

temporarily reducing the registration fee for all persons required to register is the best solution in eliminating the unexpended balance.”

The Fertilizer Institute (TFI) suggested that “RSPA consider capping the registration fee at \$700 for other than small businesses, while leaving small business entities, minus the farm sector, at the current \$250.” TFI also urged RSPA to eliminate the registration requirement for a person who offers or transports hazardous materials that require placarding. TFI suggested that if RSPA insisted that all placarded loads require registration, then agricultural retailers and farm cooperatives should be specifically exempted from the registration requirement.

The Petroleum Transportation & Storage Association (PTSA) suggested that RSPA eliminate the administrative fee for all registrants and the registration fee for small cargo tanks under 3,500 gallons. PTSA urged RSPA “to use the unexpended funds to eliminate the annual registration fee for these ultra small shippers.”

The National Propane Gas Association (NPGA) opposed the proposed reduction in the registration fees as being a “disproportionate fee reduction for large businesses over small companies” and adding additional confusion for companies trying to learn and comply with the registration requirements.

The International Sanitary Supply Association (ISSA) recommended that RSPA: (1) Eliminate the surplus over a four-year instead of a six-year period; (2) reduce the fees for small businesses to \$150, and (3) reduce the fees for other than small businesses to \$1,180.

On July 1, 2002, fifteen industry associations filed a lawsuit in the United States District Court for the District of Columbia asking for an order prohibiting RSPA from collecting any additional registration fees until RSPA adjusts the amount being collected to eliminate the unexpended surplus in the registration fee account. Counsel for plaintiffs in that lawsuit stated that 49 U.S.C. 5108(g)(2)(A) gives DOT the authority to go below the statutory minimum when it is trying to reduce any unexpended balance.

In the final rule (Docket No. HM-208C) we concluded that the registration program should: (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. See 65 FR 7303. We found that the most appropriate way to meet these objectives was to expand the category of persons required to register to include all persons who offer for transportation or transport hazardous materials that require placarding (with a limited exception for farmers) and to adopt a two-tiered fee schedule under which persons meeting the SBA criteria for defining a small business would pay a lower fee than larger businesses.

For all the reasons discussed in the February 14, 2000 final rule, we still believe that the findings and conclusions discussed in that rule are justified and, as far as possible, should be followed in adjusting the registration fees to reduce the unexpended surplus in the HMEP grants fund. Therefore, we disagree with suggestions that we except from registration persons added in the 2000 final rule. The present system, using the placarding requirement as a primary determinant, is risk-based and facilitates enforcement—especially by State and local enforcement personnel.

The recommendation that the processing fee be eliminated and replaced by an increase in the grants fee for registrants that do not meet the SBA standards for a small business did not take into consideration that the costs of processing the registration statement are not expenses authorized to be paid from the grants account. The costs of administering the registration program are provided in the Department’s annual budget authorizations from General Treasury funds—unlike the grants program expenses, which are statutorily authorized to be paid from the grants account. Although the separate statutory authority for the processing fee is permissive, it is the Department’s understanding that this permissive authority reflects Congressional intent that the registration program costs be covered by collection of that fee.

When the NPRM was published in December 2000, we estimated that the unexpended balance in the grants fund was approximately \$8.5 million (65 FR 76890, December 7, 2000). Since that time, two further collection cycles have occurred. The number of registrations received during a fiscal year (including registrations for prior years and fees paid in previous years for the current registration year) has remained constant at approximately 41,000, as has the percentage of registrants that have paid the larger business fee (approximately 15 percent). We currently estimate that, as of October 1, 2002, the unexpended balance in the grants fund was approximately \$25 million.

Because of this increase in the unexpended balance, RSPA believes

that it is necessary to adopt reductions in the registration fees that are even greater than originally proposed. Therefore, we are temporarily (for three years) reducing the registration fee for small businesses and non-profit organizations (regardless of their size) to \$125 (plus a \$25 processing fee) and for all other registrants to \$275 (plus a \$25 processing fee). RSPA is able to set the fee level for small businesses below the usual statutory minimum of \$250 because the minimum (49 U.S.C. 5108(g)(2)(A)) is subject to the requirement (49 U.S.C. 5108(g)(2)(B)) that the Secretary adjust the amount being collected to reflect any unexpended balance.

Under this temporary fee system, we estimate that we will collect approximately \$6.0 million each fiscal year, thus decreasing the grants fund balance by approximately \$8.3 million a year. This estimate depends on the number of persons registering for the current and prior years remaining constant and the authorization for the HMEP grants program remaining constant at \$14.3 million per year. At this rate of reduction, it will take about three years to deplete the surplus. Therefore, RSPA is temporarily reducing the registration fee for three years.

In the NPRM, we stated that we were not making a “permanent” change in registration fees because of uncertainty about the final registration numbers. We also stated that, within three years of the end of the proposed temporary six-year reduction in the registration fees, RSPA would reevaluate the registration fees. Because we have had three years under the new registration criteria and in order to ensure that no unnecessary surplus is created, we are now revising registration fee levels for the years after the period of temporary reduction.

Applying the objectives stated in Docket HM-208C, RSPA has determined that, beginning in registration year 2006–2007, small businesses and non-profit organizations (regardless of their size) should pay a registration fee of \$250 (plus a \$25 processing fee) and all other persons required to register should pay a registration fee of \$975 (plus a \$25 processing fee). Under this fee structure, we estimate that we will collect approximately \$14.5 million per year.

We recognize that, depending on many factors that may vary over the years (including registrations received for prior years and unexpended grant obligations), it may take more or less than three years to deplete the current surplus. We also recognize that the fee structure that would go into effect with the 2006–2007 registration year may