

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Part 107

[Docket No. RSPA-99-5137 (HM-208C)]

RIN 2137-AD17

Hazardous Materials Transportation;
Registration and Fee Assessment
ProgramAGENCY: Research and Special Programs
Administration (RSPA), DOT.ACTION: Notice of Proposed Rulemaking
(NPRM).

SUMMARY: RSPA is proposing changes to the current registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. The proposed changes would increase the number of persons required to register and increase the annual registration fee for shippers and carriers who are not a small business under Small Business Administration criteria. The proposed changes are intended to raise additional funds to enhance support for the national Hazardous Materials Emergency Preparedness Grants Program.

DATES: *Written Comments:* Comments must be received on or before June 14, 1999.

Public Meeting Date: A public meeting will be held on May 25, 1999; from 9:00 a.m. to 4:00 p.m. An additional meeting may be scheduled if there is substantial interest.

ADDRESSES: *Written Comments:* Address comments to the Dockets Unit, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW, Washington, DC 20590-0001. Comments should identify the docket number RSPA-99-5137 (HM-208C) and should be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted by e-mail to: <http://dms.dot.gov>, or by fax to (202) 366-3753. The Dockets Unit is located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation at the above address.

Public dockets may be viewed between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Internet users may access all comments and related background materials by using the Universal Resource Locator (URL) <http://dms.dot.gov>.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512-1661.

Public Meeting: The public meeting will be held in room 3200-3204 at the U.S. Department of Transportation's Nassif building, 400 Seventh Street SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366-4484, or Ms. Jodi George, Office of Hazardous Materials Standards, (202) 366-8553, RSPA, Department of Transportation, 400 Seventh Street SW, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:**I. Background***A. Current Registration Program*

In 1990, amendments to Federal hazardous materials transportation law, now codified at 49 U.S.C. 5101 et seq. (the law), required the Secretary of Transportation to establish a registration program. The Secretary delegated this authority to the Administrator, Research and Special Programs Administration (RSPA). 49 CFR 1.53(b)(1). The purpose of the registration program is to gather information about the transportation of hazardous materials and to fund a grants program to support hazardous materials emergency response planning and training activities by State and local governments. Under 49 U.S.C. 5108, each person who transports or causes to be transported in commerce one or more of the categories of hazardous materials listed below must file a registration statement with RSPA and pay an annual registration fee:

- (1) A highway-route controlled quantity of Class 7 (radioactive) materials;
- (2) More than 25 kilograms (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;
- (3) A package containing more than one liter (1.06 quarts) of a hazardous material the Secretary designates as extremely toxic by inhalation, which has been identified as a material meeting a criterion of a Zone A material that is toxic by inhalation;
- (4) A hazardous material in a bulk packaging, container, or tank if the packaging, container, or tank has a capacity equal to or greater than 13,248 liters (3,500 gallons) or more than 13.24 cubic meters (468 cubic feet); or
- (5) A shipment in other than a bulk packaging of 2,268 kilograms (5,000 pounds) or more of a class of hazardous

materials for which placarding of a vehicle, rail car, or freight container is required.

In addition, 49 U.S.C. 5108(a)(2) permits RSPA to require registration by each person who:

- (1) Transports or causes to be transported hazardous material in commerce but does not engage in the activities listed above; or
- (2) Manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packagings that the person represents, marks, certifies, or sells for use in transporting in commerce hazardous materials.

Section 5108(g) allows RSPA to set the registration fee at an amount between \$250 and \$5,000, based on one or more of the following factors:

- (1) The gross revenues from the transportation of hazardous materials;
- (2) The types of hazardous materials transported or caused to be transported;
- (3) The quantities of hazardous materials transported or caused to be transported;
- (4) The number of shipments of hazardous materials;
- (5) The number of activities which a person carries out for which filing a registration statement is required;
- (6) The threat to property, individuals, and the environment from an accident or incident involving the hazardous materials transported or caused to be transported;
- (7) The percentage of gross revenues which are derived from the transport of hazardous materials;
- (8) The amount of funds which are made available to carry out the emergency response planning and training grants program; and
- (9) Such other factors RSPA considers appropriate.

Section 5108(i)(2) specifically excepts the following persons from the registration requirements:

- (1) A department, agency, or instrumentality of the United States Government;
- (2) An authority of a State or political subdivision of a State;
- (3) An employee of a department, agency, instrumentality, or authority carrying out official duties; and
- (4) An employee of a hazmat employer, which for the purposes of registration includes the owner-operator of a motor vehicle that transports in commerce hazardous materials, if that vehicle at the time of those activities, leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR part 376 or an equivalent contractual agreement.

Section 5108(a)(4) permits RSPA to waive the registration requirements for

a person not domiciled in the United States that solely offers hazardous materials for transportation in commerce to the United States from a place outside the United States if the country of which such person is a domiciliary does not require persons domiciled in the United States who solely offer hazardous materials for transportation to the foreign country from places in the United States to file registration statements, or to pay fees, for making such an offer. In 1995, this exception for foreign offerors was incorporated into the regulations at 49 CFR 107.606(a)(6).

In establishing the registration program, RSPA chose to require registration by only those persons under a statutory obligation to register and to impose the minimum \$250 fee on those persons, plus an additional fee, currently set at \$50, to pay for the costs of processing the registration statements, as authorized by 49 U.S.C. 5108(g). All registrants pay the same registration fee, regardless of their size, their income, or the extent to which they engage in hazardous materials transportation activities.

The current regulations, in § 107.608(a), require the annual submission of a registration statement. Section 107.620 requires each registrant to maintain a copy of its registration statement and the certificate of registration issued by RSPA at its principal place of business for three years. In addition, each highway carrier and vessel operator is required to keep a copy of the current registration certificate or another document bearing the registration number on board each vehicle or vessel carrying the types and quantities of hazardous materials that require registration.

