their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative, if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It implements mandates specifically and explicitly set forth by the Congress in sections 4005(c)(1)(B) and (c)(1)(C) of subtitle D of RCRA, as amended, without the exercise of any policy discretion by EPA. In any event, EPA does not believe that this determination of the State program's adequacy will result in estimated costs of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector, in any one year. This is due to the additional flexibility that the State can generally exercise (which will reduce, not increase, compliance costs). Moreover, this determination will not significantly or uniquely affect small governments including Tribal small governments. As to the applicant, the State has received notice of the requirements of an approved program, has had meaningful and timely input into the development of the program requirements, and is fully informed as to compliance with the approved program. Thus, any applicable requirements of section 203 of the Act have been satisfied.

I. Compliance With Executive Order 12898: Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. EPA does not believe that today's final rule will have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community.

J. Compliance With the National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 258

Environmental protection, Adequacy, Administrative practice and procedure, Municipal solid waste landfills, Non-hazardous solid waste, State permit program approval.

Authority: 42 U.S.C. 6912, 6945, 6949(a).

Dated: January 20, 2000.

Mindy Lubber,

Acting Regional Administrator, Region I.

[FR Doc. 00–3363 Filed 2–11–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. RSPA–99–5137 (HM–208C)]

RIN 2137–AD17

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the statutorily mandated registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. In this final rule, RSPA is: (1) Expanding the criteria for those persons required to register to include all persons who offer for transportation or transport hazardous materials that require placarding (except for those activities of farmers directly in support of farming operations); (2) Adopting a two-tiered fee schedule—$300 for those registrants meeting the U.S. Small Business Administration criteria for defining a small business and $2,000 for all other registrants; and (3) Permitting registration for one, two, or three years on a single registration statement. This final rule is intended to increase funding for the national Hazardous Materials Emergency Preparedness grants program.

EFFECTIVE DATE: May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Background
  A. Current Registration Program
  B. Hazardous Materials Emergency Preparedness (HMEP) Grants Program
II. Summary of Proposal to Increase HMEP Funding

III. Discussion of Comments and Regulatory Changes
A. General
B. Expansion of Base
C. Two-Tiered Fee Structure
D. Clarification of ''Offeror'' and ''Shipper''
E. Registration Number Display
F. Constitutionality of Program
G. Statutory Language and Intent
H. FY 2000 Hazardous Materials Program Funding
IV. Rulemaking Analysis and Notices

I. Background

A. Current Registration Program

In 1990, amendments to Federal hazardous materials transportation law, now codified at 49 U.S.C. 5101 *et seq.* (the law), required the Secretary of Transportation to establish a registration program for persons who transport or offer for transportation in commerce certain types and quantities of hazardous materials. The Secretary delegated this authority to RSPA's Administrator (49 CFR 1.53(b)(1)). The registration program enables RSPA to gather information about the transportation of hazardous materials and to fund a grants program to support hazardous materials emergency response planning and training activities by State and local governments.

Section 5108 of the law requires each person who transports or causes to be transported in commerce one or more of the following categories of hazardous materials to file a registration statement with RSPA and pay an annual registration fee:

(1) A highway-route controlled quantity of Class 7 (radioactive) materials;

(2) More than 25 kilograms (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

(3) A package containing more than one liter (1.06 quarts) of a hazardous material the Secretary designates as extremely toxic by inhalation, which has been identified as a material meeting the criteria for a Zone A material that is toxic by inhalation;

(4) A hazardous material in a bulk packaging, container, or tank with a capacity equal to or greater than 13,248 liters (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids; or

(5) A shipment in other than a bulk packaging of 2,268 kilograms (5,000 pounds) or more gross weight of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required.

Section 5108(a)(2) of the law permits RSPA to extend registration requirements to persons who:

(1) Transport or cause to be transported hazardous material in commerce but do not engage in the activities listed above; or

(2) Manufacture, fabricate, mark, maintain, recondition, repair, or test packagings that the person represents, marks, certifies, or sells for use in transporting hazardous materials in commerce.

In addition, § 5108 (g)(2)(A) requires RSPA to set the fee at a minimum of $250 to a maximum of $5000.

In establishing the registration and fee assessment program in 1992, RSPA chose to require registration only by those persons under a statutory obligation to do so. All registrants currently pay the same registration fee regardless of their size, their income, or the extent to which they engage in hazardous materials transportation activities. RSPA imposed the minimum $250 fee on all registrants, plus an additional fee, currently set at $50, to pay for the costs of processing the registration statements, as authorized by 49 U.S.C. 5108(g). (See final rule 57 FR 30630 (July 9, 1992) and current regulations at 49 CFR part 107, subpart G.) The current regulations, in § 107.608(a), require an annual submission of a registration statement.

To ensure that all persons required to register know of and comply with the requirements of the registration program, RSPA has conducted extensive outreach efforts. Approximately 780,000 informational brochures have been distributed through direct mailing campaigns and during presentations to industry. RSPA has annually mailed registration brochures and forms to hazardous materials shippers and carriers newly entered into the Federal Highway Administration's (FHWA) Motor Carrier and Highway Safety census of highway carriers and shippers, and to newly identified shippers and carriers named on the hazardous materials incident reports, (DOT Form F 5800.1). In addition, the registration program has been publicized in trade magazines and industry newsletters, and seven notices of the registration requirements have been published in the **Federal Register**. The registration instructional brochure and form are also available on RSPA's Hazardous Materials Safety internet website: (http://hazmat.dot.gov).

Responsibility for enforcement of the registration requirement is shared by RSPA, the DOT operating administrations, and state and local agencies that have assumed this role as part of a cooperative Federal/state partnership. Inspections conducted by RSPA, FHWA, and the Federal Railroad Administration routinely have included a check for registration. We believe that the rate of compliance with the registration requirements is relatively high. Persons knowing of a violation of the registration requirements should notify an Office of Hazardous Materials Enforcement regional office, a DOT operating administration office, or state or local enforcement authority of the violation.

