
Office of Inspector General

Audit Report

Management Advisory
On Hazardous Materials Registration Program
Research and Special Programs Administration

Report Number: TR-1998-110
Date Issued: April 3, 1998



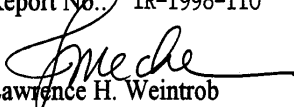


Memorandum

U.S. Department of
Transportation
Office of the Secretary
of Transportation
Office of Inspector General

Subject: INFORMATION: Management Advisory on
Hazardous Materials Registration Program
Report No.: TR-1998-110

Date: April 3, 1998

From: 
Lawrence H. Weintrob
Assistant Inspector General for Auditing

Reply to
Attn of: JA-1

To: Acting Administrator
Research and Special Programs Administration

This Management Advisory presents the results of our audit of the Research and Special Programs Administration's (RSPA) Hazardous Materials Registration Program. The audit was conducted in accordance with the Government Auditing Standards prescribed by the Comptroller General of the United States. The audit included tests of management controls, policies, and procedures specifically related to the audit objectives.

BACKGROUND AND OBJECTIVES

Under the 1990 Hazardous Materials Transportation Uniform Safety Act (Act), as amended (49 U.S.C. 5101, *et seq.*), each shipper or carrier of specified types and quantities of hazardous materials (hazmat) is required to register with the Secretary of Transportation. The Secretary also has the authority to extend registration to other companies involved in hazmat transportation. The Act directs the Secretary to collect registration fees ranging from \$250 to \$5,000 based on the types and quantities of hazmat transported. The money generated through the Hazardous Materials Registration Program is authorized to be used without further appropriation¹ to fund grants to states, territories, and to Native American tribal governments, for emergency preparedness planning and training activities. Finally, the Act establishes that these grants, including administrative costs, are authorized to total up to \$19.2 million per year.

The Hazardous Materials Registration Program is intended to contribute to safety in two ways. The primary contribution to safety comes through the emergency

¹ The \$19.2 million is authorized to be used without further appropriation, with the exception of the training curriculum funds, which totaled \$0.2 million for Fiscal Year 1997.

preparedness planning and training, which is intended to make the States better prepared to respond to future hazmat incidents. A lesser safety benefit accrues from the database of registrants, which can provide RSPA and the States information on the number of entities that ship or carry various broad categories of hazardous materials through the Nation's transportation systems.

To implement the Act, in 1992 RSPA issued Title 49, Code of Federal Regulations, Part 107.600. That regulation requires hazmat shippers and carriers to register with RSPA and to pay an annual flat rate of \$300 (which consists of a \$250 registration fee and a \$50 processing fee) from all registrants. In January 1995, RSPA issued a Notice of Proposed Rulemaking (NPRM) recommending a graduated fee structure that would increase the total fees collected to the level authorized by the Act. There was considerable industry opposition to the graduated fee structure in the 1995 NPRM. After considering the comments of industry, Federal, and state sources, RSPA decided that further consultation was necessary before making any change, and maintained the flat \$250 annual registration fee.

The objectives of our audit were to evaluate whether RSPA (1) had accurately identified hazmat shippers, (2) aggressively sought registration of those shippers and carriers, and (3) registration fees were generating the revenues intended by the Act and whether the fee structure was applied equitably. To accomplish these objectives, we interviewed officials and examined records on RSPA's previous efforts to identify and contact hazmat shippers and carriers, ascertained the number of entities registered and amounts collected as a result of those efforts, and compared those results with the direction in the Act. Also, to evaluate the efficacy of RSPA's efforts, we identified, and conducted multiple contacts with, potential hazmat shippers and carriers to determine whether there are significant numbers of unregistered hazmat entities and whether follow-up contacts would garner a better response rate.

RESULTS

We found that RSPA does not collect the full amount intended by Congress to fund the emergency preparedness planning and training grants. RSPA's collections are limited because it has not identified all shippers and carriers that are potentially subject to its regulations, does not follow up to ensure that covered entities register as required, and has not established an equitable graduated fee structure.

