(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: March 15, 2010.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2010–6995 Filed 3–29–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA-2010-0003; Internal Agency Docket No. FEMA-8123]

Suspension of Community Eligibility

Correction

In rule document 2010–6632 beginning on page 14356 in the issue of Thursday, March 25, 2010 make the following corrections:

(1) The department docket number is corrected to read as set forth above.

(2) On page 14357, in the fourth column, under the heading "Current effective map date", the date should read April 5, 2010.

[FR Doc. C1–2010–6632 Filed 3–29–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 107

[Docket No. PHMSA–2009–0201 (HM–208H)]

RIN 2137–AE47

Hazardous Materials Transportation; Registration and Fee Assessment Program

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

ACTION: Final rule.

SUMMARY: PHMSA is amending 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, PHMSA is increasing the annual fee from $975 (plus a $25 administrative fee) to $2,575 (plus a $25 administrative fee) for registration year 2010–2011 and following years. The increase is necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at approximately $28,300,000 in accordance with the Administration's Fiscal Year 2010 budget and proposed Fiscal Year 2011 budget.

DATES: Effective date of this final rule is April 29, 2010.

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

SUPPLEMENTARY INFORMATION:

I. Background

Since 1992, 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 to fund the Hazardous Materials Emergency Preparedness (HMEP) grants program and additional related activities. *See* 49 U.S.C. 5108(b), 5116, 5128(b). PHMSA may set the annual registration fee between a minimum of $250 and maximum of $3,000. *See* 49 U.S.C. 5108(a)(2), 5108(g)(2)(A).

Since 2006, the annual registration fee has been set at $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. *See* 49 CFR 107.612(d). Because PHMSA had accumulated a surplus following a prior adjustment in 2000 (*See* 65 FR 7297, 7309 [Feb. 14, 2000]), notwithstanding a temporary reduction between 2003 and 2006, since Fiscal Year 2008, PHMSA has been able to fully fund the obligation limit of $28,318,000 in the Consolidated Appropriations Act of 2008 (Pub. L. 110–116 [121 Stat. 1295], November 13, 2007), and the Omnibus Appropriations Act, 2009 (Pub. L. 111–8 [123 Stat. 945], March 11, 2009). However, that surplus has now been reduced to $1,500,000, and it is necessary to adjust registration fees in order to collect additional monies in the 2010–2011 and following registration years and fully fund the current authorization and expected budget requests of $28.3 million for Fiscal Years beginning in 2010. This can be done by leaving the annual registration fee at $250 (plus a $25 processing fee) for those persons who are a small business or not-for-profit organization and increasing to $2,575 (plus a $25 processing fee) the annual fee paid by all other persons required to register.

II. Notice of Proposed Rulemaking

On February 2, 2010, PHMSA published a notice of proposed rulemaking (NPRM; 75 FR 5258) to ensure full funding of the HMEP grants program, by proposing an increase in registration fees beginning with the 2010–2011 registration year to fund the program at the $28.3 million level. As explained in the NPRM, since 2006, the annual registration fee has been set at $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. *See* 49 CFR 107.612(d). Because PHMSA had accumulated a surplus following a prior adjustment in 2000 (*See* 65 FR 7297, 7309 [Feb. 14, 2000]), notwithstanding a temporary reduction between 2003 and 2006, since Fiscal Year 2008, PHMSA has been able to fully fund the obligation limit of $28,318,000 in the Consolidated Appropriations Act of 2008 (Pub. L. 110–116 [121 Stat. 1295], November 13, 2007), and the Omnibus Appropriations Act, 2009 (Pub. L. 111–8 [123 Stat. 945], March 11, 2009). However, that surplus has now been reduced to $1,500,000, and it is necessary to adjust registration fees in order to collect additional monies in the 2010–2011 and following registration years and fully fund the current authorization in Fiscal Year 2010 and expected budget requests of $28.3 million for future fiscal years. Accordingly, PHMSA proposed to increase the registration fees for persons other than small businesses from $975 (plus $25 processing fee) to $2,975 (plus $25 processing fee) for registration year 2010–2011 and following, in order to maintain the statutorily mandated goal of funding the HMEP grants program activities at approximately $28,300,000.