In each of the seven years since 1992, when offerors and transporters were first required to register, RSPA has received approximately 27,000 registration statements and an average of \$6.9 million to support the HMEP Grants Program.

B. Hazardous Materials Emergency Preparedness (HMEP) Grants Program

1. Purpose and Achievements of the HMEP Grants Program

The HMEP Grants Program, as mandated by the law, establishes a role for the Federal government in providing financial and technical assistance, national direction, and guidance to enhance State, local, and tribal hazardous materials emergency planning and training. The HMEP Grants Program is designed to build upon existing programs and to support

the working relationships 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 grants program was designed to encourage the growth of hazardous materials planning and training programs of State, local and tribal governments. To ensure this growth, Sections 5116(a)(2)(A) and 5116(b)(2)(A) of the law require a State or Native American tribe applying for grants to certify that the amount it expends on hazardous materials planning and training, not counting Federal funds, will at least equal the average amount spent for these purposes during the last two fiscal years. The HMEP grants therefore represent additional funds that supplement the amount already being provided by the State or tribe. To further encourage growth in planning and training funds, Section 5116(e) limits the Federal share of the costs of the additional activity for which the grants are made to 80 percent, thus requiring the State or tribe to provide 20 percent of these additional costs. By accepting an HMEP grant, the State or tribe commits itself not only to maintaining its previous level of support, but increasing that level by an amount representing 20 percent of the funds newly expended on grant-supported activities each year. For example, an HMEP grant of \$100,000 requires an additional commitment of \$25,000 in State or tribal funds over the average amount expended by the agency during the previous two years. These additional State or tribal funds may be provided in the form of direct fiscal support or through the provision of in-kind resources.

Effective responses to hazardous materials incidents depend on the extent and quality of planning and training. Generally, a State Emergency Response Commission (SERC) coordinates the activities of the Local Emergency Planning Committees (LEPCs). The nation's more than 3,000 LEPCs prepare and, in the case of an emergency, implement emergency plans that delineate how responders coordinate activities at the scene of an incident. Emergency plans include: (1)

commodity flow studies to determine the materials most likely to create an emergency; (2) exercise plans to test the effectiveness of emergency response; and (3) training requirements for responders. RSPA awards grants to agencies designated by a State or territorial Governor or tribal leader. These agencies are primarily emergency response and environmental protection agencies and Native American tribal governments. The designated agency distributes funds within the State, territory, or Native American tribe in accordance with HMEP grant rules and required certifications. Each grant is made in two portions. Under 49 U.S.C. 5116(a), the first portion of grant funds is awarded for developing, improving, and implementing emergency plans under Title III; conducting commodity flow studies; and determining the need for regional hazardous materials response teams. In each year, RSPA allocates approximately 40 percent of the grant funds for emergency preparedness planning purposes.

The second portion of the grant is designated for training. RSPA allocates approximately 60 percent of the grant funds for emergency preparedness training purposes. This portion is used to train public sector employees to respond safely and efficiently to accidents and incidents involving hazardous materials. The people trained include paid and volunteer firefighters, police, and emergency medical service providers. The designated agencies distribute the major portion of the grants to local emergency response organizations. This system promotes representation of many interests within a State or territory.

The States are also required by Section 5116(a)(2)(B) to pass at least 75 percent of the planning grant amount to LEPC's to develop emergency plans, and by Section 5116(b)(2)(C) to make available at least 75 percent of the training grant amount for training public sector employees employed or used by a political subdivision of the State. These provisions ensure that funds are provided to the local emergency response teams for planning purposes, and that training is provided to first responders.

Since 1993, all States and territories and 35 Native American tribes have been awarded planning and training grants totaling \$38.6 million. These grants, which were supplemented by funds from States, tribes, and local agencies, were used to:

- Train 576,000 hazardous materials responders;
- Conduct 1,825 commodity flow studies;

- Write or update more than 1,000 emergency plans during the first grant period, 1,200 in the second, 4,475 in the third, and 5,775 in the fourth;

- Conduct 2,850 emergency response exercises; and

- Assist 1,200 LEPCs during the first year, 2,225 in the second, 2,150 in the third, and 1,900 in the fourth.

In addition, over the past six years, HMEP Grants Program funds have been used to support the following related activities in the total amounts indicated:

- \$2.1 million for development and periodic updating of a national curriculum of courses necessary 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: first responder awareness, first responder operations, hazardous materials technician, hazardous materials specialist, and on-scene commander. To date, there have been three major and many minor updates to the curriculum guidelines. The guidelines are used to qualify courses for inclusion in the list. In this way, a national list of courses is generated in full partnership with the States and other interested parties. In addition, RSPA used some of the registration fees to distribute more than 16,000 copies of the HMEP interagency-developed curriculum guidelines to grantees, LEPCs, SERCs, and local fire departments. A small portion of the funds is used for coordination with other Federal agencies through the National Response Team Training/Curriculum Sub-Committee, chaired by RSPA. The guidelines are available from the Federal Emergency Management Agency (FEMA) via its internet web site at <http://www.fema.gov/emi/hmep> or by calling FEMA at 301-447-1009.

- \$1.7 million to monitor public sector emergency response planning and training for an accident or incident involving hazardous materials, and to provide technical assistance to a State or Native American tribe for carrying out emergency response training and planning for an accident or incident involving hazardous materials.

- \$3.3 million for periodic updating and distribution of the North American Emergency Response Guidebook.

- \$0.5 million for supplemental grants to the International Association of Fire Fighters (IAFF) to train instructors to conduct hazardous materials response training programs.

- \$2.0 million for administrative costs of carrying out the HMEP Grants Program.