Not All Shippers and Carriers Identified

Each year, RSPA mails registration forms to new and previous registrants in its registration data base, new additions to its hazmat incident reporting data base, and new additions to the Federal Highway Administration Office of Motor Carrier's shipper and carrier data base. However, RSPA's mailing does not include all potential new registrants that could be identified. For example, the RSPA registration data base does not incorporate information from state hazmat data bases. In addition, RSPA does not mail registration notices to previous entities in both its own hazmat incident reporting data base and the Office of Motor Carrier's data base. Therefore, RSPA misses the opportunity to register entities that have only recently become subject to RSPA registration requirements.

Insufficient Follow Up

RSPA also does not follow up with the recipients of its mailings to ensure those required to register do so. In May 1996, RSPA mailed registration packages to 42,483 hazmat entities (33,326 previous registrants and 9,157 additional hazmat entities) for the registration year beginning July 1, 1996. RSPA received 26,922 registrations as a result of this mailing, but made no follow-up contacts with the 15,561 (37 percent) of the hazmat entities who did not respond.

Our audit independently estimated the number of additional registrants and the fees that could be collected. We used information from states' hazmat programs, the Federal Highway Administration's Office of Motor Carriers, and RSPA incident reports in developing our estimates. We identified 36,877 hazmat entities and sent an initial letter to a sample of 200. We then mailed a second letter and followed up with a telephone call to those entities that did not respond to our initial contact. As a result of our contacts, 23 (11.5 percent) of the sampled entities registered. However, these results were primarily due to the follow-up letter and telephone calls: our initial letter resulted in two registrations, while our follow-up letter and telephone call resulted in an additional 21 registrations. In addition, there were three entities that we believed should have registered based on our follow-up conversations, but which had not registered by the end of our audit.

Based on these results, we statistically projected that by better identifying hazmat entities and by conducting follow-up contacts to those who do not respond, RSPA could register between 3,172 and 7,234 additional entities. This would generate additional registration and processing fees of between \$0.96 million and \$2.2 million annually.

Current Fee Structure Not Equitable

Finally, we found the current regulations require all registrants to pay the same fee regardless of their size or the extent to which they engage in hazmat transportation activities. A flat fee is not equitable because it is not based on the relative level of activity, volume, or potential threat caused by the operations of each person required to register, as was directed by the Act.¹ Furthermore, because RSPA assesses only the minimum authorized fee from each registrant, it collects only a fraction of the amount authorized by the Act. As of November 12, 1997, for the last 2 registration years ended June 30, 1996 and 1997, RSPA had collected only \$6.7 million of the \$19.2 million authorized to be used for emergency preparedness planning and training grants.

Enforcing Hazmat Registration

Notwithstanding the above, we did note that RSPA has taken some actions to enforce the registration requirements. In a memorandum dated February 16, 1993, RSPA requested the FHWA, USCG, FAA and FRA to implement enforcement initiatives related to the hazmat registration program. During June 1993 and June 1995, FHWA, in conjunction with the State Highway Departments, conducted road checks in nine states to determine compliance with the registration program. As of March 1998, RSPA had assessed 53 registration violation penalties, ranging from \$250 to \$1,000, with 13 penalty cases still pending. In addition, regarding the fee structure, RSPA stated it plans to issue another NPRM in Fiscal Year 1998 to change the shipper/carrier registration fee structure to a more equitable alternative.

Improvements Needed to Improve Safety and Environment

We concluded that RSPA needs to improve the Hazardous Materials Registration Program. By doing so, RSPA can contribute to the Department's Strategic Goals to improve highway safety and protect and enhance the natural environment. First, by maximizing collections so that emergency preparedness planning and training grants are funded at the full amount authorized by the Act, the States will be better prepared to respond to future hazmat incidents, which will both increase safety and better protect the environment. Second, by ensuring that as many hazmat

¹ In a March 25, 1998, response to our report, RSPA noted that the "types and quantities of hazmat transported" are not the only criteria the Secretary may use in determining the fees. RSPA further stated: "Although equity achieved by a graduated fee structure may be a desirable goal, one that RSPA has been considering for several years, it is not mandated by law." While we acknowledge the Act does not contain specific direction for "equity," we maintain the direction (codified at 49 U.S.C. 5108(2)(A)) that fees should be based on considerations such as gross revenues from transporting hazmat, types and amounts transported, numbers of shipments, numbers of activities, or overall threat, is intrinsically direction to implement an equitable fee structure that places more responsibility for program financing on the shoulders of higher volume users.

entities as possible register, RSPA and the States will have more complete and accurate information on how many entities ship or carry various types of hazardous materials in the Nation's transportation systems.