III. 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: (1) Develop, improve, and implement emergency plans; (2) train public sector hazardous materials emergency response employees to respond to accidents and incidents involving hazardous materials; (3) determine flow patterns of hazardous materials within a State and between States; and (4) 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 $203 million. These grants helped to:

- Train 2,420,000 hazardous materials responders;
- Conduct 9,282 commodity flow studies;
- Write or update 55,826 emergency plans;
- Conduct 13,372 emergency response exercises; and
- Assist 25,059 local emergency planning committees (LEPCs) or approximately 1670 per year.

Since the beginning of the program, HMEP program funds have also supported the following related activities in the total amounts indicated:

- $3.4 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 higher skill levels: (1) First responder awareness, (2) first responder operations, (3) hazardous materials technician, (4) hazardous materials specialist, and (5) on-scene commander.
- $2.6 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.
- $7.6 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.
- $3.5 million for the International Association of Fire Fighters (IAFF) to train instructors to conduct hazardous materials response training programs.

B. 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 that emergency response personnel are capable of effectively and safely responding to serious releases of hazardous materials. The availability of funding for the HMEP grants program will encourage State, Tribal, and local agencies to provide more advanced training.

The 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;
- 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;
- $188,000 for continuing development of a national training curriculum;
- $150,000 for monitoring and technical assistance; and
- $555,000 for administrative support.

IV. Discussion of Comments

PHMSA received 42 sets of comments on the NPRM, from the following individuals and organizations:

Steven Kovacsi (Mr. Kovacsi)
John Q. Counts (Mr. Counts)
Dale Anderson (Mr. Anderson)
Angela Brenwalt and Jenny Carver (Brenwalt and Carver)
The Council on the Safe Transportation of Dangerous Articles, Inc. (COSTHA)
Canadian Trucking Alliance
American Trucking Associations (ATA)
Association of HAZMAT Shippers, Inc. (AHS)
The Institute of Makers of Explosives (IME)
Petroleum Marketers Association of America (PMAA)
New England Fuel Institute (NEFI)
Owner-Operator Independent Drivers Association, Inc. (OOIDA)
Dangerous Goods Advisory Council (DGAC)
Horizon Lines, LLC (Horizon)
Fann Contracting, Inc. (Mr. Fann)
International Vessel Operators Hazardous Materials Association, Inc. (VOHMA)
Alexander & Baldwin, Inc. (A&B)
Cleveland County Local Emergency Planning Committee (CCLEPC)
North Central Florida LEPC
South Florida LEPC
Texas Department of Safety/Emergency Management
Missouri Emergency Response Commission
Oklahoma Hazardous Materials Emergency Response Commission (OHMERC) (two comments)
National Association of SARA Title III Program Officials (NASTPO)
Tulsa County (OK) Local Emergency Planning Committee (LEPC)
Livingston County (MO) LEPC
Garfield County (WA) Fire District #1
Oklahoma County (OK) LEPC
Grand River Dam Authority LEPC
Benton County (MO) Emergency Management
Douglas County (CO) LEPC
Gila County (AZ) LEPC
Ponca City, OK Emergency Management/LEPC
Jefferson County (IN) LEPC
Jefferson County (CO) LEPC
Garfield County (OK) LEPC
Blaine County (OK) LEPC
Connecticut State Emergency Response Commission (SERC)
Dade County (MO) LEPC

Arizona Emergency Response Commission
Environmental Protection Agency
Utility Solid Waste Activities Group (USWAG)

Commenters from the emergency response community support the proposed fee increase. They state that the HMEP grants are their only source of funding for planning for hazardous materials transportation incidents and training local emergency responders. They note that the high turnover rate for first responders is a significant issue and indicate that increased funding will enable them to ensure that all first responders are trained.