B. Hazardous Materials Emergency Preparedness (HMEP) Grants Program

1. 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, national direction, and guidance to enhance State, local, and tribal hazardous materials emergency planning and training. The HMEP grants program builds on existing programs and supports the working relationships 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 hazardous materials planning and training programs of State, local, and tribal governments. To ensure this growth, §§ 5116(a)(2)(A) and 5116(b)(2)(A) of the law require a State or Native American tribe applying for a grant to certify that the amount it spends on hazardous materials planning and training, not counting Federal funds, will at least equal the average amount spent for these purposes during the last two fiscal years. The HMEP grants, therefore, represent additional funds that supplement the amount already being provided by the State or tribe. To further encourage growth in planning and training funds, § 5116(e) limits the Federal share to 80 percent of the costs of the additional activity for which the grants are made, thus requiring the State or tribe to provide 20 percent of these additional costs. By accepting an HMEP grant, the State or tribe commits itself not only to maintaining its previous level of support, but increasing that level by an amount representing 20 percent of the funds newly expended on grant-supported activities each year. For

example, an HMEP grant of $100,000 requires an additional commitment of $25,000 in State or tribal funds over the average amount spent by the agency during the previous two years. These additional State or tribal funds may be provided in the form of direct fiscal support or through the provision of in-kind resources.

Since 1993, all States and territories and 35 Native American tribes have been awarded planning and training grants totaling $47.1 million. These grants, which supplement funds from States, tribes, and local agencies, helped to:

- Train 694,000 hazardous materials responders;
- Conduct 2,220 commodity flow studies;
- Write or update more than 19,600 emergency plans over the last 5 years;
- Conduct 3,600 emergency response exercises; and
- Assist 8,910 local emergency planning committees (LEPCs) over the last 5 years.

In addition, over the past six years, HMEP grants program funds have been used to support the following related activities in the total amounts indicated:

- $2.3 million for development and periodic updating of a national curriculum of courses necessary 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: First responder awareness, first responder operations, hazardous materials technician, hazardous materials specialist, and on-scene commander.
- $1.7 million to monitor public sector emergency response planning and training for an accident or incident involving hazardous materials, and to provide technical assistance to a State or Native American tribe for carrying out emergency response training and planning for an accident or incident involving hazardous materials.
- $3.3 million for periodic updating and distribution of the North American Emergency Response Guidebook.
- $750,000 for supplemental grants to the International Association of Fire Fighters (IAFF) to train instructors to conduct hazardous materials response training programs.

2. Increased Funding of the HMEP Grants Program

In each of the eight registration years since 1992, RSPA has received approximately 27,000 registration statements and an average of $6.8 million to support the HMEP grants program. This has provided an average of $6.4 million annually for planning and training grants, only 50% of the $12.8 million authorized by law for these purposes ($5 million for planning and $7.8 million for training). As discussed in RSPA's April 15, 1999, notice of proposed rulemaking (NPRM) (64 FR 18786), the HMEP grants program has accomplished much in a short time, but many needs are not being met. 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, both through direct Federal financial assistance for such training and by encouraging the provision of additional state and local funds for this purpose.

In a recent review, RSPA estimated that 800,000 shipments of hazardous materials make their way through the national transportation system each day. These shipments range in size and type from single small parcels of consumer commodities, such as flammable adhesives and corrosive paint strippers, to bulk shipments of gasoline in cargo tank motor vehicles and flammable or toxic gases in railroad tank cars. Such shipments are transported in every State, every day of the year, and it is impossible to predict with any degree of certainty when and where an incident may occur. The potential threat requires the development of emergency plans and training of emergency responders on the broadest possible scale. Yet, RSPA also believes there are over 2 million emergency responders requiring initial training or periodic recertification training, including 250,000 paid firefighters, 800,000 volunteer firefighters, 725,000 law enforcement officers, and 500,000 emergency medical services (EMS) providers.

The continuing need for training for emergency response personnel, whether paid or volunteer, is partially the result of a relatively high rate of turnover caused by the extraordinary demands expected of response providers in terms of time, physical exertion, and emotional stress. Emergency response personnel must be available at any time and at a moment's notice to respond to situations that by their very nature are unpredictable and pose a threat not only to the public in general but to the responder in particular. This turnover means that each year there is a significant number of recently recruited responders who must be trained at the most basic level. In addition, training at more advanced levels is not simply desirable; it is essential if emergency response personnel capable of effectively and safely responding to serious releases of hazardous materials are to be provided. For this reason, RSPA advocates advanced training at the first responder operations, hazardous materials technician, hazardous materials specialist, and on-scene commander levels in every emergency response team in the country. An increase in the funds available to the HMEP Grants Program will encourage the State, tribal, and local agencies to provide this more advanced, and more expensive, training.

The unmet needs of States and Native American tribes for financial assistance in emergency preparedness planning and training for transportation-related incidents involving hazardous materials are great. RSPA is determined to narrow the current gap between the authorized grant levels and the available Federal funds by its careful targeting of the additional funds collected as a result of this rulemaking. RSPA believes that it is essential to increase the awards for emergency planning and training grants to the full $12.8 million authorized by the law and, at the same time, maintain current funding of the additional activities supported by the HMEP Grants Program described above.

In FY 2000, RSPA intends to provide from registration fees $14.3 million for:

- Training and planning grants ($12.8 million);
- Grants support to certain national organizations to train instructors to conduct hazardous materials response training programs ($250,000);
- Revising, publishing, and distributing the North American Emergency Response Guidebook ($600,000);
- Monitoring and technical assistance ($150,000);
- Continuing development of a national training curriculum ($200,000); and
- Administering the grants program ($300,000).