GOVERNMENT PERFORMANCE AND RESULTS ACT

The Government Performance and Results Act of 1993 requires each agency to develop a strategic plan, including objective, quantifiable, and measurable performance goals for accomplishing major program activities. RSPA has developed performance measures for the registration program which included the number of shippers and carriers registered, the amount of fees collected, and the number and dollar amount of emergency preparedness grants awarded. In our opinion, these are reasonable performance measures for the program.

RECOMMENDATIONS

We recommend the Acting RSPA Administrator: (1) develop a more comprehensive hazmat entity data base by incorporating information from state hazmat data bases; (2) require recipients of the annual registration mailing to provide a positive response (i.e., either register or otherwise respond that they are not required to register); (3) follow up with additional contacts to those recipients who fail to reply to the initial mailing; and (4) establish a graduated registration fee schedule based on the types and quantities of hazmat transported by the entity.

MANAGEMENT RESPONSE

On March 25, 1998, RSPA provided the following responses to our recommendations (Appendix). Additional management comments were also incorporated into the report discussion.

1. Develop a more comprehensive hazmat entity database by incorporating information from state hazmat databases.

Action: While our past experience to integrate state data bases has not been particularly fruitful in identifying additional registrants, the methodology you employed appears to have elicited some promising results. In order to more fully consider the benefits of using state data bases, we would appreciate receiving a more detailed explanation of the methodology used in your study as summarized on page 3 together with a list of the 23 companies that registered as a result.

2. Require recipients of the annual registration mailing to provide a positive response (i.e., either register or otherwise respond that they are not required to register).

Action: We have researched our authority in this and a related area to implement this recommendation. Implementation of this recommendation would have the desirable impact of confirming the status of certain prospective registrants and may have the impact of increasing the number of registrants. While we do not currently require registration recipients to provide a positive response, we have clarified that RSPA does have this authority under 49 U.S.C. 5121(b). However, we have also found that the Paperwork Reduction Act exception in section 5108(i) does not apply. Therefore, to collect information on a broad base of prospective registrants would require RSPA to observe OMB and related DOT guidance concerning paperwork procedures and raises concerns about our ability to implement this recommendation. We would welcome further discussion on this issue.

3. Follow up with additional contacts to those recipients who fail to reply to the initial mailing.

Action: RSPA will immediately begin reviewing procedures to implement this recommendation. We agree that there is the potential to improve registration responses with additional follow up mailings and contacts beyond those currently employed.

4. Establish a graduated registration fee schedule based on the types and quantities of hazmat transported by the entity.

Action: We are actively exploring the feasibility of conducting a negotiated rulemaking beginning this Spring to revise the Hazardous Materials Registration and Fee Assessment Program to raise additional revenue to support the Hazardous Materials Emergency Preparedness grants program. As part of this process, we will consider various ways to increase revenues including a graduated registration fee schedule based on the types and quantities transported by the entity.

OFFICE OF INSPECTOR GENERAL COMMENTS

The planned actions satisfy the intent of all recommendations. We will provide the information on the methodology of our study and the companies that registered, as requested in RSPA's response to recommendation 1. We do not understand why the Paperwork Reduction Act exception of 49 U.S.C. section 5108(i) does not apply to RSPA. However, we welcome RSPA's willingness for further discussion on this issue and recommend a meeting in the near future. We

are also available for further discussion of methods for collecting responses from all mailing recipients, as requested in RSPA's response to recommendation 2.

ACTION REQUIRED

We request RSPA provide target dates for completion of the actions planned in response to our recommendations. We appreciate the courtesies and cooperation extended by RSPA. If you have any questions, please call me on 366-1992, or Patricia J. Thompson, Deputy Assistant Inspector General for Surface Transportation, on 366-0687.