The HMEP Grants Program has allowed RSPA to support a wide array of emergency preparedness planning and training activities of States and Native American tribes, thereby enabling them to better respond to numerous hazardous-materials-related emergencies. The experiences of emergency response personnel in actual emergency situations during the last six years demonstrate the effectiveness of the grants program. A few representative examples attest to the benefits of this program:

- On October 25, 1995, a tank car containing nitrogen tetroxide ruptured in Bogalusa, Louisiana, causing evacuation of a large part of the town. The emergency plans of St. Tammany and Washington parishes, written and updated in part with HMEP grants funds, were implemented during this accident. Sergeant Robert Pinero of the Louisiana State Police said, "Twelve State and local agencies involved in the Bogalusa response received training because of the HMEP Grants Program and we were able to effectively respond to this accident."

- On April 21, 1996, an explosion at a chemical plant in Lodi, New Jersey, killed four people. Local emergency plans had recently been updated with HMEP grant funds to include a transportation perspective and updated mutual aid plans. According to Sergeant Lance Oram of the New Jersey State Police, "Mutual aid from surrounding communities, made possible by updated plans, was critical to limiting the effect of the accident, as was hazardous materials emergency training of local responders."

- The Commonwealth of Virginia has implemented a hazardous materials response team organization in part with HMEP funding. Steven Patrick, Hazardous Materials Officer for the Virginia State Department of Emergency Services, stated, "It would have been impossible to implement or maintain the response team organization without the training and planning grants provided by the HMEP Grants Program." Virginia's regional response team approach was used in Lynchburg, Virginia, on March 31, 1998, when a 61-car freight train carrying acetone derailed and an explosion and fire occurred, resulting in the evacuation of a 36-block area, including a school, and \$1 million in damages to a nearby storage warehouse. Two regional hazardous materials teams trained to the technician level using HMEP grant funds responded to this accident. The

availability of trained teams was instrumental in minimizing the time and expense necessary to respond to the accident according to the Virginia Department of Emergency Services.

2. Increased Funding of the HMEP Grants Program

The HMEP Grants Program has accomplished much in a short period of time, but many needs are not being met. Between 1993 and 1998, the average of \$6.4 million available for planning and training grants has been only 50% of the \$12.8 million authorized by the law for these purposes (\$5 million for planning and \$7.8 million for training). The HMEP training grants are essential for providing adequate training of those persons throughout the nation responsible for responding to emergencies involving the release of hazardous materials, both through direct Federal financial assistance for such training and by encouraging the provision of additional state and local funds for this purpose.

In a recent review, RSPA estimated that 800,000 shipments of hazardous materials make their way through the national transportation system each day. These shipments range in size and type from single small parcels of consumer commodities, such as flammable adhesives and corrosive paint strippers, to bulk shipments of gasoline in cargo tank motor vehicles and flammable or toxic gases in railroad tank cars. Such shipments are transported in every State, every day of the year, and it is impossible to predict with any degree of certainty when and where an incident may occur. The potential threat requires the development of emergency plans and training of emergency responders on the broadest possible scale. Yet, RSPA also believes there are over 2 million emergency responders requiring initial training or periodic recertification training, including more than 250,000 paid firefighters, 800,000 volunteer firefighters, 725,000 law enforcement officers, and 500,000 emergency medical services (EMS) providers.

The continuing need for training for emergency response personnel, whether paid or volunteer, is partially the result of a relatively high rate of turnover. Emergency response personnel must be available at any time and at a moment's notice to respond to situations that by their very nature are unpredictable and pose a threat not only to the public in general but to the responder in particular. This turnover means that each year there is a significant number of recently recruited responders who must be trained at the most basic level.

In addition, training at more advanced levels is not simply desirable, it is essential if emergency response personnel capable of effectively and safely responding to serious releases of hazardous materials are to be provided. For this reason, RSPA advocates advanced training at the first responder operations, hazardous materials technician, hazardous materials specialist, and on-scene commander levels in every emergency response team in the country. An increase in the funds available to the HMEP Grants Program will encourage the State, tribal, and local agencies to provide this more advanced, and more expensive, training.

The unmet needs of States and Native American tribes for financial assistance in emergency preparedness planning and training for transportation-related incidents involving hazardous materials are great. RSPA is determined to narrow the current gap between the authorized grant levels and the available Federal funds by its careful targeting of the additional funds collected as a result of this rulemaking. RSPA believes that it is essential to increase the awards for emergency planning and training grants to the full \$12.8 million authorized by the law and, at the same time, maintain current funding of the additional activities supported by the HMEP Grants Program described above. We fully expect that the additional funds collected as a result of this rulemaking effort will enable us to achieve that objective. For FY-2000, RSPA is seeking Congressional appropriations of \$14.3 million in support of HMEP Grants Program activities to permit funding for:

- Training and planning grants (\$12.8 million);
- Grants/support to certain national organizations to train instructors to conduct hazardous materials response training programs (\$250,000);
- Revising, publishing, and distributing the North American Emergency Response Guidebook (\$600,000 per year average);
- Monitoring and technical assistance (\$150,000);
- Continuing development of a national training curriculum (\$200,000); and
- Administering the grants program (\$300,000).

II. Meeting the Need for Increased Funding

A. Publicity Campaigns to Notify Affected Persons

RSPA has conducted extensive outreach efforts to increase awareness of the registration requirement. Approximately 780,000 informational brochures have been distributed through direct mailing campaigns and during presentations to industry. Those mailing campaigns targeted, among others:

- (1) More than 60,000 carriers and shippers identified as carriers or shippers of hazardous materials by the Federal Highway Administration's (FHWA) Office of Motor Carriers (OMC);
- (2) 6,000 motor carriers required to maintain financial responsibility in the amount of \$1 million or \$5 million in insurance;
- (3) 700 railroad companies known to the Federal Railroad Administration (FRA);
- (4) More than 22,000 generators and 13,000 transporters of hazardous waste identified by the Environmental Protection Agency;
- (5) Over 16,500 carriers and shippers identified in RSPA's Hazardous Materials Incident Reporting System;
- (6) Approximately 4,000 holders of hazardous materials exemptions issued by RSPA;
- (7) Thousands of shippers and carriers who are members of trade associations with interests in the transportation of hazardous materials; and
- (8) Thousands of carriers and shippers known to State agencies.