II. Summary of Proposal To Increase HMEP Funding

To achieve its goal of funding the HMEP grants program activities at $14.3 million, RSPA published an NPRM on April 15, 1999 (64 FR 18786), in which it proposed to expand the definition of those persons required to register and to impose a fee schedule based on the size of a business. RSPA conducted public meetings on May 25, 1999, in Washington, DC, and on June 22, 1999, in Des Moines, Iowa. The closing date for the comment period was extended until July 2, 1999. (64 FR 28135)

In the NPRM, RSPA proposed to require registration by any person, other than a ''farmer,'' who offers for transport or transports a shipment of hazardous materials that requires placarding. RSPA proposed a two-tiered fee schedule ($300 and $2,000), with the lower fee to be imposed on a registrant that meets the Small Business Administration

(SBA) criteria for a small business. The proposed exception for a ''farmer,'' as defined in § 171.8 of the Hazardous Materials Regulations (HMR), is limited to operations in direct support of the farmer's farming operations. RSPA also proposed reducing the processing fee from $50 to $25 in order to bring the aggregate amount collected closer to the amounts needed to process the registration statement and to issue the Certificate of Registration. Finally, RSPA proposed to permit registration for one, two, or three years on a single registration statement.

III. Discussion of Comments and Regulatory Changes

A. General

RSPA received approximately 400 written comments, and 31 persons made oral presentations at the two public meetings. The commenters included representatives of emergency response organizations and LEPCs; individuals engaged in all modes of transportation, agricultural retailing, petroleum distribution, farming, and convenience store operations; and industry associations representing a broad spectrum of businesses that transport or offer for transport hazardous materials.

Many commenters supported the intent of the proposal to fully fund the HMEP grants program. Grant recipients expressed strong support for the proposed changes. The National Association of SARA Title III Program Officials (NASTTPO) expressed strong support for fully funding the HMEP grants program through increased registration fees and stated the need for increased funding at all levels, especially in emergency planning and curriculum development. NASTTPO stated:

> The intent to raise additional funds to enhance support for the National Hazardous Materials Emergency Preparedness (HMEP) Grants Program is commendable and needed. It has been largely through the HMEP Grants program that significant planning actions, training programs and curriculum development have been accomplished that ultimately have better protected the hazardous materials responder, hazardous materials shipper, receiver and user alike. * * * Increased focus and impetus through an enhanced HMEP program are direly needed, particularly in light of potential diminished hazardous materials response support from other federal sources.

The Connecticut State Emergency Response Commission stated, ''We support the proposed rule which would raise additional funds for the National Hazardous Materials Emergency Preparedness (HMEP) Grants Program. Funding from this grant program is extremely important to Connecticut's hazardous materials emergency planning and responder training efforts.''

Emergency responders also strongly supported the proposal. The International Association of Fire Fighters (IAFF) stated:

> The IAFF has developed extensive experience training hazardous materials instructors through other federal grants dating back to 1987. The RSPA program enabled us to expand our instructor training efforts and reach fire service trainers in all regions of the United States. * * * [W]e are able to target responders along common hazardous materials transportation routes and hubs. Our first project year was a tremendous success.

Mr. Bradley D. Robinson, Captain in Charge of Hazmat Operations for the Sioux City Fire Department's Regional HazMat Team and current President of the Iowa Hazardous Materials Task Force, offered strong support for the proposed expansion of the base of registrants and increase in the registration fee. He stated that the:

> * * * funding for that training gets harder and harder, which brings us back to the need to fully fund the HMEP Grants Program. * * * I would like to strongly urge that all of [the] proposed changes to 49 CFR Part 107 be implemented. More importantly, I would like to ask those opposing these changes to join with us, the emergency responders, and accept more of the financial responsibility in training us to properly protect the public and environment from uncontrolled releases of the hazardous materials you use and/or transport. The bulk of financial responsibility of training and planning for your release should not be placed on the backs of the tax paying citizens.

Mr. John Gardner, Fire Marshal of the Chandler, Arizona, Fire Department and a Maricopa County LEPC member, fully supported the proposed expansion of the base of registrants and increased registration fees. He stated, ''Increased funding needs to be provided for increased curriculum development that will ensure the innovation of programs is consistent with the rapidly changing technological and electronic advancements [that] are being made.''

Several industry organizations and associations also expressed their support for fully funding the HMEP grants program. The Hazardous Materials Advisory Council (HMAC) stated, ''We recognize that the current system does not generate the amount of funding that was anticipated when the program was established. Moreover, we support the goal of funding the HMEP Grants Program to the $12.8 million level.''

B. Expansion of Base

In 1995, an Industry Working Group (IWG) facilitated by HMAC provided recommendations on how the registration and fee collection requirements could be improved under Docket HM–208B. Among the IWG's recommendations was the expansion of the registration rule to apply to all shipments for which display of hazard warning placards is required. This IWG recommendation was joined by many industry associations and other persons who provided additional comments to the 1995 proposal. In the April 15, 1999, NPRM, RSPA proposed to expand the base of registrants to include any person who offers for transportation or transports a shipment of hazardous materials for which a hazard warning placard must be displayed on a bulk packaging, freight container, unit load device, transport vehicle or rail car. This proposal attracted both strong support and opposition in the public comments.

Commenters who support the current proposal to expand the base of registrants note that the proposal would simplify compliance and enforcement. For example, HMAC commented that, ''extension of the requirement to register to such parties [that offer or transport any shipment that requires placarding] would greatly simplify the requirement to register; additionally, the requirement to placard is a generally accepted measure of the degree of hazard presented by any specific load.''

The Chemical Manufacturers Association (CMA) also supports RSPA's proposed expansion of the base of registrants to include shippers and carriers of all placarded loads, with the exception of farmers (as defined in 49 CFR 171.8). CMA stated, ''Ease of compliance and simplicity of enforcement are critical components of a successful registration program and CMA believes the placarding requirement will satisfy these conditions.''

The Association of Waste Hazardous Materials Transporters (AWHMT) and the National Tank Truck Carriers (NTTC) support expansion of the base of registrants to include all placarded loads, but oppose the exception proposed for farmers.

A significant number of commenters oppose expansion of the base of registrants to all placarded loads. In particular, petroleum marketers and agricultural retailers and their associations assert that expanding the base to include all placarded loads and increasing the registration fee would place undue burdens on their industries. Over 250 commenters from

the petroleum distribution industry, such as the Petroleum Marketers Association of America (PMAA) and its member companies, expressed opposition to the proposed expansion of the base of registrants and the two-tiered fee structure. Many of these commenters stated that it is not ''fair'' to ''tax'' them to fund the HMEP grants program because they already pay local taxes to fund local firefighters. These commenters stated that they already provide adequate training to their customers and local emergency responders.

