

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Part 107**

[Docket No. PHMSA-2006-25589 (HM-208F)]

RIN 2137-AE11

**Hazardous Materials Transportation; Registration and Fee Assessment Program****AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This rule proposes to amend 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, we are proposing to increase the fee to \$1,975 (plus a \$25 administrative fee) for registration year 2007-2008 and increase the fee to \$2,975 (plus a \$25 administrative fee) for registration year 2008-2009 and following years. The fee increase is necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at approximately \$28,000,000 in accordance with the Administration's Fiscal Year 2007 budget proposal to Congress. PHMSA is also proposing to eliminate the expedited telephonic registration option. The number of telephonic registrations has steadily decreased with the addition of the internet registration option, therefore, we believe that this registration option is no longer necessary.

**DATES:** Submit comments by October 16, 2006.**ADDRESSES:** You may submit comments identified by any of the following methods:

—*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

—*Web Site:* <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

—*Fax:* 1-202-493-2251.

—*Mail:* Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

—*Hand Delivery:* To the Docket Management System; Room PL-401 on

the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Instructions:* You must include the agency name (Pipeline and Hazardous Materials Safety Administration) and docket number (PHMSA-xx-xxxx (HM-208F)) or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation we received your comments, you should include a self-addressed stamped postcard. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act section of this document.

*Docket:* You may view the public docket through the Internet at <http://dms.dot.gov> or in person at the Docket Management System office at the above address.

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

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

Since 1992, the Pipeline and Hazardous Materials Safety Administration (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 fund the Hazardous Materials and Emergency Preparedness (HMEP) grants program. The HMEP grants program supports hazardous materials emergency response planning and training activities by States, local governments, and Indian tribes. See 49 U.S.C. 5108(b), 5116. PHMSA has 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 the statutorily mandated minimum and maximum amounts. See 49 U.S.C. 5108(a)(2), 5108(g)(2)(A).

To meet Congressionally authorized funding of \$14.3 million for the HMEP grants program, in 2000, we expanded

the base of registrants and adopted a two-tier fee schedule under which the registration fee was set at \$275 for persons qualifying as small businesses under Small Business Administration (SBA) criteria, and \$1,975 for other persons (plus a \$25 processing fee in all cases). (69 FR 7297) Due to a surplus, in 2003, we temporarily adjusted the registration fee to \$125 (plus a \$25 processing fee) for small businesses and not-for-profit organizations and \$275 (plus a \$25 processing fee) for all other registrants. (68 FR 1342) In 2006, the fees increased to \$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.

Congress reauthorized the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) in 2005 through the "Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005" (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU), P.L. 109-59, 119 Stat. 1144, August 10, 2005). The Act makes available approximately \$28,000,000 for the HMEP grants program and lowers the maximum registration fee from \$5,000 to \$3,000. Consistent with SAFETEA-LU, the Administration's Fiscal Year 2007 budget proposal to Congress requests \$28,000,000 in support of HMEP activity.

**II. 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 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 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 not only maintain its previous level of support, but also to increase the previous level by an amount representing 20 percent of the funds expended on grant-supported activities each year. See 49 U.S.C. 5116(a)(2)(A), 5116(b)(2)(A) and 5116(e).

Since 1993, PHMSA has awarded all States and territories and 45 Native American tribes planning and training grants totaling \$125 million. These grants helped to:

- Train 1,843,000 hazardous materials responders;
- Conduct 7,545 commodity flow studies;
- Write or update more than 41,344 emergency plans;
- Conduct 9,452 emergency response exercises; and
- Assist 18,907 local emergency planning committees (LEPCs).

Since the beginning of the program, HMEP grantees have used program funds to support the following related activities in the total amounts indicated:

- \$3.2 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 more skilled levels: (1) First responder awareness, (2) first responder operations, (3) hazardous materials technician, (4) hazardous materials specialist, and (5) on-scene commander.
- \$2.5 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.
- \$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.
- \$2 million for the International Association of Fire Fighters (IAFF) to train instructors to conduct hazardous materials response training programs.

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

The increased funding for HMEP grants will enable PHMSA to help meet previously unmet needs of State, local and tribal governments by providing for the following activities authorized by law:

- \$21,800,000 for training and planning grants, an increase of \$9 million;
- 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, an increase of \$125,000;
- \$200,000 for continuing development of a national training curriculum; and
- \$150,000 for monitoring and technical assistance.

### **III. Summary of Proposal to Increase HMEP Funding**

A registration fee system should: (1) Be simple, straightforward, and easily implemented and enforced; (2) employ an equity factor reflecting the differences in level of risk to the public and the financial impact associated with the business activities of large and small businesses; and (3) ensure adequate funding for the HMEP grants program. Under Federal hazmat law, we have the discretion to increase registration fees for both small and large businesses. We 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.

Due to a surplus, in 2003, we temporarily adjusted the registration fee to \$125 (plus a \$25 processing fee) for small businesses and not-for-profit organizations and \$275 (plus a \$25 processing fee) for all other registrants. (68 FR 1342) This reduction has reduced the current surplus to approximately \$8.5 million.