To avoid duplication of mailings when possible, RSPA has cross-checked its registration data base with other lists provided by the various Federal and State agencies and industry sources. Annually, RSPA mails registration brochures and forms to hazardous materials shippers and carriers newly entered into the OMC census of highway carriers and shippers and into the RSPA list of shippers and carriers named on the hazardous materials incident report form. The registration program has been publicized in trade magazines and industry newsletters. Seven notices of the registration requirements have been published in the **Federal Register**.

B. Measures to Enhance Compliance

Many commenters to Docket HM-208B (60 FR 5822, January 30, 1995) questioned whether a significant number of persons required to register failed to do so, and whether an accelerated enforcement program would raise sufficient funds to support the HMEP Grants Program fully. In 1994, to ensure compliance with the registration requirements, RSPA proposed that offerors and transporters verify the registration status of each other before transportation begins (Docket HM-208A, 59 FR 15602, April 1, 1994). Most commenters opposed this proposal. Commenters overwhelmingly believed that Federal and State agencies, and not industry, should be responsible for enforcing the regulations. Commenters opposing this proposal cited logistical problems, administrative burdens, and increased costs as reasons for their opposition. RSPA did not adopt the proposal in the final rule (59 FR 32930, June 27, 1994).

The DOT modal administrations have incorporated verification of registration into their normal compliance inspection routines. Enforcement efforts sponsored by FHWA indicate a relatively high compliance rate by motor carriers. Enforcement of the registration requirements was a key element of ROADCHECK-93, and ROADCHECK-95, nationwide inspection efforts led by FHWA. In ROADCHECK-93, of 2,300 placarded trucks that were checked for proof of registration, 88% were registered and had proof on board. Of the 12% that did not have proof on board, 80% were already registered. In ROADCHECK-95, 1,220 placarded trucks were stopped. Of these, 91% were registered and had proof of registration on board. Of the 9% that did not have proof on board, 60% were registered. This indicates a compliance rate among highway carriers of over 95%.

The safety compliance reviews conducted by FHWA (motor carriers) and RSPA (non-bulk shippers and other offerors) confirm high rates of compliance with the registration rule by industry. The following table contains a summary of compliance statistics.

SUMMARY OF COMPLIANCE REVIEWS—HAZARDOUS MATERIALS REGISTRATION RULE (1995-1997)

Period and agency	Number of inspections	Number of citations for failure to register	Percent of failures to register
FY 95 FHWA	2,338	100	4.3
FY 96 FHWA	3,215	79	2.5
FY 97 FHWA	1,369	44	3.2

SUMMARY OF COMPLIANCE REVIEWS—HAZARDOUS MATERIALS REGISTRATION RULE (1995–1997)—Continued

Period and agency	Number of inspections	Number of citations for failure to register	Percent of failures to register
FY 98 FHWA	2,032	35	1.7
CY 95 RSPA	586	19	3.2
CY 96 RSPA	610	15	2.5
CY 97 RSPA	875	20	2.3
CY 98 RSPA	1,053	26	2.5

FRA publicized the registration program through technical bulletins and informational brochures distributed to its regional offices and all FRA inspectors. FRA checks for registrations during compliance reviews and issues notices of defects for failure to register. FRA, FHWA, and 28 State enforcement agencies have issued more than 700 informal notices of the requirement to register, a form developed for use in ROADCHECK-93, but used beyond that operation. The majority of these notices were issued in 1993, 1994, and 1995.

RSPA's goal remains 100% compliance. Therefore, RSPA once again requests assistance from all interested persons to identify those elements of affected industries, or individual companies, that they suspect are required to file a registration statement and pay a fee, but have not done so. Suspected violations of the registration requirements, as well as other possible violations of the Hazardous Materials Regulations, may be reported by calling RSPA's Hazardous Materials Regulations Information Center at (800) 467-4922.

C. DOT Inspector General Recommendations

In 1996 the DOT Office of Inspector General performed a review of the hazardous materials registration program, concentrating on RSPA's efforts to inform the public of the registration requirements. The OIG issued a "Management Advisory" on April 3, 1998, as a result of this review, which made several recommendations, including one that called on RSPA to establish a graduated registration fee schedule based on the types and quantities of hazardous materials transported in order to increase the grants program funds. That recommendation is addressed in this notice. The other recommendations were related to increasing RSPA's efforts to encourage compliance with the current registration requirements through additional public information efforts.

To implement these recommendations, in May 1998 RSPA

sent brochures to 42,300 companies that were identified as carriers or shippers of hazardous materials by the OMC. All of these companies had previously been sent information on the registration program since 1992. In October 1998 RSPA resent brochures to 33,000 of these companies in an effort to ensure that companies likely to be required to register had been informed of the registration program. RSPA also mailed registration information to 6,229 companies in the OMC insurance record database that are insured for \$1 million or \$5 million. RSPA estimates that approximately 800 companies registered as a result of the May 1998 mailing and approximately 200 in response to the October 1998 mailing. While these new registrations provide an additional \$250,000 in annual fees to support the HMEP Grants Program, it is an amount far short of what is necessary to enhance funding for the program at the intended level. The results of this effort are consistent with RSPA's finding that at least 90% of the persons required to file a registration statement and pay a fee are complying with the current rule, and that little additional levels of revenue may be obtained by a more aggressive compliance enforcement effort.