The Petroleum Marketers and Convenience Store Association of Kansas also opposes expansion of the base of registrants and any fee increase. It stated that the proposed fee is excessive and favors the ''nation's largest corporations at the expense of small businesses.'' It stated, ''to include small cargo tank operators into a program that should clearly be predicated on interstate commerce, and to require a small convenience store owner to pay the same fees assessed huge corporations is inequitable, at minimum.'' Finally, it stated, ''if DOT feels it must increase Hazmat funding by requiring that anyone hauling a placarded material be included in the program, then the agency should take steps to ensure that all classes of Hazmat transporters are subject to the provisions of the program and consequently required to pay the annual registration fee.''

The Independent Lubricant Manufacturers Association (ILMA) stated, ''this proposed expansion would create paperwork and administrative burdens on independent lubricant manufacturers far out of proportion to the potential benefits of the proposal, particularly in instances where a company might have only a handful of placarded shipments during the course of the year.'' ILMA stated that RSPA could meet its objectives by retaining the current structure of persons required to register and ''a very modest across-the-board fee increase, would suffice to fully fund the HMEP grants program.'' Finally, ILMA did not support the exemption provided to farmers.

The Fertilizer Institute (TFI) also opposes expansion of the registrant base to include placarded loads. TFI stated, ''RSPA fails to demonstrate a need for more registrants and, in any event, including agricultural retailers and others transporting farm inputs as part of the registration program contravenes clear Congressional intent regarding the scope of the registration program.''

The Illinois Fertilizer and Chemical Association (IFCA) opposes lowering the threshold to any placarded load as an unjustified fee increase, stating, ''there is no indication that seasonal shipments of smaller, placarded loads in rural communities pose a substantial hazmat risk to responders.'' IFCA further stated, ''Most [agricultural] retailers also offer or transport placarded loads of pesticides; therefore, exempting only anhydrous ammonia nurse tanks from the registration program would provide no relief whatsoever for 99% of the ag retailers in Illinois.'' RSPA did not propose to except anhydrous ammonia nurse tanks except when operated by farmers in direct support of their farming operations.

Other parties favor even greater extension of the registration requirement. The Iowa Department of Transportation (IDOT) suggested requiring registration by anyone who offers to transport or transports a shipment that is required to be marked and/or placarded, including marine pollutants, class 9 materials and cryogenics, with the exception of farmers. IDOT contends that requiring these persons to register would produce sufficient revenues without implementing two fee levels. IDOT stated, ''By lowering the registration threshold quantity, more offerors and carriers would be required to register. Keep it simple, if you offer or transport HM in quantities that require placarding, or the marine pollutant mark, or the display of identification numbers on placards, white square on point configurations or orange panels you must register.'' Phillips Petroleum Company (Phillips) also proposed expansion of the registration base to include marine pollutants and bulk shipments requiring the hazardous material identification number marking.

Based on its review of comments received in response to the NPRM, and the public meetings, RSPA is adopting the proposal to expand the base of registrants to each person who offers for transport or transports a shipment of hazardous materials for which placarding of a bulk packaging, freight container, unit load device, transport vehicle, or rail car is required. Expansion of the base of persons required to register by including all persons offering or transporting placarded loads recognizes the greater risks posed to health and safety or property by the transportation of hazardous materials in quantities that require placarding. Thus, shippers and carriers involved in the shipment of a placarded load of hazardous materials will bear a fair share of the financial burden that falls on State and local government agencies to develop emergency plans and to train first-on-the-scene responders. Also, by requiring all offerors and transporters of placarded shipments of hazardous materials to register, RSPA will create the most current list of persons engaged in the transportation of appreciable shipments of hazardous materials, one of the primary intentions of the registration requirement.

RSPA has provided one exception to this rule for those activities of a ''farmer'', as defined in § 171.8 of the HMR, that support the farmer's farming operations. However, this is not a blanket exception for all farmers from the registration rule. If a farmer offers for transportation or transports in commerce a hazardous material that is specifically identified in § 5108(a)(1) of the law, or offers for transportation or transports a placarded shipment that is not in direct support of the farmer's farming activities, that farmer must submit a registration statement and pay the required fee.

The proposals to expand the proposed definition of persons required to register to include not only all shipments requiring placarding but also those requiring marking, including marine pollutants, class 9 materials and cryogenics, would not appreciably increase the number of persons required to register. Further, such an approach would make what was intended to be a simplification of the registration requirements more complicated. RSPA has, therefore, chosen not to adopt the suggested expansion of the scope of the registration rule.

The application of generally well understood hazard communication criteria for placarding greatly simplifies the matter of whether a shipper, carrier, or other person is required to register. Simplification of the regulations similarly makes the rule much easier to enforce, thereby further assuring a high rate of compliance.

C. Two-Tiered Fee Structure

In the April 15, 1999 NPRM, RSPA proposed a two-tiered fee schedule under which a company meeting the small business criterion for its category established by the SBA at 13 CFR 121.201 would pay a smaller registration fee than a company that does not meet the SBA criterion. The proposal specified that a small business would pay an annual registration fee of $300, while a larger business would pay $2,000.

Many commenters oppose the two-tiered fee structure, advocating an increased registration fee for all registrants instead. For example, the

International Warehouse Logistics Association suggested, ''If an increase is necessary * * * for the sake of clarity and simplification, we would urge a minimal increase in the registration fee for all registrants rather than a two-tiered plan.'' Similarly, AWHMT opposes the two-tiered fee structure as flawed and difficult to enforce, suggesting as a more equitable approach a minimal incremental increase in the fee across the board, regardless of the size of the business or its hazardous materials operations. IDOT stated that a tiered fee program may be more difficult to implement than expected and stated that ''Basing it on gross revenue of a company's total operation is unfair to say the least. They may have a high gross revenue, but only a small percentage is derived from Hazardous Materials activities.''

