

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

[Docket No. RSPA-00-8439 (HM-208D)]

RIN 2137-AD53

**Hazardous Materials: Temporary Reduction of Registration Fees****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

**SUMMARY:** RSPA is reducing the registration fees paid by persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials, in order to eliminate the unexpended balance in the Hazardous Materials Emergency Preparedness Grants Fund. RSPA is also revising its regulations to provide that a not-for-profit organization will pay the same registration fee as a small business.

**EFFECTIVE DATE:** March 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366-4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, (202) 366-8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:****I. Background**

Since 1992, the Research and Special Programs Administration (RSPA) has conducted a National registration program for persons who offer for transportation or transport certain hazardous materials in intrastate, interstate, or foreign commerce, under the mandate in 49 U.S.C. 5108. The purposes of the registration program are to (1) gather information about the transportation of hazardous material and (2) fund the Hazardous Materials Emergency Preparedness (HMEP) grants program that supports hazardous material emergency response planning and training activities by States, local governments, and Indian tribes and related activities. See 49 U.S.C. 5108(b), 5116. The law gives RSPA discretion to require additional persons to register, beyond those offerors and transporters of the categories and quantities of hazardous materials listed in 49 U.S.C. 5108(a)(1), and to set the annual registration fee between \$250 and

\$5,000. See 49 U.S.C. 5108(a)(2), 5108(g)(2)(A).

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

In a final rule published in the **Federal Register** (65 FR 7297) on February 14, 2000, RSPA expanded the base of registrants and adopted a two-tiered fee schedule under which the registration fee was set at \$275 for a person meeting the Small Business Administration (SBA) criteria for a small business, and \$1,975 for other persons (plus a \$25 processing fee in all cases). A greater-than-anticipated number of persons has paid the higher registration fee applicable to a larger business. As a result, RSPA has collected more than \$21 million in each registration year since 2000. These collections have created a surplus (unexpended balance) in the HMEP Fund because the current annual grants program obligations are limited to the \$14.3 million designated by Congress. Section 5108(g)(2)(B) of 49 U.S.C. requires RSPA to adjust the amount being collected “to reflect any unexpended balance” in the HMEP Fund. Therefore, on December 7, 2000, we published a notice of proposed rulemaking (NPRM) in this docket proposing to temporarily lower the registration fee for all registrants for six registration years to \$250 (plus a \$25 processing fee) for small businesses and \$475 (plus a \$25 processing fee) for all other persons. 65 FR 76890. In addition, we proposed to specify that a not-for-profit organization (regardless of its size) pay the same fee as a small business; to reflect SBA’s replacement of the Standard Industrial Classification (SIC) code system with the North American Industry Classification System (NAICS), and to allow payment by credit cards not previously authorized.

On September 16, 2002, RSPA published a final rule under Docket HM-208E (67 FR 58343) adopting the NAICS codes, allowing payment methods not previously authorized, and permitting registration via the Internet. However, we have delayed taking final action on the fee-related proposals in the December 7, 2000 NPRM because

our budget requests to Congress for FY 2002 and FY 2003 proposed to fund a portion of RSPA’s hazardous materials safety program from the excess registration fees (above the \$14.3 million specified to be used for training and planning grants and grant-related activities). See the status documents we published in the **Federal Register** on May 2, 2001 (66 FR 22080), and March 14, 2002 (67 FR 11456). Since these proposals were not adopted by Congress in the FY 2002 DOT appropriations and the FY 2003 DOT appropriations bill is pending, we are now taking final action on the fee-related proposals in the December 7, 2000 NPRM.

**II. Discussion of Comments and Regulatory Changes****A. General**

RSPA received approximately 20 written comments to the December 7, 2000 NPRM. The commenters included representatives of organizations and individuals engaged in all modes of transportation of hazardous materials, agricultural retailers, petroleum marketers and distributors, chemical manufacturers, and industry associations representing a broad spectrum of businesses that transport or offer for transport hazardous materials.

**B. Reduction of Registration Fees**

Commenters supported reduction of the registration fees. However, some commenters opposed certain aspects of RSPA’s proposal. Some commenters stated that RSPA should return to a single flat fee system or eliminate the requirement that a person must register if it offers or transports a quantity of hazardous materials required to be placarded.

For example, the American Trucking Associations (ATA) stated that it supports “the efforts of RSPA to adjust and refund registration fees in order to comply with statutory limits set forth in the HMTL,” but it “still disagree[s] with the need for a two-tiered registration fee.” National Tank Truck Carriers (NTTC) also “continues to believe that RSPA should reinstate a ‘single fee’ system (as opposed to the proposed two-tiered structure).”

The Petroleum Marketers Association of America (PMAA) stated that RSPA “should revise the registration criteria by temporarily eliminating the requirement that all persons who offer for transportation or transport hazardous materials required to be placarded be registered. However, if the agency will not eliminate this particular group of registrants from the fee requirement, PMAA believes that