Comments from the regulated community are divided. Some oppose the proposal to increase fees for large businesses and suggest that, in the interest of fairness, the fee increase should be risk based so that higher volume shippers of carriers of hazardous materials bear a higher percentage of proposed fees. Other commenters recommend, again in the interest of fairness, that PHMSA consider an increase in the registration fees paid by small businesses and not-for profit organizations. Commenters also express concern about how funds are allocated and spent, grants to non-profit hazmat employee organizations, and alleged ineffective enforcement of the current registration requirements.

The comments are discussed in more detail below.

A. Support for HMEP Grants and the Registration Fee Increase

A total of 24 State and local government emergency planning and response entities submitted comments on the NPRM. These commenters from the emergency response community support the proposed fee increase. As indicated above, they state that the HMEP grants are their only source of funding for planning for hazardous materials transportation incidents and training local emergency responders. For example, Texas DPS/Emergency Management notes that almost 80% of fire departments in Texas have no paid responders and that volunteers depend on HMEP funding to receive appropriate and up-to-date training. According to Texas DPS/Emergency Management, "HMEP is the only source of hazardous materials training funds for the majority of our fire departments and under the current economical situation is becoming a major source of funding for all of our departments." Similarly, OHMERC states that, throughout most of Oklahoma, the first responders on scene at a transportation incident are local volunteers. "There is no industrial tax base in the surrounding area to support the planning and exercising activities of these dedicated individuals. There is no industry-based training available * * * There are regionally based Hazmat response teams that can provide assistance to local volunteers but their response times may be in excess of 2 hours. * * *" CCLEPC states that it is "heavily dependent upon the money it receives each year through the * * * HMEP grant. Without this source of funding we would be greatly hampered in our ability to carry out our mission. * * *" The Arizona Emergency Response Commission states that "[w]ithin Arizona as with other states, serious financial shortfalls have occurred which greatly affect how much funding will be passed through to the local communities."

These commenters also note that turnover among volunteer firefighters is high, so, in the words of Texas DPS/Emergency Management, "a consistent continual training program is necessary. Volunteer, rural responders need to have the knowledge to protect themselves, the public, and the environment. * * *."

PHMSA believes it is critical to fund local emergency planning and response efforts to the maximum level allowed under the law. Government and industry have a shared responsibility to minimize the consequences of hazardous materials transportation accidents. The possible consequences of a serious incident require that all communities develop response plans and train emergency services, fire, and police personnel to assure an effective response. The importance of planning and training cannot be overemphasized. Small towns and rural communities are served by largely volunteer fire departments and, in many instances, these communities' resources already are overextended in their efforts to meet routine emergency response needs.

B. Basis of Proposed Registration Fee Increase

OIDA, NEFI, and PMAA support the two-tiered registration structure. PMAA states that it is "entirely appropriate and inherently fair that small business registrants pay a significantly lower fee than large HAZMAT offerors * * * Reduced risk should be rewarded with a lower fee." OIDA agrees and adds that small-business motor carriers already pay a "significantly higher per unit cost than their large competitors." OIDA suggests that while a one-truck motor carrier faces a total cost of $275 per unit, a larger carrier with 15,000 trucks would pay the equivalent of 20 cents for each truck in its fleet under the proposed higher fee structure.