The Conference on Safe Transportation of Hazardous Articles, Inc. stated that RSPA should simply, ''Determine the total amount necessary to be collected and divide it by the number of current and prospective registrants under an expanded pool. A two-tiered system would be more difficult to enforce, and presumes that smaller companies have a lesser impact on transportation safety than larger ones.''

Other commenters criticized use of the SBA criteria for small businesses. Morganite Incorporated stated the Environmental Protection Agency categorizes it as a small quantity generator of hazardous waste. While its level of revenues and number of employees is not at all related to the shipment of hazardous materials, Morganite stated that it would be unfair for it to ''be assessed $2000/year for the transportation of these occasional small quantities.'' The Canadian Trucking Alliance (CTA) similarly argued that basing the registration fee ''on a motor carrier's total revenue as opposed to its revenue earned transporting hazardous materials does not appear to be equitable, although it is clearly administratively simple.'' CTA requested that RSPA allow Canadian carriers to use only the revenue earned in the United States to determine whether those motor carriers are classified as a small business under SBA criteria.

Several large entities stated that basing registration fee amounts on the SBA criteria will require them, in essence, to financially subsidize potentially higher-risk, smaller entities. Southwest Solvents & Chemicals stated, ''Generally, larger companies are capable and devote more personnel, time and money to promoting safety and developing proficiency in their operations than do smaller companies.'' It further stated, ''Assuming an increase is justifiable, there is nothing equitable in imposing on larger businesses a 660% increase in fees without asking small businesses to share the load.''

Phillips commented that the proposed fee increase puts an unfair burden for funding the HMEP grants program on larger businesses. Phillips stated, ''As it is currently proposed, the two-tier fee structure would increase the total amount that Phillips and its subsidiaries pay to register from $1,500 to $10,000 annually. * * * Here again, the large corporations are being unfairly burdened.''

Phillips also stated that small businesses are more likely to fail to comply fully with the HMR because they do not employ full-time regulatory compliance staffs. Phillips and other large entities with multiple subsidiaries proposed that a single registration fee should cover both a parent company and its subsidiaries. Alternatively, one commenter from a large business entity suggested that no more than $20,000 should be collected from a family of companies that enjoy common equity or ownership.

Some commenters suggested a third level of registration fees for larger entities that offer relatively smaller amounts of hazardous materials, or who would be near the dividing line between small and larger businesses under SBA criteria. The Utility Solid Waste Activities Group suggested adding a mid-level third tier for entities who cannot satisfy the SBA criteria for a small business but offer or transport ''low volume/low risk hazardous materials.''

A number of commenters expressed the view that RSPA should not base the amount of the registration fee on SBA criteria because that does not consider risk appropriately, and it is not one of the factors explicitly set forth in the statute. Tower Group International stated:

> Whether a registrant is categorized as a small business or not under SBA rules is simply a measure of revenue and employee head count. The SBA definition does not consider the volume or type of the person's hazardous materials activities. If Congress had intended that the SBA's small business criterion be a basis for determining the fee, it would have included appropriate language in Sec. 5108.

The International Sanitary Supply Association (ISSA), which opposes expansion of the base of registrants, stated that RSPA's two-tier fee proposal fails ''to properly consider the criteria that the [law] requires it to do. As such, the imposition of a substantially higher fee without a finding that these companies present greater hazards across the board is inherently inequitable and cannot be supported by the ISSA.'' ISSA stated it would support a risk-based alternative such as charging a higher fee for Table 1 placarded materials than for Table 2 placarded materials, and within each category a higher fee assessed for greater quantities.

Air Products and Chemicals Inc. stated that the lack of standardization in using SBA criteria for small and larger businesses would create confusion and difficulty in enforcement, because ''companies will have difficulty understanding the Standard Industrial Code * * * to recognize whether they meet Small Business Administration criteria for a small business.'' It went on to say, ''We believe that the proposed two-tier fee schedule may cause misunderstanding with current and potential registrants. Also, we doubt whether the Department of Transportation has the time and resources to verify the size criteria for registrants for enforcement.''

Some commenters expressed a preference for basing registration fees on the number or size of containers or vehicles used to transport hazardous materials. The Petroleum Transportation and Storage Association stated that it ''believes that the most efficient and equitable method to structure a multi-tiered fee system based on risk is to assign the fee according to the number of bulk packagings in a HAZMAT shipper's fleet.'' The Illinois Fertilizer and Chemical Association urged RSPA to ''Apply a graduated fee based on size of hazardous material containers,'' suggesting a three-tier level of fees triggered by vehicle gross weight, number of rail cars, or a combination of both.

Farmland Industries, Inc. suggested a three-tier fee as follows:

> (1) Persons who offer for transport or transport a hazardous material only in vehicles weighing less than 26,001 pounds should pay $300.
>
> (2) Persons who offer for transport or transport a hazardous material only in vehicles weighing 26,001 pounds or more should pay $500.
>
> (3) Persons who offer for transport or transport a hazardous material by rail, or by rail and in vehicles weighing 26,001 pounds or more should pay $700.

RSPA has carefully considered the comments submitted in response to the NPRM, and has weighed them against the objectives declared in the April 15, 1999, notice. These objectives required the resulting program to: (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. While some of the recommendations made in the comments might come closer to satisfying one of these objectives, RSPA remains convinced that its proposal will most adequately address all four of them.

RSPA does not agree with the commenters opposing the two-tiered fee structure. RSPA considers the proposal to enlarge the definition of those persons required to register and simultaneously to increase the required fee for the larger registrants to be a reasonable distribution of the costs of the program among the varying types and sizes of businesses that contribute to the need for trained emergency response personnel. The expansion of the definition to include all offerors and transporters of placarded shipments of hazardous materials will most directly affect relatively small businesses that use smaller bulk containers or offer to transport or transport placarded shipments of less than 5,000 pounds in non-bulk packages. Requiring these entities to register recognizes that their activities contribute to the need for enhanced emergency response programs. The imposition of a larger fee of $2,000 on persons that do not meet the criteria for a small business, most of whom have been required to register since 1992, places a greater, but not unduly burdensome, share of these costs on companies most likely to be offering to transport or transporting large volumes of hazardous materials.