D. RSPA's Past Proposal to Increase Funding the Grants Program

On January 30, 1995, RSPA published a notice of proposed rulemaking under Docket HM-208B (60 FR 5822) proposing a three-tier registration fee schedule. The proposed registration fee schedule was based on various factors related to the extent of a company's involvement in the transportation of hazardous materials. After considering over 300 comments from the public and other interested parties, RSPA concluded that it needed more time to assess the registration and grant programs and to reconsider fee equity based on the risks posed by various types and quantities of hazardous materials. A final rule adopting some minor revisions to the registration program, but maintaining a flat fee of \$300, was published on May 23, 1995 (60 FR 27231). In the four years since

that proposal, providing funds to support planning and training aspects of the HMEP Grants Program at the levels authorized by Congress has been an important goal for RSPA and the grant recipients.

E. Negotiated Rulemaking Convening Report

RSPA has considered advice, comments, and suggestions from the public and interested industry groups made in previous rulemakings, and at meetings, seminars, workshops, and discussions concerning the reauthorization of the hazardous materials safety program. In the Spring of 1998, in anticipation of this proposed rulemaking, RSPA awarded a contract to assess the feasibility of addressing this issue through a negotiated rulemaking. The convenor contacted approximately 40 representatives of the hazardous materials industry and State regulatory agencies affected by the registration and grants programs to ascertain issues of concern to these parties. The convenor recommended that RSPA should proceed to use the negotiated rulemaking process to develop an NPRM on the registration and fee requirements.

Although RSPA determined not to convene a committee, the convening report has been useful in formulating this current proposal. A copy of the Convening Report has been entered into this docket and is available for review through DOT's Docket Unit and via the Internet at the URL indicated in the addresses section of this document.

III. Proposal to Increase Funding of the HMEP Grants Program

In setting a registration fee, RSPA believes that its proposal should meet the following objectives: (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.

Alternatives considered by RSPA for increasing the funds available for the HMEP Grants Program included: (1) Increasing the flat fee imposed on current registrants; (2) imposing a flat-fee on an expanded base of registrants; (3) imposing a two-tier fee schedule on the current registrants; and (4) imposing a two-tier fee schedule on an expanded base of registrants. RSPA has concluded that imposing a two-tiered fee schedule on an expanded base of registrants is the best approach to meet the objectives listed above. The preliminary regulatory evaluation prepared in support of this notice of proposed rulemaking contains a discussion of each of those alternatives. A copy of the preliminary regulatory evaluation was entered into the docket and is available for review by all interested parties.

A. Impose a Two-Tier Fee Schedule on an Expanded Base of Registrants

RSPA proposes to expand the number of persons required to register and to impose a fee schedule based on the size of the business. The base of registrants would be expanded to all persons offering or transporting a shipment of hazardous materials that requires placarding, with the exception of farmers, as discussed below. A two-tier fee schedule would be created, with the lower fee imposed on registrants meeting the U.S. Small Business Administration (SBA) criteria for a small business, also discussed below. This alternative would distribute fees according to a long-established measurement of business size and ensure the collection of sufficient funds to support the HMEP Grants Program at an enhanced level. Under this proposal, RSPA would achieve its goal of raising \$14.3 million annually (exclusive of funds collected for administrative processing), by collecting a fee of \$300 (which includes a \$25 processing fee) from approximately 43,500 registrants that are small businesses and a fee of \$2,000 (which includes a \$25 processing fee) from an estimated 1,500 registrants not meeting the criteria for a small business. Should the amount actually collected exceed \$14.3 million, the law, at § 5108(g)(2)(B), specifies that the Secretary of Transportation shall adjust the amount being collected to reflect any unexpended balance in the account. However, the Secretary is not required to refund any fee.

This alternative recognizes the risks posed to health and safety or property by the transportation of hazardous materials in significant quantities that require placarding. It would require that shippers, carriers and other persons involved in the shipment of a placarded

load of hazardous materials bear a fair share of the financial burden that falls on State and local government agencies to develop emergency plans and to train first-on-the-scene responders.

Expanded Base

RSPA proposes to expand the base of persons required to register to include, with one exception, offerors, carriers, and other persons who transport or cause to be transported hazardous materials in a bulk packaging, freight container, unit load device, transport vehicle, or rail car that must display a hazard warning placard, under the provisions of subpart F of part 172 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180).

The one exception is for those activities of a “farmer,” as defined in § 171.8 of the HMR, that support the farmers farming operations. Absent this exception, the registration rule would potentially apply to a very large number of the nation’s more than two million farms. If the actual number of affected farmers were only one percent of the total number of farms, *i.e.*, 20,600, that segment of the economy would nearly equal the current number of 27,000 registrants drawn from all segments of the economy. However, this is not a blanket exception for all farmers from the registration rule. If a farmer offers for transportation or transports in commerce a hazardous material that is specifically identified in § 5108(a)(1) of the law, that farmer must submit a registration statement and pay the required fee.

RSPA’s proposal to expand the base of persons required to register by including all placarded loads is responsive to concerns raised by numerous persons who participated in earlier rulemaking proceedings on this topic and through the convening process discussed earlier in this preamble. This proposed expansion of the base to include all placarded loads incorporates three important elements. First, the classes and quantities of hazardous materials for which placarding is required pose a substantial threat to health and safety or property during transportation. Second, the application of generally well understood hazard communication criteria for placarding greatly simplifies the matter of whether a shipper, carrier or other person is required to register. Simplification of the regulations similarly makes the rule much easier to enforce, thereby further assuring a high rate of compliance. Third, by expanding the scope of the registration rule RSPA expects that it will have the financial resources necessary to increase funding of planning and training grants under

the HMEP Grants Program to levels currently authorized by the law.

RSPA estimates that the proposed expansion of the universe of additional persons required to register will result in an additional 15,000 to 18,000 registrations, for a total of 42,000 to 45,000 annually. This is based on RSPA’s review of the best available data from a number of sources, including the FHWA’s Office of Motor Carriers (OMC) database of motor carriers and their shippers, the 1992 Truck Inventory and Use Survey conducted by the U.S. Census Bureau, and the 1992 Economic Census, also conducted by the U.S. Census Bureau.