VOHMA recommends that fee assessments should be "more equitably determined" based on volumes of hazardous materials transported. "[T]he higher volume carrier[s] who benefit from the revenue of carrying such commodities should bear a higher percentage of the * * * fees." A&B and AHS assert that the current fee structure is unfair because it requires registrants who only occasionally offer for transportation or transport hazardous materials to pay the same fee as registrants who offer or transport hazardous materials as their primary business. VOHMA and Horizon suggest that vessel carriers calling at U.S. ports have "little need" to employ the additional resources of Emergency Response Teams funded through the registration fee program as they already have a "vast listing of reserved parties on call" and further, ships are at sea most of the time. ATA, AHS, Mr. Fann, and IME suggest that before large businesses are asked to absorb a 200 percent fee increase, PHMSA should consider increasing fees paid by small businesses and not-for-profit organizations. Alternatively, AHS and IME suggest that PHMSA consider a fee structure with multiple fee tiers. Further, IME does not agree that large businesses pose a greater risk, and, therefore, should shoulder a greater share of funding for the HMEP grant program. IME suggests that PHMSA institute a waiver process under which businesses that demonstrate that their shipment patterns are similar to those of large not-for-profit entities could qualify to pay at the small business rate. IME also suggests that PHMSA set a cap on total fees paid by subsidiaries of a parent company, stating, "[s]uch qualified relief would accommodate gross inequities resulting from the 'ability-to-pay' approach to financing the HMEP and would interject a dimension to the fee calculation based on risk." ATA suggests that PHMSA consider eliminating certain exceptions to the current registration requirements, including the exception for farmers that transport placarded materials in direct support of the farmer's farming operations. NACD and DGAC recommend a "performance-based fee system" under which entities with poor incident histories and safety records would pay higher fees. USWAG recommends that the fee increase be delayed for at least one more registration year.

Commenters are correct that under Federal hazmat law, PHMSA has the discretion to increase registration fees for both small and large businesses. As explained in the NPRM, PHMSA 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. PHMSA continues to believe that this second option is the best approach for meeting our overall objectives for both the registration and HMEP programs. 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. PHMSA has received approximately 41,000 registrations for the 2008–2009 registration year, and expects approximately the same number for 2009–2010. Small businesses or not-for-profit organizations make up 83%, or 35,025 of the registrants, while large businesses make up 17%, or 6,975 of the registrants.

Since the registration program was first established, PHMSA has considered, and rejected, methods for apportioning registration fees among registrants according to various approximations of the risk imposed. For example, in Docket No. HM–208B, there were overwhelming objections to basing registration fees on risk factors such as the hazard characteristics of specific classes of materials and the consequences of a release during transportation; the quantity of materials shipped or transported, including the type and size of containers (including vehicles); and the number of shipments offered or transported. The agency concluded that trying to distinguish among distinct levels of risk would require the imposition of a complicated system that would necessarily involve significant recordkeeping burdens on the regulated public (60 FR 5822). PHMSA remains convinced that even the simplest of the suggested alternative fee structures would impose significant cost burdens. As a further example, the creation of a third level based on a "waiver" for registrants that do not meet the criteria for a small business but engage in limited hazardous materials activities could impose a greater expense on the registrant to maintain the necessary records to prove its level of activity than the cost of the registration fee. PHMSA believes that the current two-tiered fee schedule based on SBA criteria is the most equitable, simple, and enforceable method for determining and collecting registration fees. The two-tiered fee schedule distributes registration fees according to a well-established measurement of business size and ensures the collection of sufficient funds to support the HMEP grants program at an enhanced level.

C. Oversight and Accountability

ATA, AHS, PMAA, and IME suggest that PHMSA should provide greater oversight and accountability on how the HMEP grant funds are allocated and used. IME questions PHMSA's enforcement of the registration program and suggests that the two-tier system complicates rather than simplifies enforcement efforts. IME also questions PHMSA's data on the number of emergency plans and LEPCs supported by the HMEP grant funds and suggests that training grants are in greater need of funding. IME states, "given the plethora of other viable alternatives to address the needs of the response community, the HMEP is at best inconsequential, and in retrospect, a program that has outlived its relevance and usefulness as a stand alone resource."

In 2008, PHMSA received approval from the Office of Management and Budget (OMB) to collect more detailed information from HMEP grantees to enable the agency more accurately to evaluate the effectiveness of the grant program in meeting emergency response planning and training needs (73 FR 39780). PHMSA is now collecting that detailed information. In addition, the agency is hiring additional staff to provide an enhanced HMEP oversight capability. The HMEP grant program was established over 15 years ago and has continued with few changes since its initial implementation. HMEP grantees have used program funds to train first responders; conduct commodity flow studies; write or update emergency plans; conduct emergency response exercises; and assist local emergency planning committees. Few other resources are available to accomplish these tasks. PHMSA recognizes that, because the HMEP grant program is funded by registration fees paid by hazardous materials shippers and carriers, it is incumbent on the agency administering the grant program as well as the grantees themselves to ascertain that the program is accountable to those who fund it and is as effective as possible in meeting its emergency response planning and training goals.

