

Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

23. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

24. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

#### E. Additional Information

25. For more information on this *Second Further Notice of Proposed Rule Making*, please contact Lyle Elder, [Lyle.Elder@fcc.gov](mailto:Lyle.Elder@fcc.gov), or Eloise Gore, [Eloise.Gore@fcc.gov](mailto:Eloise.Gore@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120.

26. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Further Notice of Proposed Rule Making*, including the Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 76

Cable television, Digital television, Multichannel video programming distributors, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8-9747 Filed 5-2-08; 8:45 am]

BILLING CODE 6712-01-P

## 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; Registration and Fee Assessment Program

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

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This rule proposes to amend the statutorily-mandated registration and fee assessment program for persons who transport, or offer for transportation, certain categories and quantities of hazardous materials. For those registrants not qualifying as a small business or not-for-profit organization, we are proposing to increase the fee from \$975 (plus a \$25 administrative fee) to \$2,475 (plus a \$25 administrative fee) for registration year 2009-2010 and following years. The proposed fee increase is necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at approximately \$28,000,000 in accordance with the Administration's Fiscal Year 2008 budget.

**DATES:** Submit comments by July 14, 2008.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number PHMSA-2008-0010 by any of the following methods:

- Fax:* 202-493-2251.
- Mail:* Dockets Management System; U.S. Department of Transportation, Dockets Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.
- Hand Delivery:* U.S. Department of Transportation, Dockets Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* Include the agency name and docket number PHMSA-2008-0010 (HM-208G) or Regulatory Identification Number (RIN) RIN 2137-AE35 for this rulemaking at the beginning of your comment. Note that all comments received will be posted, without change, to <http://www.regulations.gov> including any personal information provided. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

*Docket:* You may review the public docket through the Internet at <http://www.regulations.gov> or in person at the Dockets Operations office at the above address (See ADDRESSES).

**FOR FURTHER INFORMATION CONTACT:** Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, PHMSA, (202) 366-4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, PHMSA, (202) 366-8553.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Since 1992, the Pipeline and Hazardous Materials Safety Administration (PHMSA) has conducted a national registration program under the mandate in 49 U.S.C. 5108 for persons who offer for transportation or transport certain hazardous materials in intrastate, interstate, or foreign commerce. The purposes of the registration program are to gather information about the transportation of hazardous materials, and fund the Hazardous Materials and Emergency Preparedness (HMEP) grants program. The HMEP grants program supports hazardous materials emergency response planning and training activities by States, local governments, and Indian tribes. See 49 U.S.C. 5108(b), 5116. PHMSA has discretion to require additional persons to register, beyond those offerors and transporters of the categories and quantities of hazardous materials listed in 49 U.S.C. 5108(a)(1), and to set the annual registration fee between the statutorily-mandated minimum and maximum amounts. See 49 U.S.C. 5108(a)(2), 5108(g)(2)(A).

To meet Congressionally-authorized funding of \$14.3 million for the HMEP grants program, in 2000, we expanded the base of registrants and adopted a two-tier fee schedule under which the registration fee was set at \$275 for persons qualifying as small businesses under Small Business Administration (SBA) criteria, and \$1,975 for other persons (plus a \$25 processing fee in all cases). (69 FR 7297) Due to a surplus, in 2003, we temporarily adjusted the

registration fee to \$125 (plus a \$25 processing fee) for small businesses and not-for-profit organizations and \$275 (plus a \$25 processing fee) for all other registrants. (68 FR 1342) In 2006, the fees increased to \$250 (plus a \$25 processing fee) for small businesses and not-for-profit organizations and \$975 (plus a \$25 processing fee) for all other registrants.

Congress reauthorized the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) in 2005 through 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 (SAFETEA—LU), Public Law 109–59, 119 Stat. 1144, August 10, 2005). The Act makes available approximately \$28,000,000 for the HMEP grants program and lowers the maximum registration fee from \$5,000 to \$3,000. Consistent with SAFETEA—LU, and the Consolidated Appropriations Act of 2008 (Pub. L. 110–16) which sets an obligation limitation of \$28,318,000 for expenses from the HMEP fund, the Administration’s Fiscal Year 2008 budget requested and was granted \$28,000,000 in support of HMEP activity.

To ensure full funding of the HMEP grants program, PHMSA is proposing an increase in registration fees to fund the program at the \$28.3 million level. This proposed fee increase will be in effect for the 2009–2010 registration year. We are proposing to delay the proposed fee increase until the 2009–2010 registration year to avoid accumulating a large surplus in the HMEP grants program account. For those registrants not qualifying as a small business or not-for-profit organization, we propose 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.

## II. HMEP Grants Program

### A. Purpose and Achievements of the HMEP Grants Program

The 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 encourages the growth of the hazardous materials planning and training programs of State, local, and tribal governments by limiting the Federal funding to 80 percent of the cost a State or Indian tribe incurs to carry out the activity for which the grant is made. *See* 49 U.S.C. 5116(e). HMEP grants supplement the amount already being provided by the State or Indian tribe. By accepting an HMEP grant, the State or tribe makes a commitment to maintain its previous level of support. *See* 49 U.S.C. 5116(a)(2)(A) and 5116(b)(2)(A).

