

need to be revised to avoid accumulating an unexpended balance. Consequently, RSPA will reevaluate the account balance and the fee levels, during the 2005–2006 registration year.

C. Not-for-Profit Organizations

We received comments in favor of and against the proposal to establish the registration fee for not-for-profit organizations at the same level as for small businesses. For example, ATA and PMAA supported the proposal to designate all not-for-profit organizations as small businesses. However, PMAA added that:

The definition for a not-for-profit organization should be limited to 26 U.S.C. 501(c)(3) [because] many “large businesses,” including electric multistate cooperatives, are classified as not-for-profit organizations. To reduce their fee to the same level as the fee for small business would be unfair, since these particular organizations compete with many small businesses.

In contrast, IME and NPGA opposed this proposal. IME stated that “RSPA compounds the error of a fee based on business size by suggesting that an organization’s educational, religious, charitable and other similar purposes should also be factored into the determination of what is the appropriate contribution any registrant should make to the HMEPG.”

NPGA stated, “DOT should limit its definition of non-profit organization solely to charitable organizations,” and that, “this provision will have the effect of providing a competitive advantage in the energy marketplace to rural electric cooperatives (RECs), many of which sell propane and therefore operate contrary to the purposes for which they were originally chartered.”

The SBA criteria for small business size standards apply to business entities organized for profit. 13 CFR 121.105(a). Therefore, non-profit organizations do not technically qualify as small businesses. After the February 14, 2000 final rule was adopted, RSPA applied SBA size criteria for appropriate SIC codes to non-profit organizations. However, nearly all of the not-for-profit organizations that are currently registered, which are mostly educational institutions and hospitals, exceed the SBA size standards for a small business.

To some extent, this may result from the SBA’s focus on the characteristics of for-profit businesses in establishing the size standard for an industry group. In those infrequent instances where not-for-profit organizations constitute a significant portion of an industry group, the SBA may deliberately exclude the characteristics of not-for-profit organizations when considering the

appropriate size standard. Because not-for-profit organizations generally are operated for educational, religious, charitable and other similar purposes, RSPA remains interested in helping them minimize their costs of operation and believes that, in so doing, we are following a precedent established by law in the exemption of such organizations from taxation.

We considered the comments recommending narrower criteria for not-for-profit organizations than proposed and concluded that our proposal remains the most straightforward resolution for dealing with entities that do not conform to SBA’s criteria for a small business. To accept the PMAA’s recommendation to limit the definition of not-for-profit organizations to those included in 26 U.S.C. 501(c)(3) or the NPGA’s recommendation to limit the definition solely to “charitable organizations” would exclude organizations that the law exempts from taxation because of their non-profit status. We recognize that by providing a new fee category for not-for-profit organizations, some relatively large organizations may pay a reduced fee in the future, but RSPA considers the adoption of the proposed broader definition of not-for-profit organizations as defined by U.S. law to be more easily applied than any attempt to distinguish between types of non-profit organizations. Even though it seems unlikely that many registering organizations would be affected by the limitation of the definition to 26 U.S.C. 501(c)(3), we decided to retain the broader group included in 26 U.S.C. 501(a) and to adopt the proposal to establish a fee for all not-for-profit organizations at the same level as that for small businesses.

III. Refunds

In response to requests from industry, in the February 14, 2000 final rule (Docket No. HM–208C) RSPA amended the HMR to allow a person to register for up to three years in one registration statement. 49 CFR 107.612(c), 65 FR at 7309–10. Approximately 4,550 advance registrations for the 2003–2004 and 2004–2005 registration years have been received. Refunds will be provided for registrations paid in advance for those years at the higher fee levels in effect at the time of payment.

A letter will be sent approximately 45 days after the publication of this final rule to each registrant that, on that date, is due a refund for fees paid in advance for the 2003–2004 and 2004–2005 registration years. The letter will specify the amount of the refund and will be accompanied by a Form W–9, Request

for Taxpayer Identification Number and Certification. The form must be submitted to RSPA before a refund can be made. Registrants that have submitted registrations including payment for the 2003–2004 and 2004–2005 registration years that do not receive a letter within this time frame should contact the registration office at 202–366–4109. Refunds will be made by checks issued by the U.S. Treasury after the Form W–9 is submitted. Persons who later pay in advance for the 2003–2004 and 2004–2005 registration years at the higher fee levels being reduced by this rule will be similarly contacted for the purpose of providing refunds for the overpayment.

Of the approximately 4,550 registrants due refunds, 4,250 small businesses will receive refunds of \$150 (3,050) or \$300 (1,200), and 300 others will receive refunds of \$1,700 (200) or \$3,400 (100).

IV. Rulemaking Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was subject to formal review by the Office of Management and Budget. This rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). RSPA has prepared a regulatory evaluation that is available for review in the public docket.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). The registration requirements do not impair the ability of States, local governments, or Indian tribes to impose their own fees or registration or permit requirements on persons who offer or transport hazardous materials in commerce. RSPA encourages States, local governments, and Indian tribes to adopt and enforce requirements in the HMR and the Federal registration requirement, in order to enhance compliance with a nationally uniform set of regulations on the transportation of hazardous materials.

The consultation and funding requirements of Executive Order 13132 do not apply because this rule does not adopt any regulation that:

(1) Has substantial direct effects on the States, the relationship between the National government and the States, or the distribution of power and