirements to permit registration over the internet and to authorize the use of additional credit cards to pay the registration fee. Other proposals in our December 7, 2000, notice of proposed rulemaking, to temporarily reduce registration fees and charge not-for-profit organizations the same registration fee as a small business, will be addressed in a separate final rule after enactment of the Department of Transportation appropriations for Fiscal Year 2003, as we announced in our March 14, 2002, notice of proposed rulemaking in the **Federal Register**.

EFFECTIVE DATE: January 6, 2003.

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**

Since 1992, RSPA has conducted a national registration program of persons who offer for transportation or transport hazardous materials in intrastate, interstate, or foreign commerce, under the mandate in 49 U.S.C. 5108. 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 sections 5108(b), 5116. The law gives RSPA discretion to require additional persons to register, beyond those offerors and transporters of the categories and quantities of hazardous materials listed in § 5108(a)(1), and to set the annual registration fee between \$250 and \$5,000. See sections 5108(a)(2), 5108(g)(2)(A).

Until 2000, only those persons who offer or transport the categories and quantities of hazardous materials set forth in section 5108(a)(1) were required to register, and the annual registration fee was set at the minimum level of \$250 (plus a processing fee of \$50). In each year through the July 1, 1999–June 30, 2000 registration year, the total registration fees collected by RSPA amounted to less than one-half of the total \$14.3 million intended by Congress for training and planning grants and grant-related activities.

In a final rule published in the **Federal Register** on February 14, 2000, RSPA applied the requirement to register to additional persons, and we adopted a two-tiered fee under which the registration fee was set at \$275 for a person meeting the Small Business Administration (SBA) criteria for a small business, and \$1,975 for other persons (plus a \$25 processing fee in all cases). 65 FR 7297. However, a much greater than anticipated number of persons have paid the higher registration fee applicable to a larger business, and RSPA has collected more than \$21 million each registration year starting with 2000–2001. Because Section 5108(g)(2)(C) requires RSPA to adjust the registration fee “to reflect any unexpended balance” in the HMEP Fund, on December 7, 2000, we published a notice of proposed rulemaking (NPRM) under Docket No. RSPA-00-8439 (HM-208D) proposing to: (1) Temporarily lower registration fees for all registrants for six registration years; (2) specify that a not-for-profit organization (regardless of its size) would pay the same fee as a small business; (3) replace the Standard Industrial Classification (SIC) code system with the North American Industry Classification System (NAICS), consistent with SBA actions; and, (4) allow payment by credit cards not previously authorized.

RSPA has delayed taking final action on the proposals in the December 7, 2000, NPRM because our budget requests to Congress for FY 2002 and FY

2003 have proposed to fund a portion of RSPA’s hazardous materials safety program from excess registration fees (*i.e.*, those exceeding the \$14.3 million specified to be used for training and planning grants and grant-related activities). See the status documents we published in the **Federal Register** on May 2, 2001 (66 FR 22080), and March 14, 2002 (67 FR 11456). This proposal was not adopted by Congress in the FY 2002 DOT appropriations and, as soon as Congress acts on the FY 2003 budget request, we intend to take appropriate action on the proposals to temporarily reduce registration fees and charge not-for-profit organizations the same registration fee as a small business. In the meantime, however, we consider that it is appropriate to adopt those proposals that are unrelated to reducing registration fees.

II. Discussion of Comments and Regulatory Changes

RSPA received 19 written comments to the NPRM from emergency response organizations; industry associations representing a broad spectrum of businesses that offer or transport hazardous materials; and individuals engaged in agricultural retailing, petroleum distribution, farming, convenience store operations, and all modes of transportation. In this rule, we discuss only the comments unrelated to the fee reduction proposals in the December 7, 2000, NPRM.

A. SBA Criteria for Definition of a Small Business

At the present time, the “small business” criteria used to determine the amount of the registration fees are found in the Standard Industrial Classification (SIC) code for the registrant’s primary industry group. These codes were adopted and used by SBA until two years ago. In our February 14, 2000, final rule, we discussed the likelihood that SBA would change from SIC codes to the NAICS, and SBA’s estimation 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. After SBA adopted the NAICS in a final rule published on May 15, 2000 (65 FR 30836), we proposed to make a similar change in § 107.612.