The information provided by the grantees will provide data to evaluate emergency response planning and training programs conducted by States and Indian Tribes. The development of accurate output information will also summarize the achievements of the HMEP grant program. The information PHMSA seeks from grantees will enhance emergency response preparedness and response by allowing the agency and its State and Tribal partners to target gaps in current planning and training efforts and focus on strategies that have been proven to be effective. PHMSA notes in this regard the comments from NASTPO and OHMERC that "one size does not fit all when it comes to community preparedness." OHMERC states that it is working with grantees to establish priorities and outcome metrics so that program effectiveness can be demonstrated. NASTPO as well states that it is working to address the effectiveness of the HMEP program, including its accountability.

PHMSA believes that funding for both planning and training is critical to the local emergency responders' capability of dealing with hazardous materials transportation incidents. The emergency response community has stressed that rural communities depend on volunteers and their ability to plan, train and exercise for a wide range of potential events. To ensure effective emergency response, communities must continually revise plans, repeat training, and conduct exercises. As NASTPO notes, community preparedness and emergency planning is "a process, not an end point." An effective planning organization will routinely evaluate and update its emergency response plans to account for changing circumstances and conditions.

D. Grants to Non-Profit Hazmat Employee Organizations

DGAC and IME oppose the use of registration fees to fund the training grants authorized under § 5107(e) of Federal hazmat law. IME asserts that this $4 million training program is a double taxation for hazmat employee training since employees trained by third parties would still need to meet the specific and specialized training each company is responsible for providing under the Hazardous Materials Regulations, and that, "using industry fees for this purpose cannot be justified." DGAC contends that the program does not have industry support and suggests that PHMSA has not explained how, and for what purpose, it plans to use the training grant funds.

According to the law, training grant funds awarded to an organization may be used to train hazmat instructors and, to the extent determined to be appropriate, for such instructors to train hazmat employees. Grant funds are not authorized to fund an organization's existing hazmat training program. The program is open to non-profit hazardous materials employee organizations demonstrating: (1) Expertise in conducting a training program for hazmat employees, and (2) ability to reach a target population of hazmat employees. For the purposes of the grants program, an employee organization is a labor union, association, group, or similar organization the members of which are hazardous materials employees and the stated purpose of which is to represent hazmat employees. Hazmat employees include self-employed persons, including owner-operators of motor vehicles; vessel or aircraft crewmembers and employees; railroad signalmen; and maintenance-of-way employees. Due to budget and other limitations, many hazmat employees cannot leave their employment locations for extended periods of time to attend training courses. Instructors trained under this grant program can offer training to a large number of hazmat employees at locations within close proximity to the hazmat employees' places of employment, thereby significantly minimizing employee travel cost and training time. PHMSA believes the statutorily mandated training grants will benefit the transportation industry by providing this much needed hazmat training.

E. Rising Transportation Costs

COSTHA, NACD, Mr. Fann, Horizon, and VOHMA ask PHMSA to take into consideration the current state of the economy and the high costs of transportation in setting registration fees. These commenters suggest that increasing registration fees will impose additional hardships on businesses already struggling with rising costs. COSTHA notes that the economy is "still in flux after suffering one of the largest recessions in 40 years" and requests a reconsideration of the fee increase in light of current economic conditions. VOHMA requests that PHMSA "consider the fact that vessel operators use large quantities of petroleum fuels and are finding it increasingly difficult to remain competitive and efficient in this costly energy environment." Horizon notes that it is "faced with rising and unstable fuel expenses coupled with weather related delays, damages, and a weak economy" which all affect its ability to operate profitably. Mr. Kovacsi states that in the current economy, "this whopping increase is totally inappropriate when so many drivers are already out of work due to poor revenues by their employers." Mr. Fann states that "[b]usinesses are suffering through these hard times also by having to make cut backs, watch expenses and find less expensive alternatives to their way of doing business." Several commenters note as well that adoption of the proposals in the final rule will require many businesses to incur unbudgeted expenses during the current calendar year.