Since 1993, PHMSA has awarded all States and territories and 45 Native American tribes planning and training grants totaling \$125 million. These grants helped to:

- Train 2,103,000 hazardous materials responders;
- Conduct 8,617 commodity flow studies;
- Write or update more than 50,983 emergency plans;
- Conduct 11,773 emergency response exercises; and
- Assist 22,288 local emergency planning committees (LEPCs).

Since the beginning of the program, HMEP program funds have been used to support the following related activities in the total amounts indicated:

- \$3.6 million for the development and periodic updating of a national curriculum used to train public sector emergency response and preparedness teams. The curriculum guidelines, developed by a committee of Federal, State, and local experts, include criteria for establishing training programs for emergency responders at five progressively more skilled levels: (1) First responder awareness, (2) first responder operations, (3) hazardous materials technician, (4) hazardous materials specialist, and (5) on-scene commander.
- \$2.8 million to monitor public sector emergency response planning and training for hazardous materials incidents, and to provide technical assistance to State or Indian tribe emergency response training and planning for hazardous materials incidents.
- \$6.5 million for periodic updating and distribution of the North American Emergency Response Guidebook. This

guidebook provides immediate information on initial response to hazardous materials incidents, and is distributed free of charge to the response community.

- \$2.8 million for the International Association of Fire Fighters (IAFF) to train instructors to conduct hazardous materials response training programs.

### B. Increased Funding of the HMEP Grants Program

An estimated 800,000 shipments of hazardous materials make their way through the national transportation system each day. It is impossible to predict when and where a hazardous materials incident may occur or what the nature of the incident may be. This potential threat requires state and local agencies to develop emergency plans and train emergency responders on the broadest possible scale.

The HMEP training grants are essential for providing adequate training of persons throughout the nation who are responsible for responding to emergencies involving the release of hazardous materials. There are over 2 million emergency responders requiring initial training or periodic recertification training, including 250,000 paid firefighters, 850,000 volunteer firefighters, 725,000 law enforcement officers, and 500,000 emergency medical services (EMS) providers. Due to the high turnover rates of emergency response personnel, there is a continuing need to train a considerable number of recently recruited responders at the most basic level.

In addition, training at more advanced levels is essential to ensure emergency response personnel are capable of effectively and safely responding to serious releases of hazardous materials. The availability of increased funding for the HMEP grants program will encourage State, tribal, and local agencies to provide more advanced training.

The increased funding for HMEP grants will enable PHMSA to help meet previously unmet needs of State, local and tribal governments, and public and private trainers by providing for the following activities authorized by law:

- \$21,800,000 for training and planning grants, an increase of \$9 million;
- A new \$4,000,000 grant program for non-profit hazmat employee organizations to train hazmat instructors who will train hazmat employees;
- \$1,000,000 for grants to support certain national organizations to train instructors to conduct hazardous

materials response training programs, an increase of \$750,000;

- \$625,000 for revising, publishing, and distributing the North American Emergency Response Guidebook, an increase of \$125,000;
- \$200,000 for continuing development of a national training curriculum; and
- \$150,000 for monitoring and technical assistance.

### III. Summary of Proposal To Increase HMEP Funding

A registration fee system should: (1) Be simple, straightforward, and easily implemented and enforced; (2) employ an equity factor reflecting the differences in level of risk to the public and the financial impact associated with the business activities of large and small businesses; and (3) ensure adequate funding for the HMEP grants program. Under Federal hazmat law, we have the discretion to increase registration fees for both small and large businesses. We considered several alternatives for increasing the funds available for the HMEP grants program. One option was to increase the fee for all businesses offering for transportation or transporting the covered hazardous materials. Another option was to maintain the fee for small businesses and not-for-profit organizations while adjusting the fee for larger businesses.

Due to a surplus, in 2003, we temporarily adjusted the registration fee to \$125 (plus a \$25 processing fee) for small businesses and not-for-profit organizations and \$275 (plus a \$25 processing fee) for all other registrants. (68 FR 1342) This reduction has reduced the current surplus to approximately \$14 million at the end of FY 2007.

To achieve the statutorily mandated goal of funding the HMEP grants program activities at approximately \$28,000,000 and avoid a surplus in the HMEP grants account, we are proposing to delay increasing the registration fees by leaving registration fees for persons other than small businesses at the current level of \$975 (plus \$25 processing fee) for registration year 2008–2009 and raising the fees to \$2,475 (plus \$25 processing fee) for registration year 2009–2010 and following.

We believe adjusting the fee solely for larger, for-profit businesses is the best approach to meet the objectives listed above. Although there are exceptions, small businesses and not-for-profit organizations generally offer for transportation or transport fewer and smaller hazardous materials shipments as compared to larger companies. Raising the registration fee only for

other-than-small businesses rather than for all businesses correlates the fee structure to the level of risk associated with shipments offered for transportation and transported by larger companies.

Moreover, increasing the registration fees only for other-than-small businesses will affect significantly fewer entities and will affect entities that can more easily absorb the increase. Since 2000, PHMSA has received approximately 42,000 registrations for each registration year. Small businesses or not-for-profit organizations make up 84%, or 35,275 of the registrants, while large businesses make up 16%, or 6,725, of the registrants.