While none of these sources discussed above contain the number of persons who offer or transport hazardous materials in shipments that require placarding, RSPA believes its estimate of the total number of registrants is conservative and reasonable. We request information on other sources from which to better estimate the number of persons who would be required to register under the proposed rule. If such new information suggests a number significantly larger than RSPA’s current estimate, RSPA would consider adjusting the proposed registration fees to avoid collecting an amount in excess of the \$14.3 million needed to enhance funding of the HMEP Grants Program.

In addition, RSPA is interested in public comments on the advisability of expanding the number of persons required to register as proposed above, especially in relation to the economic impact of adopting or not adopting this element of the proposal.

Two-tier Schedule of Fees

RSPA proposes a two-tier fee schedule based on information that: (1) Is readily available to potential registrants; (2) can be verified by inspection and enforcement personnel; and (3) is based on one or more of the fee determinants permitted by law. Although the registration statement is excepted by 49 U.S.C. 5108 from requirements of the Paperwork Reduction Act, RSPA seeks to avoid any approach that entails a large record keeping and accounting burden on industry and the government. For example, basing the annual registration fee on a person’s hazardous materials shipments could require significant changes in the way a registrant handles its paperwork tracking and accounting procedures. Further, law enforcement personnel would have to verify this information in order to ensure that a person’s annual fee is in fact commensurate with its activities.

RSPA believes that its goals are best met by establishing a two-tier fee schedule under which a company not meeting the small-business criterion established for it by the SBA at 13 CFR 121.201 pays a larger fee than that required for a small business. Upon careful review of census data concerning establishments identified by SIC codes corresponding to operations involving the likely manufacture, distribution, or sale (wholesale and retail) of hazardous materials, RSPA estimates that of the 27,000 current registrants, approximately 1,000 registrants do not qualify as a SBA small business. If the base of registrants is expanded to include all persons who offer or transport placarded shipments, RSPA estimates that 1,500 shippers, carriers, and offerors of hazardous materials would not qualify as a SBA small business, while an estimated 43,500 registrants would meet the criterion established by SBA appropriate to their commercial activity.

RSPA believes this regulatory approach provides fee levels that reflect a key factor contained in 49 U.S.C. 5108(g)(2)(A), specifically, the relative size of a business. In addition, this proposal addresses the different levels of risk posed by smaller companies that are engaged in fewer and smaller shipments of hazardous materials as compared to larger companies that annually manufacture, offer, and transport thousands of tons of hazardous materials. RSPA maintains that five of the specific factors permitted by 49 U.S.C. 5108(g)(2)(A) as fee determinants were intended to be indications of the level of risk imposed by the registrant, and that two were intended to be indications of the size of the business (see the list of fee determinants above). Use of the SBA standards for differentiating small businesses offers a simple and direct factor that is commonly used and established by Federal regulation. The use of alternative size criteria, even though they could be defined to reflect, for instance, the relative percentage of specific hazardous materials related businesses, would impose additional and possibly significant record-keeping requirements on the registrants.

RSPA believes that the use of the SBA size criteria as a fee determinant will not impose any additional recordkeeping requirements on the registrants since existing personnel and payroll records can be used to substantiate the number of employees, and financial records subject to routine audits can be used to substantiate gross annual receipts.

The SBA size standards for small businesses are readily available and relatively simple to apply to a business. Each Standard Industrial Code is assigned a standard that is either the number of employees or the gross annual receipts of the business. If a registrant's number of employees or gross annual receipts is equal to or less than the standard assigned to the SIC category that best describes its commercial activities, it qualifies as a small business. In most instances a registrant will be able to immediately determine whether it meets the small business definition. For instance, the size standard for SIC Division D (Manufacturing) is the number of employees, and depending on the product manufactured can be 500, 750, 1000, or 1,500. Any registrant whose primary business is manufacturing that employs 500 persons or less, will qualify as a small business, and, again depending on the SIC code, may qualify as a small business with up to 750 or 1000 employees. Registrants whose primary business falls within the SIC Major Group "Motor Freight Transportation and Warehousing" are defined as small businesses if the gross annual receipts are equal to or less than \$18.5 million, with two exceptions ("Garbage and Refuse Collection, without Disposal" has an upper limit of \$6.0 million, and "Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation" has a limit of \$5.0 million). Here again, RSPA believes that most motor carriers will immediately recognize whether they meet the SBA criterion for a small business.

The SBA size criteria in 13 CFR part 121 are applied to a "business concern" or "business entity." For the purposes of determining the appropriate registration fee, the SBA criteria are to be applied to the registering "person" as defined in 49 CFR 107.3, even if that "person" is substantively different from the SBA "concern" or "entity." For example, the SBA, at 13 CFR 121.103(a), sometimes looks beyond the specific operations of a legally organized business to consider whether its affiliation with another business concern or business entity through identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, may be treated as one party with such interests aggregated. In its application of requirements for registration RSPA makes no such distinction and each business concern or business entity

subject to the registration regulation would be required to file a separate registration statement and pay the appropriate fee.

Under this proposal, a foreign carrier that transports a specified type and quantity of hazardous material within the United States would have to determine its small-business status by applying the criteria in 13 CFR 121.201, using the U.S. Dollar equivalent of annual receipts or the number of employees, as appropriate.

RSPA is interested in public comments on the advisability of imposing a two-tier schedule of fees as proposed above, particularly in relation to the alternative of maintaining the greater simplicity of a flat fee collected from all registrants regardless of their business size or amount and type of hazardous materials activities.

Lower Administrative Fee for All Registrants.