PHMSA recognizes the concerns of industry relating to the increasing costs of energy and transportation. However, these costs affect many industries, as well as consumers and emergency responders. PHMSA believes that increasing energy and transportation costs reinforce the need to fully fund the HMEP grants program. State emergency planners and responders continue to indicate that these HMEP grants are the only source of funds they receive to fund the continuing need for emergency response planning and training.

F. Surplus in HMEP Grants Fund

Commenters, including COSTHA, NPGA, Mr. Anderson, Mr. Counts, and IME, express concern that the increase in registration fees will result in a surplus in the HMEP grants account. For example, IME contends that "PHMSA is again embarking on a path to generate millions of dollars in excess of the amount authorized." NPGA suggests that "it is conceivable that a surplus could exist in a very short period of time."

As already discussed, the past surplus enabled PHMSA to temporarily reduce registration fees for all persons during the 2003–2006 period. Further, as discussed in the NPRM, in part because of accumulated surpluses, PHMSA was able to fully fund the HMEP program at its authorized limit of $28,318,000 for FY 2009. However, that surplus has now been reduced to $1.5 million. PHMSA estimates that without the proposed increase in fees, the agency will be approximately $8 million short of the authorized grant obligations to be made in 2010. Further, PHMSA has received approximately 2,000 (6%) fewer registrations for the 2008–2009 registration year than for 2007–2008. The number of registrations for the 2009–2010 registration year has only slightly increased over the number for 2008–2009 at this time last year. This may be due to the current economic conditions, even though PHMSA has been aggressively addressing entities who have failed to register.

G. Enforcement of Registration Fee Requirements

COSTHA, IME, AHS, and VOHMA express concern about the industry's compliance with and PHMSA's enforcement of the registration fee requirements. IME states that it has "long questioned PHMSA's ability to provide credible enforcement of the two-tiered registration requirement" and suggests that, extrapolating from a five percent non-compliance rate and using PHMSA's registration statistics, "over $1.5 million in revenue will annually be forgone." Similarly, VOHMA questions whether all entities that are subject to the registration and fee assessment requirements are actually in compliance and recommends that PHMSA "place more emphasis on enforcement of the registration requirements to ensure that all persons subject to these requirements have filed the applicable forms and paid the fees. * * *"

PHMSA takes its responsibility to ensure compliance with the registration requirements very seriously. Integrated as part of every compliance inspection and incident investigation, PHMSA aggressively enforces the requirements for Hazardous Materials Registration. The agency also instituted a nationwide surveillance and compliance operation that identifies, enforces, and collects the unpaid fees of persons (in active status) who have failed to renew or file for registration. In 2009, for example, PHMSA cited 120 companies for registration violations and levied $60,810 in penalties. An additional 23 companies were issued warning letters or are awaiting determination of an appropriate penalty.

H. Multi-Year Registrations

PHMSA allows a person to register for up to three years in one registration statement (49 CFR 107.612(c)). As discussed in the NPRM, PHMSA has received approximately 2,100 advance registrations for the 2010–2011 registration year from other-than-small businesses that have paid the fee previously established for those years. Approximately 1,250 also included advance registrations for the 2011–2012 registration year. PHMSA applies 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, when PHMSA adopts an increase in registration fees, additional payments are required for registrations paid in advance at the lower levels in effect at the time of payment.

NPGA recommends that PHMSA clarify that any business that has paid a multi-year registration fee prior to the effective date of this final rule should be deemed as having registered with the agency and not be subject to any form of violation related to non-registration as a result of the difference in the fee structure between the time of the original registration and this final rule. NACD also recommends that any difference between the new fee and prepaid fees should be assessed in the first subsequent registration year for which the fee has yet to be paid.