### IV. Multi-Year Registrations

We allow a person to register for up to three years in one registration statement (49 CFR 107.612(c)). We have received approximately 560 advance registrations for the 2009–2010 registration year from other-than-small businesses that have paid the fee previously established for that year. We apply fees according to the fee structure ultimately established by regulation for the registration year rather than according to the fee set at the time of payment. Thus, if we adopt the increase in registration fees proposed in this NPRM, additional fees would be required for registrations paid in advance at the lower levels in effect at the time of payment. When we lowered the fees for all registrants in 2003, we provided over 7,100 refunds amounting to over \$2.3 million within the first year to registrants who had overpaid the newly established fees. If we adopt this proposal, we will notify each registrant who will be required to pay additional fees for the 2009–2010 and following registration years.

### V. Rulemaking Analyses and Notices

#### A. Statutory/Legal Authority for This Rulemaking

This proposed rule is published under the authority of the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*, as amended by Pub. L. 109–59). Section 5108 of the Federal hazmat law authorizes the Secretary of Transportation to establish a registration program to collect fees to fund HMEP grants. The HMEP grants program, as mandated by 49 U.S.C. 5116, authorizes 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.*

Congress reauthorized the Federal hazmat law in 2005 through the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005. This Act makes available funding for the HMEP grants program at approximately \$28,000,000, an increase of nearly \$14 million. In addition, the Act lowers the maximum fee to \$3,000.

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

This proposed rule is not 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 considered non-significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The cost to industry of increasing registration fees will be \$14 million per year. The increased funding for the HMEP grants program will provide essential training of persons throughout the nation who are responsible for responding to emergencies involving the release of hazardous materials. In addition, training at more advanced levels is essential to assure emergency response personnel are capable of effectively and safely responding to serious releases of hazardous materials. The increased funding for the HMEP grants will enable us to help meet previously unmet needs of State, local and tribal governments, and public and private trainers by providing funding for activities such as: (1) Planning and training grants for local emergency planning committees; (2) a new program for non profit hazmat employee organizations to train hazmat instructors that will train hazmat employees; (3) support to certain national organizations to train instructors to conduct hazardous materials response training programs; (4) revising, publishing, and distributing the North American Emergency Response Guidebook; (5) continuing development of a national training curriculum; and (6) monitoring and technical assistance.

While the safety benefits resulting from improved emergency response programs are difficult to quantify, we believe these benefits significantly outweigh the annual cost of funding the grants program. The importance of planning and training cannot be overemphasized. To a great extent, we are a nation of small towns and rural communities served by largely volunteer fire departments. In many instances, communities' response

resources already are overextended in their efforts to meet routine emergency response needs. The planning and training programs funded by the HMEP grants program enable state and local emergency responders to respond quickly and appropriately to hazardous materials transportation accidents, thereby mitigating potential loss of life and property and environmental damage. The regulatory evaluation to the final rule issued under Docket HM-208 (57 FR 30620) showed that the benefits to the public and to the industry from the emergency response grant program would at least equal, and likely exceed, the annual cost of funding the grant program. Based on estimates of annual damages and losses resulting from hazardous materials transportation accidents, the analysis concluded that the HMEP program would be cost-beneficial if it were only 3% effective in reducing either the frequency or severity of the consequences of hazardous materials transportation accidents. Achieving this level of effectiveness is well within the success rates of training and planning programs to reduce errors and increase the proficiency and productivity of response personnel. A regulatory evaluation for this proposed rule is available for review in the public docket.

#### C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). There is no preemption of State fees on transporting hazardous materials that meet the conditions of 49 U.S.C. 5125(f). This proposed rule does not propose any regulation having 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. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

#### D. Executive Order 13175

This proposed 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 proposed rule does not have adverse tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

#### E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

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. The provisions of this rule apply specifically to businesses not falling within the small entities category. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

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

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$120.7 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

#### G. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) do not apply to this proposed rule.

#### H. 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.

#### I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321-4347), 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. There are no significant environmental impacts associated with this proposed rule. PHMSA is proposing in this rule changes to the requirements in the Hazardous Materials Regulations on the registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. The proposed increase in registration fees will provide additional funding for the HMEP program to help mitigate the

safety and environmental consequences of hazardous materials transportation accidents.

#### J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, 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 you may visit <http://www.regulations.gov>.

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

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and record keeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR part 107 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, revise paragraph (d)(3) to read as follows:

#### § 107.612 Amount of fee.

\* \* \* \* \*

(d) \* \* \*

(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 registration fee of:

(i) For registration year 2006-2007, 2007-2008, and 2008-2009, \$975 and the processing fee required by paragraph (d)(4) of this section;

(ii) For registration year 2009-2010 and following, \$2,475 and the processing fee required by paragraph (d)(4) of this section.

\* \* \* \* \*

Issued in Washington, DC, on April 29, 2008, under authority delegated in 49 CFR part 106.

**Theodore L. Willke,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. E8-9815 Filed 5-2-08; 8:45 am]

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