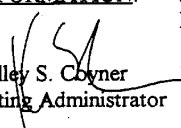
U.S. Department
of Transportation
**Research and
Special Programs
Administration**

Memorandum

Date **MAR 25 1998**

Reply to Attn. of:

Subject: **INFORMATION:** Review of Draft Management Advisory on
Hazardous Materials Registration Program

From: 
Kelley S. Coyner
Acting Administrator

To: Lawrence H. Weintrob
Assistant Inspector General for Auditing

RSPA staff and I have reviewed the *Draft Management Advisory on Hazardous Materials Registration Program* of February 10, 1998, and appreciate the opportunity to comment on it.

First, I would like to address each of the four recommendations contained in the report and then offer ways to clarify the report based on certain factual edits.

Recommendation #1: *Develop a more comprehensive hazmat entity data base by incorporating information from state hazmat data bases.*

Action: While our past experience to integrate state data bases has not been particularly fruitful in identifying additional registrants, the methodology you employed appears to have elicited some promising results. In order to more fully consider the benefits of using state data bases, we would appreciate receiving a more detailed explanation of the methodology used in your study as summarized on page 3 together with a list of the 23 companies that registered as a result.

Recommendation #2: *Require recipients of the annual registration mailing to provide a positive response (i.e., either register or otherwise respond that they are not required to register).*

Action: We have researched our authority in this and a related area to implement this recommendation. Implementation of this recommendation would have the desirable impact of confirming the status of certain prospective registrants and may have the impact of increasing the number of registrants. While we do not currently require registration recipients to provide a positive response, we have clarified that RSPA does have this authority under 49 U.S.C. 5121(b). However, we have also found that the Paperwork Reduction Act exception in section 5108(i) does not apply. Therefore, to collect information on a broad base of prospective registrants would require RSPA to observe OMB and related DOT guidance concerning

paperwork procedures and raises concerns about our ability to implement this recommendation. We would welcome further discussion on this issue.

Recommendation #3: *Follow up with additional contacts to those recipients who fail to reply to the initial mailing.*

Action: RSPA will immediately begin reviewing procedures to implement this recommendation. We agree that there is the potential to improve registration responses with additional follow up mailings and contacts beyond those currently employed.

Recommendation #4: *Establish a graduated registration fee schedule based on the types and quantities of hazmat transported by the entity.*

Action: We are actively exploring the feasibility of conducting a negotiated rulemaking beginning this Spring to revise the Hazardous Materials Registration and Fee Assessment Program to raise additional revenue to support the Hazardous Materials Emergency Preparedness grants program. As part of this process, we will consider various ways to increase revenues including a graduated registration fee schedule based on the types and quantities transported by the entity.

Editorial clarifications.

Several points relating to the Congressional mandates for this program should be clarified. The Federal hazardous material transportation law (49 U.S.C. 5101, *et seq.*) requires registration only of companies that offer for transportation or transport certain types and quantities of hazardous materials, but grants the Secretary the authority to extend registration to other companies involved in the transportation of hazardous materials. The law also provides a number of criteria the Secretary may use to determine a fee, including but not restricted to the "types and quantities of hazmat transported." Although equity achieved by a graduated fee structure may be a desirable goal, one that RSPA has been considering for several years, it is not mandated by the law. In addition, the law authorizes up to \$19.2 million per year for the expenses associated with the Hazardous Materials Emergency Preparedness grants program. The authorization represents a goal, which is annually restricted by the amounts collected through the registration program and by the amounts appropriated for these expenses by Congress. Finally, grants are made to territories and to Native American tribal governments as well as to state agencies and encompass the transportation of hazardous materials by all modes, including rail, air, and water in addition to highway.

Although there was considerable industry opposition to the graduated fee structure in the 1995 proposal, it is not correct to attribute the withdrawal of that proposal solely to this cause. After considering the comments submitted by industry, Federal, and state sources, RSPA concluded that further consideration of the means of revising the registration program and further consultation with the interested parties were appropriate before a major change to the fee was enacted (60 FR 27231-3). RSPA is examining alternatives to increase the funds available from the registration program.

If you have any questions, please contact me or Mr. William E. Vincent, Director, Office of Policy and Program Support, at 366-4831.

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