PHMSA cannot agree to permit multi-year registrants to postpone payment of the increased registration fee until the first subsequent registration year for which the fee has yet to be paid. In order to ensure full funding of the HMEP grants, PHMSA must account for registration fees in the year they are due. PHMSA does not expend monies collected through multi-year registrations until the year for which they were paid. Further, when PHMSA lowered the fees for all registrants in 2003, PHMSA provided more than 7,100 refunds amounting to over $2.3 million within the first year to registrants who had overpaid the newly established fees. However, PHMSA agrees that enforcement action should not be initiated against entities that registered in good faith and paid the fee in effect at the time of registration provided they remit the difference between the fee originally paid and the new registration fee in a timely manner. PHMSA will notify each registrant who will be required to pay additional fees for the 2010–2011 and following registration years.

V. Provisions of This Final Rule

PHMSA shares commenters' concern that the agency should only collect an amount of registration fees necessary to fully fund the HMEP program without the accumulation of a surplus. PHMSA also recognizes the challenging business environment in which hazardous materials shippers and carriers operate. After consideration of the comments received in response to the NPRM, PHMSA re-examined its estimates for funding the HMEP grants program based on updated information from the Department of Treasury on the HMEP account carry-over balance, de-obligations of unused grant and administrative funds, increased enforcement of the registration requirements, and current registrant data. Based on this re-examination, PHMSA has concluded that it will be able to fund the HMEP grants program at the $28.3 million level in Fiscal Year 2010 and for future years with a smaller increase in registration fees than was proposed in the NPRM. For those registrants not qualifying as a small business or not-for-profit organization, the fee will increase to $2,575 (plus a $25 administrative fee) for the 2010–2011 registration year and following years. For registrants qualifying as a small business or not-for-profit organization, the fee will remain at its current level of $250 (plus a $25 administrative fee). This fee increase will fund the HMEP grants program at approximately $28.3 million in accordance with the Administration's Fiscal Year 2010 budget proposal. The cost to industry of increasing registration fees will be approximately $14 million per year. The increased funding for the HMEP grants program will provide essential training to 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 by providing more adequate funding.

In addition, PHMSA is adopting the proposal in the NPRM to revise § 107.612 to remove information on previous years' registration fees. This fee information is no longer needed. Information on fees in effect for registration years 1992–1993 to 2009–2010 is available in the registration brochure, previous editions of the CFR, and on the registration Web site (*http://www.phmsa.dot.gov/hazmat/registration*). Note that persons subject to registration requirements must pay the annual registration fee, including the processing fee, in effect for the specific registration year for which the person is submitting registration information.

VI. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). 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.*

The Federal hazmat law makes available funding for the HMEP grants program at approximately $28,300,000, and directs PHMSA to establish an annual registration fee between a minimum of $250 and a maximum of $3,000.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget. This final 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 an additional $14 million per year. The 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 funding for the HMEP grants will enable PHMSA 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, PHMSA believes 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 final rule is available for review in the public docket.

C. Executive Order 13132

This final 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 final rule does not impose 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 final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Because this final 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 final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 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 final 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 final rule. PHMSA is amending 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 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 recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Part 107 is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

■ 2. In § 107.612, revise paragraphs (a) and (b) to read as follows:

§ 107.612 Amount of fee.

(a) For the registration year 2010–2011 and subsequent years, each person offering for transportation or transporting in commerce a material listed in § 107.601(a) must pay an annual registration 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 North American Industry Classification System (NAICS) code that describes that person's primary commercial activity, must pay an annual registration fee of $250 and the processing fee required by paragraph (a)(4) of this section.

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

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in

paragraph (a)(1) or (a)(2) of this section must pay an annual registration fee of $2,575 and the processing fee required by paragraph (a)(4) of this section.