RSPA spent considerable time and effort evaluating several methods of apportioning the fee among registrants according to various approximations of the risk imposed. We considered factors such as Table 1 and Table 2 materials, the type and size of containers (including vehicles), and the number of shipments offered or transported. We concluded that trying to reasonably distinguish between distinct levels of imposed risk would require the imposition of a complicated system that would necessarily involve significant recordkeeping burdens on the regulated public. Persons interested in a more detailed analysis of such a risk-based proposal may consult Docket HM–208B, RSPA's 1995 proposal to base a four-level fee structure on risk factors.

Further, we are convinced that even the simplest of the suggested alternative fee structures would impose significant cost burdens. For example, the creation of an intermediate fee level for registrants that do not meet the criteria for a small business but engage in limited hazardous materials activities could impose a greater expense on the registrant to maintain the necessary records to prove its level of activity than the cost of the $2,000 fee. Similarly, the suggestion from the Canadian Trucking Alliance that only revenue earned in the United States be used to determine a foreign company's business size (for those businesses for which the SBA size standard is the annual revenue) would involve foreign carriers in complicated and detailed record-keeping.

In response to the commenters who supported retention of a flat fee for all persons required to register, we note that, if the base of registrants is not expanded and the current number of annual registrants is maintained, a flat fee of approximately $555 (including a processing fee of $25) would be necessary to collect $14.3 million in grant monies. If the universe of registrants is expanded to approximately 45,000 persons, a flat fee of $345 (including a $25 processing fee) would be necessary to meet that collection amount. Given Federal directives to consider the needs of small businesses in establishing fees, we cannot justify an increase in the fee required of small businesses when clear alternatives are available.

RSPA also disagrees with commenters who stated that RSPA's proposed use of the SBA criteria: (1) favors big businesses over small businesses; (2) is not one of the determinants allowed by 49 U.S.C. 5108(g)(2)(A); and (3) would be difficult for potential registrants to understand and apply to their business operations. We believe that our goals are best met by establishing a two-tiered fee schedule under which a person not meeting the criterion established for it by the SBA at 13 CFR 121.201 pays a larger fee than that required for a small business. This regulatory approach provides fee levels that reflect a key factor contained in 49 U.S.C. 5108(g)(2)(A), specifically, the relative size of a business.

In addition, this approach generally addresses the different levels of risk posed by small businesses that make fewer and smaller shipments of hazardous materials as compared to larger businesses that annually manufacture, offer, or transport thousands of tons of hazardous materials. Five of the specific factors permitted by 49 U.S.C. 5108 (g)(2)(A) as fee determinants are indicators of the level of risk imposed by the registrants, and two are indicators of the size of the business. Use of the SBA standards for differentiating small businesses offers a simple and direct factor that is commonly used and established by Federal regulation. The use of alternate size criteria would impose additional burdensome, and significant recordkeeping requirements on most registrants.

In relation to the comments suggesting that a limit be placed on the number of registrations required from corporately connected subsidiary companies, RSPA points out that the law requires registration of each ''person'' that engages in certain activities, and that the definition of ''person'' is governed by Section 1 of Title 1 of the U.S. Code. A corporation that elects the option of forming itself into more than one person for whatever reason also assumes certain legal responsibilities for each of those persons, including the requirement to register.

Many commenters believe that use of the SBA size criteria would be confusing to registrants. However, most businesses are already aware of the Standard Industrial Classification (SIC) code applicable to them or can easily determine that code from the list published by the SBA on its Internet web site at the following address: ''http://www.sbaonline.sba.gov/regulations/siccodes/''. This list also contains the size standard established for each SIC code. With few exceptions, the specified standard is either annual receipts (as defined in 13 CFR 121.104) or maximum number of employees (as defined in 13 CFR 121.106). A company that considers the size determinant for its industrial code to be improper can request SBA to reconsider the standard by writing to the Assistant Administrator for Size Standards, Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416. The SBA web site also has a link (''http://www.osha.gov/oshstats/sicser.html'') to the Occupational Safety and Health Administration Standard Industrial Classification search engine for persons needing a fuller description of the definition of the businesses included within particular SIC codes.

For these reasons and based on our review of comments received in response to the NPRM and at the public meetings, we believe that the proposed two-tiered fee schedule based on SBA criteria is the most equitable, simple, and enforceable method for determining and collecting registration fees. Therefore, RSPA is adopting, as proposed, the two-tiered fee schedule

based on SBA criteria for small businesses.

With regard to use of SIC codes, RSPA notes that SBA recently issued a notice of proposed rulemaking (64 FR 57188, October 22, 1999) to amend its size regulations in 13 CFR 121.201 by establishing small business size standards for industries defined under the North American Industry Classification System (NAICS). In addition, SBA proposed that the new size standards be effective for Fiscal Year 2001, which begins October 1, 2000. SBA estimates that relatively few firms would gain or lose small business status as a result of this rule. SBA intends that, in establishing a new table of size standards, firms that are now eligible for Federal small business programs will remain eligible to the maximum extent practicable.

A review of the proposed NAICS table of size standards compared to industries identified by SIC codes in RSPA's regulatory evaluation revealed few instances in which an entity may lose its status as a small business.

The two-tiered fee schedule distributes registration fees according to a well-established measurement of business size and ensures the collection of sufficient funds to support the HMEP grants program at an enhanced level. RSPA will achieve its goal of raising $14.3 million annually (exclusive of funds collected for administrative processing), by collecting a fee of $300 (which includes a $25 processing fee) from an estimated 43,500 registrants that are small businesses and a fee of $2,000 (which includes a $25 processing fee) from an estimated 1,500 registrants that do not meet the criteria for a small business. If the number of estimated new registrants is significantly larger than RSPA's current estimate, RSPA will consider adjusting the registration fees in subsequent years to avoid collecting an annual amount in excess of the $14.3 million required for more appropriate funding of the HMEP grants program.

