

Dated: May 29, 2009.

**Charlene Frizzera,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: June 16, 2009.

**Kathleen Sebelius,**

*Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 107

[Docket No. PHMSA-2008-0010 (HM-208G)]

RIN 2137-AE35

#### Hazardous Materials Transportation; Miscellaneous Revisions to Registration and Fee Assessment Program

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration (PHMSA) is withdrawing the notice of proposed rulemaking published under this docket on May 5, 2008 (73 FR 24519). Our revised estimates of unexpended balances from previous years and revenues expected to be generated at current registration fee levels indicate that an increase in registration fees is not necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at its authorized level of \$28,318,000 for Fiscal Year 2009.

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

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Hazardous Materials Emergency Preparedness (HMEP) grants program, as mandated by 49 U.S.C. 5116, provides Federal financial and technical assistance to States and Indian tribes to “develop, improve, and carry out emergency plans” within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C.

11001 *et seq.* The grants are used to develop, improve, and implement emergency plans; to train public sector hazardous materials emergency response employees to respond to accidents and incidents involving hazardous materials; to determine flow patterns of hazardous materials within a State and between States; and to determine the need within a State for regional hazardous materials emergency response teams. The HMEP grants program is funded by registration fees collected from persons who offer for transportation or transport certain hazardous materials in intrastate, interstate, or foreign commerce.

Congress reauthorized the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) in 2005. The Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users, Pub. L. 109-59, 119 Stat. 1144, Aug. 10, 2005) authorizes \$28.3 million per year for the HMEP grants program and lowered the maximum registration fee from \$5,000 to \$3,000. The Consolidated Appropriations Act of 2008 (Pub. L. 110-161, 121 Stat. 2404, Dec. 26, 2007) set an obligation limitation of \$28,318,000 for expenses from the HMEP fund, and the Administration’s Fiscal Year 2009 budget requests \$28,300,000 in support of HMEP activity.

##### II. Current Rulemaking

To ensure full funding of the HMEP grants program for FY 2009, PHMSA proposed an increase in registration fees to fund the program at the \$28.3 million level (73 FR 24519, May 5, 2008). For those registrants not qualifying as a small business or not-for-profit organization, we proposed to increase the registration fee from \$975 (plus a \$25 administrative fee) to \$2,475 (plus a \$25 administrative fee) for registration year 2009–2010 and following years. As explained in the NPRM, an existing surplus enabled us to delay an increase in registration fees, but we concluded that we would not be able to fund the HMEP grants program at the \$28.3 million level in Fiscal Year 2009 without an increase.

We received 13 written comments in response to the NPRM from shippers and carriers and from the emergency response community, including the American Trucking Association (ATA), Council on the Safe Transportation of Hazardous Articles (COSTHA), Institute of Makers of Explosives (IME), International Association of Fire Chiefs

(IAFC), National Association of SARA Title III Program Officials (NASTTPO), and Vessel Operators Hazardous Materials Association, Inc. (VOHMA).

We have recently re-examined our estimates for funding the HMEP grants program based on updated information from the Department of Treasury on the HMEP account carry-over balance, de-obligations of unused grant and administrative funds, increased enforcement of the registration requirements, and current registrant data, and we have further refined our estimates of revenues we anticipate collecting for registration years 2008–2009 (covering July 1, 2008 to June 30, 2009) and 2009–2010 (covering July 1, 2009 to June 30, 2010) at current registration fee levels. Based on this analysis, we have concluded that we will be able to fund the HMEP grants program at the \$28.3 million level in Fiscal Year 2009 without an increase in registration fees. Accordingly, PHMSA is withdrawing the May 5, 2008, NPRM and terminating this rulemaking proceeding. Depending on appropriated and available funding for Fiscal Year 2010, we may initiate a future rulemaking to adjust registration fees for future registration years.

Issued in Washington, DC, on June 9, 2009 under authority delegated in 49 CFR part 106.

**Theodore L. Willke,**

*Associate Administrator for Hazardous Materials Safety.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R6-ES-2009-0037; 92210-1117-0000-B4]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Revise Critical Habitat for *Eriogonum pelinophilum* (Clay-Loving Wild Buckwheat)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of critical habitat review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (USFWS), announce a 90-day finding on a petition to revise critical habitat for *Eriogonum pelinophilum* (clay-loving wild buckwheat) under the Endangered