Commenters supported this proposal. The Petroleum Marketers Association of America (PMAA) stated that RSPA should join other “administrative agencies [that] have begun using NAICS [which] will promote uniformity throughout the regulations.” PMAA stated that there would be “no detrimental effect on our members in

changing from SIC system to the NAICS.”

The Agricultural Retailers Association (ARA) “supports the change with the proviso that the agency include NAICS information in all future registration correspondence with the regulated community.” It stated that “there remains a definite lack of knowledge of the current SIC Code system among ARA’s members and the changeover to NAICS will only further cloud the issue.”

The Petroleum Transportation and Storage Association (PTSA) stated that:

NAICS is a far more useful guideline to determine business categories and size because it more accurately reflects modern economic activity than the SIC code. The highly specialized economic activity descriptions in NAICS would allow shippers who have multiple business establishments to more easily calculate the number of employees or gross receipt thresholds that determine the amount of the annual registration fee.

Our further review of SIC and NAICS codes confirms our earlier conclusion that very few entities would lose status as a small business. Based on that review and the comments received in response to the NPRM, we are adopting the proposal to use the NAICS for size standards.

A list of size criteria by NAICS codes is provided on the SBA Internet site at: <http://www.sba.gov/size/sizetable.html>.

A list by SIC code with the corresponding NAICS code and size standard is provided at: <http://www.sba.gov/size/SIC2NAICSmain.html>.

A search engine for the SIC and NAICS systems is provided by the SBA at its Internet site at: https://eweb1.sba.gov/naics/dsp_naicssearch2.cfm. 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.

B. Registration Over the Internet

Within a few months after issuing the February 14, 2000, final rule, we realized that we should allow persons to register and pay the registration fee over the Internet, even though the registration procedures contained in the regulations do not specifically discuss that method. We are amending § 107.616 to specifically permit a person to use the Internet to submit its registration statement and pay the registration fee with a credit card or by other means of electronic payment.

C. Additional Credit Cards Authorized

In the NPRM, we proposed to authorize persons to use additional credit cards (besides Visa and MasterCard) to pay registration fees. The only commenter on this proposal was the American Trucking Associations (ATA), which supported the “expanded payment methods.” To allow greater flexibility, we are providing in § 107.616(b) that a person may use any “credit card or other electronic means of payment acceptable to the Department.”

III. Rulemaking Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, it was not reviewed by the Office of Management and Budget (OMB), and a regulatory assessment was not required for OMB. This rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Due to minimal economic impact of this final rule, preparation of a regulatory impact analysis or regulatory evaluation is not warranted.

B. Executive Order 13132

This final 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 Hazardous Materials Regulations 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 final rule does 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 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this rule does not have tribal implications, does not impose substantial direct compliance costs and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the 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 7308–09. This final rule affects the same small entities that Docket HM–208C did and, therefore, this final rule affects a significant number of small entities. See 65 FR at 7307 through 7309. However, this final rule addresses editorial and other minor changes that have no economic impact on small businesses. Therefore, I certify that this final rule does not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not 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. To distinguish this final rule from the continuing rulemaking action concerning fee reductions we have created a new RIN number, 2137-AD74, and Docket No. RSPA-02-13328 (HM-208E) for this final rule. The fee-reduction related proposals will remain under RIN 2137-AD53 and Docket No. RSPA-00-8439 (HM-208D).

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 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.

§ 107.612 Amount of fee.

2. In § 107.612, in paragraph (b)(1), the wording “standard industrial classification (SIC)” is removed and “North American Industry Classification System (NAICS)” is added in its place.

3. In § 107.616, paragraphs (a) and (b) are revised to read as follows:

§ 107.616 Payment procedures.

(a) Except as provided in paragraph (d) of this section, each person subject to the requirements of this subpart must mail the registration statement and payment in full to the U.S. Department of Transportation, Hazardous Materials Registration, P.O. Box 740188, Atlanta, Georgia 30374-0188, or submit the statement and payment electronically through the Department’s e-Commerce Internet site. Access to this service is provided at <http://hazmat.dot.gov/register.htm>. A registrant required to file

an amended registration statement under § 107.608(c) must mail it to the same address or submit it through the same Internet site.

(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 completing an authorization for payment by credit card or other electronic means of payment acceptable to the Department on the registration statement or as part of an Internet registration as provided in paragraph (a) of this section.

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Issued in Washington, DC on September 10, 2002, under authority delegated in 49 CFR Part 1.

Ellen G. Engleman,

Administrator.

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