D. Clarification of ''Offeror'' and ''Shipper''

Some commenters, such as PMAA, Petroleum Transportation and Storage Association (PTSA), AWHMT, and several public meeting speakers, requested that RSPA further clarify and define the terms ''offeror'' and ''shipper.'' These commenters are particularly concerned about a person's name appearing on the shipping paper and containing the information required by §§ 172.202, 172.203, and 172.204. The commenters' concern involves an interpretation [57 FR 48739–41 (October 28, 1992)] by RSPA on activities which the agency considers as indicia of an entity's direct role in causing hazardous materials to be transported in commerce. These commenters include convenience store operators whose names appear on shipping papers when they order bulk quantities of gasoline for resale at their convenience stores. The referenced interpretation (No. 92–1-RSPA) was issued by RSPA's Chief Counsel in response to a request from PMAA and QTI Service Corporation. This interpretation references two previous interpretations (Nos. 88–1–RSPA and 89–1–RSPA) issued by RSPA's Chief Counsel's Office in 1988 and 1989 in response to requests from the National Tank Truck Carriers, Inc., and published in the **Federal Register** on February 26, 1990 (55 FR 6760–62).

PMAA stated that RSPA's instructions and DOT Form F 5800.2 for registration year 1999–2000 contain a definition of ''offeror'' that is in conflict with RSPA's official interpretation. RSPA's instructions state, '' If your company's name appears on the shipping papers as the shipper or as one of the shippers, you have assumed responsibility as an offeror and must therefore register.'' PMAA pointed out that ''Under some state tax laws, the marketer [who orders a shipment of gasoline] is named as the shipper on the shipping papers, since the state requires the marketer's name to be listed since he is the owner of the product.'' PMAA requested RSPA rewrite the registration instructions to clarify that the company's name appearing on the shipping paper as the ''shipper'' does not automatically require registration as an ''offeror.''

PTSA also requested clarification of ''offeror'' and recommended:

> RSPA should clarify the term offeror to include only those functions that relate to the physical control of hazardous material shipments. At the very least, RSPA should allow petroleum marketers who hire common carriers to include their company name on the shipping papers as the billing party without rising to the level of an offeror. This clarification makes sense because the common carrier is the only one in the position to comply with the hazardous material regulations since it has sole control over the physical shipment.

The AWHMT disagrees with PMAA and PTSA and states, ''In our view, if a person's name appears on a shipping paper, the person has engaged in a commercial hazmat transaction and the person is subject to the HMR and if, for purposes of this rulemaking, the shipping paper causes to be transported hazardous materials which are placarded, the person should be'' required to pay a registration fee.

RSPA disagrees with PTSA's position that only those functions normally performed by an offeror that ''relate to the physical control of hazardous materials shipments'' are appropriate in determining whether a person is an offeror of hazardous materials. All of the functions enumerated in Interpretation No. 92–1–RSPA continue to be valid factors for determining whether a person is a ''shipper'' or ''offeror.'' These functions, also printed in the annual registration brochures, include, but are not limited to, selection of the packaging for a regulated hazardous material, physical transfer of hazardous materials to a carrier, determining hazard class, preparing shipping papers, reviewing shipping papers to verify compliance with the HMR or their international equivalents, signing hazardous materials certifications on shipping papers, placing hazardous materials markings or placards on vehicles or packages, and providing placards to a carrier.

RSPA has carefully considered PMAA's request to clarify the advice given in the registration brochure extending the term ''offeror'' to persons whose name appears as the shipper or one of the shippers on the shipping paper. The 1996–97 registration brochure added a statement to the discussion of the term ''offeror'' that if a company's name appears on the shipping papers as the shipper or as one of the shippers, that company has assumed responsibility as an offeror and is therefore required to register. This does not contradict the 1992 interpretation and was intended to clarify the circumstances in which RSPA considers a party to a transaction to be one of the offerors. In the 1992 interpretation and the two related 1988 and 1989 interpretations (published in the **Federal Register** in 1990), RSPA emphasized the principle that more than one person may perform one or more of the functions of an offeror in the course of a transaction. PMAA and other commenters now allege that certain persons who do not engage in any activity of an offeror nevertheless are listed as the shipper or one of the shippers on the shipping papers in compliance with state tax or other regulatory requirements.

RSPA agrees that the act of ordering hazardous materials is not included within the meaning of ''causes to be transported'' and, in and of itself, does not require registration. Beginning in Registration Year 2000–2001, RSPA, as a matter of policy, will no longer consider the presence of a person's name on the shipping paper as the shipper or one of the shippers as

conclusive evidence of whether that person is required to register. The registration brochure will be revised to eliminate that statement. Therefore, a person who purchases a hazardous material, has his or her name on the shipping paper as the shipper, and performs no ''offeror'' functions will not be required to register. However, RSPA notes that, most commonly, a person who is named as a ''shipper'' on a shipping paper performs one or more of the functions of an offeror and is required to register.

Some commenters expressed concern about applicability of the requirement to register to persons who return ''empty'' tank cars to the original shipper or to any other location. Commenters indicated that this requirement may have a significant adverse impact on a number of persons, especially petroleum marketers. According to commenters, many petroleum marketers receive a significant part of their propane supplies by tank car. Commenters argued that payment of the registration fee constitutes a significant cost of doing business and could absorb all of the savings realized by transporting a large volume of propane by tank car.

RSPA has long held that performance of functions necessary to assure the safe return of a tank car or cargo tank motor vehicle containing residue is subject to the HMR and clearly within the meaning of ''offering'' a hazardous material for transportation in commerce. When a propane tank car is unloaded (but not cleaned and purged), the petroleum marketer meets RSPA's criteria for an ''offeror'' when it returns the ''empty'' tank car to a railroad for return to the original shipper or another party. It is not uncommon for an ''empty'' tank car to retain several hundred gallons of product, which in the case of propane is likely to be extremely volatile. RSPA considers this issue to be settled and no comment submitted to the docket concerning this matter causes the agency to reconsider its position.