In this notice, RSPA proposes to reduce the processing fee to \$25 in order to bring the aggregate amount collected closer to the amounts needed to process the registration statement and to issue the Certificate of Registration. All amounts collected by RSPA (including the processing fee) are deposited into the U.S. Treasury, and Congress appropriates funds for RSPA to process registration statements, issue registration certificates, and perform the related parts of the registration program. In Fiscal Years 1996-99, the amounts needed by RSPA to administer the registration program, and appropriated by Congress, have been about one-half of the total processing fees collected. Although the current proposal would increase the number of persons required to register and pay a registration fee, RSPA estimates that a processing fee of \$25 per registration statement will still be necessary and sufficient to administer the registration program at that level.

B. Registration Procedures

In connection with the proposed fee schedule, RSPA notes that additional information would be required on the Registration Statement submitted by persons subject to the registration requirements. The proposed new information includes the SIC Code and certification of whether the registrant meets the SBA standards for a small business. The SIC Code would replace the former indication of "Industrial Classification" on the Registration Statement.

At the request of various industry representatives, RSPA is also proposing to permit registration for one, two, or three years on a single registration

statement. Registration for more than a single year would be strictly optional. Registrants that register for years in advance would not receive RSPA's courtesy mailing of registration materials in the years for which they have pre-registered, but would receive a notice to register when their current registration is about to expire. A single administrative fee of \$25 would be collected for each registration statement submitted under this proposal, whether for one, two, or three years, and a single registration statement and number would be issued for the entire period.

IV. Fiscal Year 2000 Budget Request and Hazardous Materials Transportation Reauthorization Proposal

The Administration's Fiscal Year 2000 Budget and the Hazardous Materials Transportation Reauthorization proposals to Congress include legislative authority to fund RSPA's entire Hazardous Materials Safety Program from the registration fee program, beginning with the fourth quarter of fiscal year 2000. If this authority is granted, RSPA will initiate additional rulemaking action to collect the approximately \$32.5 million needed to adequately fund both the HMEP Grants program (\$14.3 million) and the remainder of RSPA's Hazardous Materials Program (\$18.2 million).

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. A regulatory evaluation is available for review in the public docket. This proposal is intended to collect annual registration fees in the amount of \$14.3 million to support activities of the HMEP Grants Program. Because Federal hazardous materials transportation law mandates the establishment and collection of fees, the discretionary aspects of this rulemaking are limited to setting the amount of the fee within the statutory range for each person subject to the registration program, and to extending the registration requirements to persons who transport or cause the transportation of hazardous materials but who are not specifically required to register by law. The proposed fees are not related to the cost of RSPA's

hazardous materials safety programs. The fees to be paid by shippers and carriers of certain hazardous materials in transportation are related to the benefits received by these persons from the sale and transportation of hazardous materials and from emergency response services provided by public sector resources, should an accident or incident occur. The fees are also related to expenses incurred by State, Native American tribal, and local hazardous materials emergency preparedness and response activities.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). States and local governments are "persons" under 49 U.S.C. 5102, but are specifically exempted from the requirement to file a registration statement. The regulations herein have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Native American tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Executive Order 13084

RSPA believes that revised regulations evolving from this NPRM would have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply. Nevertheless, this NPRM specifically requests comments from affected persons, including Indian tribal governments, as to its potential impact.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each agency to review regulations and assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Based on its preliminary regulatory evaluation prepared in support of this proposal, RSPA certifies that this

proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposal would expand the number of persons subject to RSPA's registration and fee program to include all persons who offer for transportation or transport a shipment of hazardous materials required to be placarded. RSPA is also proposing to maintain at the current level the combined registration and processing fee in the amount of \$300 as authorized by the Federal hazardous materials transportation law for persons meeting the Small Business Administration (SBA) definition of small business. In addition, RSPA is proposing a limited exception for farmers that offer for transportation or transport certain shipments of hazardous materials in support of their farm operations.

Approximately 27,000 persons registered with RSPA for each of the last two registration years, and these persons are expected to engage in hazardous materials transportation activities that require registration in the coming years. Approximately 65% (17,550) of these persons are carriers or carriers-and-shippers, the remaining 35% (9,450) being shippers or other offerors who do not transport hazardous materials. RSPA estimates that the proposed expansion of the universe of persons required to register will result in an additional 15,000 to 18,000 registrations, for a total of 42,000 to 45,000 annual registrations. This represents the least number of registrations that can be reasonably expected under the proposed rule.

The 1992 Truck Inventory and Use Survey (TIUS-92) conducted by the Bureau of the Census as part of the Census of Transportation indicates that there were 17 million trucks (not including pickups, vans, utility vehicles, and station wagons) in the United States. Except for a few specialized vehicle types, essentially all of those 17 million trucks may be used in the transportation of hazardous materials. With deregulation of the trucking industry there are essentially no economic barriers to entry into this field of transportation; carriers that are ready, willing, and able to transport hazardous materials are generally free to do so. The data indicate that only 360,000 of the 17 million trucks are actually used to carry placarded shipments of hazardous materials. The number of companies maintaining these trucks was not included in the census, but fleet sizes were provided. The number of fleets that included a truck that carried hazardous materials is estimated to be 40,000. This number contains an undetermined number of

farmers who would be excepted under the proposed rule.

The number of persons who offer shipments of hazardous materials for transportation exclusively by rail, air, or water is thought to be quite small by comparison to multi-modal shippers, and probably does not exceed 500 to 1,000. An increase is expected in the number of motor carriers that would be required to register and in the number of persons that offer shipments of hazardous materials that require placarding for transportation. RSPA expects that the estimated 15,000 to 18,000 new registrants will be divided in approximately the same proportion as the current mix of registrants, i.e., 65% (9,750 to 11,700) would be carriers or carriers-and-shippers, and 35% (5,250 to 6,300) would be persons who never transport their own shipments of hazardous materials. Of the estimated 15,000 to 18,000 new registrants, RSPA estimates that all but 400 to 500 are small businesses.

