

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Parts 107 and 171

(Docket HM-208)

Hazardous Materials Transportation
Registration and Fee Assessment
Program; Clarification of Registration
ProvisionsAGENCY: Research and Special Programs
Administration (RSPA), DOT.ACTION: Clarification concerning
registration provisions.

SUMMARY: In this document, RSPA clarifies regulatory provisions and corrects errors in an instructional brochure, concerning registration requirements of a final rule published July 9, 1992 in the Federal Register under Docket HM-208.

EFFECTIVE DATE: The final rule at 57 FR 30620 is effective August 31, 1992. This document clarifies portions of that rule.

FOR FURTHER INFORMATION CONTACT: Joseph S. Nalevanko, Office of Hazardous Materials Planning and Analysis (202) 366-4109, or Beth Romo, Office of Hazardous Materials Standards (202) 368-4488, Hazardous Materials Safety, 400 Seventh Street SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: A final rule was published July 9, 1992 under Docket HM-208 (57 FR 30620) to establish a national registration program, as mandated by Congress in the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), for persons engaged in the offering for transportation and transportation of certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. Persons subject to the registration program are required to annually file a registration statement with RSPA and pay an annual fee of \$300, \$250 of which is to fund a nationwide emergency response training and planning grant program for States and local governments and \$50 of which is to offset DOT processing costs. An initial filing deadline of August 31, 1992 was imposed for filing the registration statement and paying the fee.

Immediately after the final rule was published, RSPA publicized the registration program in a number of including distribution of over 400,000 instructional brochures, entitled Hazardous Materials Registration Program—What You Need to Know, containing a registration statement form

as referenced in § 107.608(d). RSPA has received a large number of inquiries concerning who must register. In this notice, RSPA is acknowledging errors in the instructional brochure and providing a correction of those errors and a narrative discussion of who is subject to the new registration requirements.

Error in the Instructional Brochure

On the second and third panels of the brochure, paragraphs [E] and [G], respectively, are in error. In paragraph [E], the words "a hazardous material or" should be removed. Paragraph [G] incorrectly implies that certain large bulk packagings are not subject to registration. Paragraph [G] of the brochure should read as follows:

[G] Bulk packagings having capacities less than 3500 gallons (or 468 cubic feet), even when 5000 pounds or more of one hazard class is offered for transportation or transported (Note: this exception is in effect until July 1, 1993).

Clarification on Registration Statement Form—DOT Form F 5800.2

In the "Requirements" section and in section 5 (Prior Year Survey Information) of the registration statement form, in paragraph E, the words "a hazardous material or" should be removed. Paragraph E should read:

E. Offered or transported in commerce a shipment of 2,170 kilograms (5,000 pounds) gross weight or more of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required.

Applicability Provisions of Paragraphs (d) and (e) of § 107.601

RSPA has received hundreds of telephone calls from persons who are confused about the bulk packaging exception in paragraph (e) and how it relates to paragraph (d). The definition of bulk packaging is found in § 171.3 of the Hazardous Materials Regulations. A bulk packaging is defined as a packaging other than a vessel or a barge which has no intermediate form of containment and has:

- (1) A maximum capacity greater than 119 gallons (450 liters) for liquids;
- (2) A maximum net mass greater than 882 pounds (400 kg) for solids; or
- (3) A water capacity greater than 1000 pounds (454 kg) for gases.

It is important to note that paragraphs (d) and (e) of § 107.601 are separate provisions. The bulk packaging exception in paragraph (e) applies only to the provisions of paragraph (e) and provides no exception to the bulk packaging registration requirements in paragraph (d).

Under paragraph (d) of § 107.601, any hazardous material offered for transportation or transported in a bulk packaging having a capacity equal to or greater than 3500 gallons (or greater than 468 cubic feet) is subject to registration requirements, even when placards are not required.