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

(b) For registration years 2009–2010 and prior years, each person that offered for transportation or transported in commerce a material listed in § 107.601(a) during that year must pay the annual registration fee, including the processing fee, specified under the requirements of this subchapter in effect for the specific registration year.

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Issued in Washington, DC, on March 24, under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2010–7035 Filed 3–29–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2009–0175]

RIN 2127–AK62

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; correcting amendments.

SUMMARY: In July 2009, NHTSA published a final rule that amended the Federal motor vehicle safety standard for air brake systems by requiring substantial improvements in stopping distance performance. In November 2009, the agency published a final rule that provided a partial response to petitions for reconsideration of the earlier rule. Today's document corrects errors in the November 2009 final rule.

DATES: This rule is effective April 29, 2010.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Jeff Woods, Office of Crash Avoidance Standards (Telephone: 202–366–5274) (Fax: 202–366–7002). For legal issues, you may call Mr. Edward Glancy, Office of Chief Counsel (Telephone: 202–366–2992). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On July 27, 2009, NHSTA published a final rule [1] in the **Federal Register** (74 FR 37122) amending Federal Motor Vehicle Safety Standard (FMVSS) No. 121, Air *Brake Systems,* to require improved stopping distance performance for truck tractors. The agency provided two years of lead time for typical three-axle tractors, which comprise approximately 82 percent of the truck tractor fleet. The agency concluded that other types of tractors, which are produced in far fewer numbers and may require additional work to fully develop improved brake systems and also to ensure vehicle control and stability while braking, would require more lead time, and the agency provided four years for these vehicles to comply with the new stopping distance requirements.

NHTSA received eight petitions for reconsideration to the July 2009 final rule. The petitions were submitted by manufacturers of truck tractors, an association of truck manufacturers, and heavy truck brake component manufacturers.

On November 13, 2009, NHTSA published in the **Federal Register** (74 FR 58562) a final rule; partial response to petitions for reconsideration.[2] One of the issues we addressed in that document was how typical three-axle tractors should be defined for purposes of determining whether a three axle tractor is subject to the upgraded requirements with two years of leadtime rather than a longer period. In that document, we explained that we intended to limit the definition of typical three axle tractors to those that have a steer axle GAWR of 14,600 pounds or less and a combined drive axle GAWR of 45,000 pounds or less.[3]

The Truck Manufacturers Association (TMA) submitted a petition for reconsideration of the November 2009 final rule, citing an issue that it believed to be an error. TMA noted that the agency used the term "rear axles" instead of "rear drive axles" in two portions of the regulatory text defining the typical three axle tractors subject to the upgraded requirements with two years of leadtime rather than a longer period. TMA stated that based strictly on the regulatory text using the term "rear axles," certain three-axle tractors with one driven rear axle and one non-driven rear axle (a 6x2 tractor configuration) may fall under the two-year leadtime implementation date for the new requirements. That organization stated that 6x2 tractors are specialty vehicles that are manufactured in low volumes. TMA noted statements in the preamble referring to drive axles. TMA requested that the agency revise S5 and the title of Table IIa to use the term "rear drive axles."

NHTSA has reviewed TMA's submission and agrees that the omission of the word "drive" in S5 and the title heading of Table IIa was an error. We are correcting FMVSS No. 121 by adding the word "drive" in those locations.

[1] Docket # NHTSA–2009–0083

[2] Docket # NHTSA–2009–0175.

[3] 74 FR at 58564.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

■ Accordingly, 49 CFR part 571 is corrected by making the following correcting amendments:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.121 is amended by revising S5 and Table IIa to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5. *Requirements.* Each vehicle shall meet the following requirements under the conditions specified in S6. However, at the option of the manufacturer, the following vehicles may meet the stopping distance requirements specified in Table IIa instead of Table II: Three-axle tractors with a front axle that has a GAWR of 14,600 pounds or less, and with two rear drive axles that have a combined GAWR of 45,000 pounds or less, that are manufactured before August 1, 2011; and all other tractors that are manufactured before August 1, 2013.

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