RSPA believes the \$300 in annual registration fees is so small as to not constitute a significant burden on any small business. For example, an independent owner-operator, i.e., a motor carrier not operating under lease to a registered motor carrier, probably represents the smallest of all small businesses potentially subject to requirements in this proposed rule. These owner-operators typically own one truck and average 2,000 revenue-miles per week at an estimated cost per mile of \$0.80 cents. Assuming the typical independent owner-operator is in service 40 weeks per year, the additional cost per mile attributed to \$300 in registration and processing fees is \$0.00375 cents. Stated differently, the independent owner-operator's increased cost of doing business would be less than one-half of 1% of current costs. That does not represent a significant impact on an independent owner-operator's cost of doing business.

As indicated above, there are nearly 17 million vehicles in either private commercial operations or for-hire service. Assuming, on the basis of census data, that one-truck-only operators comprise 28% of the national fleet, it follows that there are at least 4.25 million concerns that could, at their discretion, engage in the transportation of hazardous materials. In this analysis, RSPA notes that the estimated total number of 9,750 to 11,700 persons described as carriers or carriers-and-shippers that the agency expects would be subject to the requirement to register is less than one-half of 1% of the 4.25 million very small carriers that comprise the for-hire and

commercial business services sector of the national economy. That is neither a substantial number of all potentially affected transporters, nor is it a substantial number of the 97% of those operators that RSPA believes meet SBA criteria for a small business.

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 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. This proposed rule is the least burdensome alternative that achieves the objective of the rule.

F. Paperwork Reduction Act

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

G. Impact on Business Processes and Computer Systems (Year 2000)

Many computers that use two digits to keep track of dates may, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This NPRM does not propose business process changes or require modification to computer systems. Because the NPRM apparently does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the proposed requirements in the NPRM.

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 can 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.

Accordingly, RSPA proposes to amend 49 CFR part 107 as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 would continue 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.

Subpart G—Registration of Persons Who Offer or Transport Hazardous Materials

2. Section 107.601 would be revised to read as follows:

§ 107.601 Applicability

(a) The registration and fee requirements of this subpart apply to any person who offers for transportation, or transports, in foreign, interstate or intrastate commerce—

(1) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this chapter;

(2) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material (see § 173.50 of this chapter) in a motor vehicle, rail car or freight container;

(3) More than one L (1.06 quarts) per package of a material extremely toxic by inhalation (i.e., "material poisonous by inhalation," as defined in § 171.8 of this chapter, that meets the criteria for "hazard zone A," as specified in §§ 173.116(a) or 173.133(a) of this chapter);

(4) A shipment of a quantity of hazardous materials in a bulk packaging (see § 171.8 of this chapter) having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class, under the provisions of subpart F of part 172 of this chapter; or

(6) Except as provided in paragraph (b) of this section, a quantity of hazardous material that requires

placarding, under provisions of subpart F of part 172 of this chapter.

(b) Paragraph (a)(6) of this section does not apply to those activities of a farmer, as defined in § 171.8 of this chapter, that are in direct support of the farmers farming operations.

(c) In this subpart, the term "shipment" means the offering or loading of hazardous material at one loading facility using one transport vehicle, or the transport of that transport vehicle.

3. In § 107.608, paragraphs (a), (b), and (d) would be revised to read as follows:

§ 107.608 General registration requirements.

(a) Except as provided in § 107.616(d), each person subject to this subpart must submit a complete and accurate registration statement on DOT Form F 5800.2 not later than June 30 for each registration year, or in time to comply with paragraph (b) of this section, whichever is later. Each registration year begins on July 1 and ends on June 30 of the following year.

(b) No person required to file a registration statement may transport a hazardous material or cause a hazardous material to be transported or shipped, unless such person has on file, in accordance with § 107.620, a current Certificate of Registration in accordance with the requirements of this subpart.

* * * * *

(d) Copies of DOT Form F 5800.2 and instructions for its completion may be obtained from the Hazardous Materials Registration Program, DHM-60, U.S. Department of Transportation, Washington, DC 20590-0001, by calling 617-494-2545 or 202-366-4109, or via the Internet at <http://hazmat.dot.gov>.

* * * * *

4. Section 107.612 would be revised to read as follows:

§ 107.612 Amount of fee.

(a) *Registration year 1999-2000 and earlier.* For all registration years through 1999-2000, each person subject to the requirements of § 107.601(a)(1)-(5) must pay an annual fee of \$300 (which includes a \$50 processing fee).

(b) *Registration year 2000-2001 and following.* For each registration year beginning with 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 applicable to the standard industrial classification (SIC) code that describes that person's primary commercial activity must pay an annual fee of \$300 (which includes a \$25 processing fee).

(2) *Other than a small business.* Each person that does not meet criteria specified in paragraph (b)(1) of this section must pay an annual fee of \$2,000 (which includes a \$25 processing fee).

(3) The processing fee is limited to \$25 for each registration statement filed for more than one year, as provided in § 107.616(c).

5. In § 107.616, paragraphs (c) and (d)(2) would be revised to read as follows:

§ 107.616 Payment procedures.

* * * * *

(c) Payment must correspond to the total fees properly calculated in the "AMOUNT DUE" block of the DOT Form F 5800.2. A person may elect to register and pay the required fees for up to three registration years by filing one complete and accurate registration statement.

(d) * * *

(2) Pay a registration and processing fee of \$350 (including a \$50 expedited handling fee). For registration years 2000-2001 and following, persons who do not meet the criteria for a small business, as specified in § 107.612(b)(1), must enclose payment of \$1,700 with the expedited follow-up material, for a total of \$2,050 (including a \$50 expedited handling fee); and

* * * * *

Issued in Washington, D.C. on April 12, 1999, under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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