Under paragraph (e) of § 107.601, a hazardous material in a bulk packaging, container or tank having a capacity of less than 3500 gallons (or less than or equal to 468 cubic feet) is excepted from the registration requirements until July 1, 1993. Therefore, until July 1, 1993, paragraph (e) only applies to a shipment of hazardous materials in non-bulk packagings which: (1) Has a gross weight of 5000 pounds or more of one hazard class; (2) requires placarding; and (3) is loaded at one facility.

Aggregate Quantities Under § 107.601(e)

If an offeror or transporter loads a shipment at one facility consisting of 3000 pounds gross weight of one hazard class and 3000 pounds gross weight of another hazard class, both hazard classes require placards. However, this shipment is not subject to the § 107.601(e) registration requirements because the shipment must be 5000 pounds or more of one hazard class, not an aggregate quantity of different hazard classes.

If a shipment consisting of 3000 pounds gross weight of one hazard class is loaded at Facility A and is then transported to Facility B where another 3000 pounds gross weight of the same hazard class is loaded, this shipment is not subject to the registration requirements. Under § 107.601(e), there must be a one hazard class offering of 5000 pounds gross weight or more that is loaded at one facility.

Applicability of the Term "Person"

RSPA has received numerous inquiries as to how companies having diverse branches or plant locations must register. As discussed in the preamble to the final rule and also as defined under 49 App. U.S.C. 1802, the term "person" means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise.

Each separately incorporated subsidiary subject to § 107.601 must

register and pay a fee separate from its parent company. However, a parent company may submit separate registration statements on behalf of, and for, each of its subsidiaries subject to the registration program (and itself, if also subject to the registration program) and enclosed one combined registration fee payment.

If branch offices or plant locations of a company are not separately incorporated, the company is required to submit only one registration statement and pay a single fee. However, the registration statement must indicate each state in which a covered activity took place.

Persons Exempted From Registration and Fee Requirements

Agencies of the Federal Government, agencies of States, agencies of political subdivisions of States, employees of such agencies with respect to their official duties, and employees of a "hazmat employer," including owners/operators of motor vehicles under a 30-day or longer lease to registered motor carriers, are exempted from the registration requirements.

A farmer engaging in any of the covered activities must register and pay a fee. However, there has been some

confusion about the applicability of the rule to farmers and other persons offering or transporting hazardous materials weighing more than 5,000 pounds in a "small" bulk packaging, container or tank (i.e., with a capacity less than 3,500 gallons), such as a nurse tank. Until July 1, 1993, a nurse tank (which is limited to 3,000 gallons or less under 49 CFR 173.315(m)) is not subject to registration requirements.

A two-year delay of application is provided to foreign offerors, including foreign subsidiaries of domestic corporations and foreign governments performing an offeror function.

If a person engaged in any of the covered activities between July 1 and August 31, 1992, but does not intend to engage in any of these activities after August 31, 1992, that person is not subject to the registration requirements. Even though the registration year is July 1, 1992 through June 30, 1993, the registration requirements do not go into effect until August 31, 1992. Activities conducted prior to this date do not require registration.

Persons Not Exempted From Registration and Fee Requirements

As mandated by HMTUSA, the registration requirements apply to

intrastate offerors and transporters in all transportation modes. Therefore, even if a company only ships in intrastate commerce and is not subject to the Department's Hazardous Materials Regulations (49 CFR parts 171-180), it is subject to the registration requirements.

Federal contractors are not excepted from the registration and fee program. Likewise, offerors or transporters of hazardous waste are required to register if they are engaged in any activity subject to the registration requirements.

Foreign carriers are required to register by the initial deadline of August 31, 1992. Foreign carriers include Canadian or Mexican motor or rail carriers, foreign airline carriers, and merchant vessel carriers transporting any of the specified hazardous materials in or on U.S. territory (see § 171.8 definition of "United States"), including airspace and territorial seas.

Issued in Washington, DC, on July 23, 1992, under the authority delegated in 49 CFR part 1.

Alan L. Roberts,

Associate Administrator, Hazardous Materials Safety.

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