To achieve the statutorily mandated goal of funding the HMEP grants program activities at approximately \$28,000,000, we are proposing to adjust registration fees for persons other than small businesses to \$1,975 (plus \$25 processing fee) for registration year 2007–2008 and to \$2,975 (plus \$25 processing fee) for registration year 2008–2009 and following.

We believe adjusting the fee solely for larger, for-profit businesses is the best approach to meet the objectives listed above. 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. Even at the fee levels proposed for registration year 2008–2009, the two fee levels will only differ by a factor of 10.

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. Since 2000, PHMSA has received

approximately 41,500 registrations for each registration year. Small businesses or not-for-profit organizations make up 84%, or 34,775, of the registrants, while large businesses make up 16%, or 6,725, of the registrants.

We are also considering raising the current baseline penalty assessment of \$1,000, for failing to register as an offeror or carrier of hazardous materials, for other-than-small businesses who fail to register and pay a registration fee. We would adjust the baseline penalty assessment to keep it proportional to the increased registration fee. We request comments on raising this baseline penalty assessment for other-than-small businesses.

#### IV. Expedited Registration Process

Since the beginning of the registration program in 1992, we have provided a 24 hour, seven days-a-week expedited telephonic registration option. Person utilizing this option are provided a temporary registration number and must pay an additional \$50 expedited processing fee. With the addition of the internet registration option, the number of registrants utilizing the expedited registration option has steadily decreased to a low of less than 100 persons since January 2006. Therefore, we are proposing to eliminate the expedited registration option.

#### V. Multi-Year Registrations

We allow a person to register for up to three years in one registration statement (49 CFR 107.612(c)). We have received approximately 300 advance registrations for the 2007–2008 registration year and one advance registration for the 2008–2009 registration year from other-than-small businesses that have paid the fee previously established for those years. We apply 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, if we adopt the increase in registration fees proposed in this NPRM, additional fees would be required for registrations paid in advance at the lower levels in effect at the time of payment. When we lowered the fees for all registrants in 2003, we provided over 7,100 refunds amounting to over \$2.3 million within the first year to registrants who had overpaid the newly established fees. If we adopt this proposal, we will notify each registrant who will be required to pay additional fees for the 2007–2008 and following registration years.

#### VI. Indian Tribes Exception

The Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 amends § 5108(i)(2)(b) of the Federal hazmat law to add Indian tribes to the list of governmental agencies specifically excepted from the registration requirements. As a matter of policy, we have not been enforcing the registration requirements against Indian tribes, which were specifically included among the grant recipients. We are proposing to incorporate this specific exception into the HMR.

#### VII. Rulemaking Analyses and Notices

##### A. Statutory/Legal Authority for This Rulemaking

This proposed rule is published under the authority of the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*, as amended by P.L. 109–59) and 49 U.S.C. 44701. 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.*

Congress reauthorized the Federal hazmat law in 2005 through the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005. This Act makes available funding for the HMEP grants program at approximately \$28,000,000, an increase of nearly \$14 million. In addition, the Act lowers the maximum fee to \$3,000.

##### B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed 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 proposed 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 \$14 million per year. The increased 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 increased funding for the HMEP grants will enable us to help meet previously unmet needs of State, local and tribal governments 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, we believe 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 proposed rule is available for review in the public docket.

#### C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule preempts State, local, and Indian tribe requirements, but does not propose 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 proposed 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 proposed 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 proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$120.7 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 proposed 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 proposed rule. PHMSA is proposing in this rule changes to the requirements in the HMR on the registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. The proposed 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://dms.dot.gov>.

#### List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and record keeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR part 107 as follows:

#### PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues 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.

2. In § 107.606, redesignate paragraphs (a)(4), (a)(5), and (a)(6) as

(a)(5), (a)(6), and (a)(7) respectively, and add a new paragraph (a)(4) to read as follows:

#### § 107.606 Exceptions.

- (a) \* \* \*  
(4) An Indian tribe.  
\* \* \* \* \*

3. In § 107.612, revise paragraph (d)(3) to read as follows:

#### § 107.612 Amount of fee.

- \* \* \* \* \*  
(d) \* \* \*

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (d)(1) or (d)(2) of this section must pay an annual registration fee of:

- (i) For registration year 2006–2007, \$975 and the processing fee required by paragraph (d)(4) of this section;  
(ii) For registration year 2007–2008, \$1,975 and the processing fee required by paragraph (d)(4) of this section;  
(iii) For registration year 2008–2009 and following, \$2,975 and the processing fee required by paragraph (d)(4) of this section.  
\* \* \* \* \*

#### § 107.616 [Amended]

4. In § 107.616, paragraph (a) is amended by, in the first sentence, eliminating the phrase "Except as provided in paragraph (d) of this section," and paragraph (d) is removed.

Issued in Washington, DC on August 9, 2006, under authority delegated in 49 CFR part 106.

**Robert McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. E6–13312 Filed 8–14–06; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### 49 CFR Part 389

[Docket No. MARAD–2005–22050]

RIN 2133–AB67

#### Determination of Availability of Coastwise-Qualified Launch Barges

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Proposed rule; Notice of opening of reply comment period.

**SUMMARY:** The Maritime Administration is establishing regulations governing administrative determinations of availability of coastwise-qualified launch barges to be used in the transportation and launching of offshore