E. Registration Number Display

The American Trucking Associations (ATA) asked RSPA to remove the requirement for a motor carrier to carry a copy of its current Certificate of Registration issued by RSPA or another document bearing the registration number identified as the ''U.S. DOT Hazmat Reg. No.'' on board each truck and truck tractor as specified in § 107.620 (b). ATA stated:

> Other modes of transportation and shippers are merely required to retain the registration certificate at their principal place of business. This is a more reasonable approach, since the registration certificate does not measure a motor carrier's fitness to transport hazardous materials. It merely identifies who has or has not paid a fee to RSPA. As this is merely a record keeping requirement to prove payment of the fee, a large portion of enforcement should be accomplished during safety and compliance reviews at the motor carrier's place of business instead of at the roadside during a driver/vehicle inspection.

Roadside enforcement is a key element of enforcement of the registration rule. Keeping records only at the motor carriers's place of business instead of in the motor vehicle where they are readily accessible for inspection would adversely impact enforcement efforts by Federal motor carrier inspectors and their partners in the States. A single day of roadside inspections enables inspectors to efficiently verify the registration status of a large number of carriers. Therefore, RSPA is not changing the requirement that a copy of the Certificate of Registration or another document bearing the registration number identified as the ''US DOT Hazmat Reg. No.'' be on board each truck and truck tractor.

F. Constitutionality of Program

PMAA asserts that the registration fee is a ''tax'' and constitutionally deficient. It claims that the registration fee is unconstitutional because the ''originations'' clause in Article I § 7 of the Constitution provides that ''[a]ll bills for raising revenue shall originate in the House of Representatives.'' According to PMAA, the 1990 amendments (as enacted in the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Pub. L. 101–615) ''originated as a bill in the Senate.'' Next, PMAA claims that, because Article I § 8 of the Constitution provides that ''Congress shall have power to lay and collect taxes,'' the authority to set and collect a registration fee has been improperly delegated to DOT. Third, PMAA contends that the registration fee violates the ''equal protection component of the Fifth Amendment due process'' because it is not ''rationally related to a legitimate government objective'' and it ''unfairly discriminates against small transporters.''

The Supreme Court has made it clear that the ''originations'' clause in Article I § 7 applies only to ''a statute that raises revenue to support Government generally.'' *United States* v. *Munoz-Flores,* 495 U.S. 385, 398 (1990). The Court cited its prior decision that ''revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue,'' so that ''a statute that creates a particular governmental program and that raises revenue to support that program'' is not a ''bill for raising revenue'' within the meaning of the originations clause. 495 U.S. at 397, 398. HMTUSA created a specific governmental program, the HMEP grants program, and devised the registration fee to support that specific program. Under the Supreme Court's long-standing interpretation, the registration fee is not subject to the originations clause, and it is unnecessary to undertake the sometimes difficult task of determining the body of Congress in which a particular statutory provision originated. Moreover, cases such as *United States* v. *Sperry Corp.,* 493 U.S. 52, 66 (1989), and *United States* v. *Munoz-Flores,* 863 F.2d 654, 660–61 (9th Cir. 1988), rev'd on other grounds, 495 U.S. 385 (1990), discredit PMAA's theory that the number of the bill enacted into law determines the house in which the specific provision in the bill originated. In these cases, the court analyzed where the specific fee provision actually originated. According to AWHMT, the registration fee was first proposed in a House bill, which the Senate then substituted ''for the Senate bill and returned the bill to the House with a Senate number.''

The Supreme Court has also clarified that a single, straightforward principle governs Congress's power to delegate to an administrative agency the authority to set a fee, regardless of whether the ''fee'' is found to be ''a form of taxation because some of the administrative costs paid by the regulated parties inure to the benefit of the public rather than directly to the benefit of those parties.'' *Skinner* v. *Mid-America Pipeline Co.,* 490 U.S. 212, 223 (1989). Under that principle, delegation is permitted ''so long as Congress provides an administrative agency with standards guiding its actions such that a court could ascertain whether the will of Congress has been obeyed.'' 490 U.S. at 218 (internal quotation marks omitted). Section 5108 contains clear standards, which RSPA has followed in developing this rule, with respect to both the amount of the registration fee and the persons that may be required to register and pay the fee. RSPA notes that § 5108(g)(2) provides that the Secretary may set the amount of the registration fee based on the amount needed to carry out the HMEP grants program. That is exactly the basis on which RSPA has determined the total amount to be raised in registration fees. With the total amount set in this fashion, and the

permissible $250–$5,000 range of the registration fee specified, there are sufficient standards in the law against which to measure RSPA's actions.

As explained in the NPRM, RSPA also believes that the registration fee should be ''fair'' in terms of having ''an equity factor that reflects the differences between the risk imposed on the public by the business activities of large and small businesses,'' and also being ''simple, straightforward, and easily implemented and enforced.'' 64 FR at 18790. RSPA does not read § 5108(g)(2) as requiring a single fee for all registrants nor, however, does it believe that it must provide perfect equity among all persons that are required to register. The Supreme Court has commented that the due process and equal protection clauses do not guarantee perfection in treatment, but rather protect against governmental actions ''that are downright irrational.'' *Hudson* v. *United States,*__U.S.__,118 S.Ct. 488, 495 (1997). The use of registration fees to fund training and planning for emergency response to a hazardous material incident in transportation is clearly a rational governmental action. Congress perceived a nationwide need and fashioned a nationwide program to address that need. The fact that all businesses, including both small and ''large, national transporters,'' pay local taxes that may (or may not) be used by their local communities to train and plan for emergency response to transportation incidents involving hazardous materials is not a constitutional infirmity in a program that uses a national registration fee program to benefit all communities that respond to hazardous materials incidents in transportation. RSPA sees no discrimination against small businesses that pay the minimum fee (under the current program) or (under the program applicable after July 1, 2000) a significantly lower registration fee than a company that is not a small business. As discussed elsewhere (see Section III.C), the dividing line between a small business that will pay a $300 fee and a larger one that will pay a $2,000 fee is based on the size determinations of the Small Business Administration, which, even if not perfect, are appropriate bases for apportioning the costs of funding the HMEP grants program.

G. Statutory Language and Intent

PMAA and others argued that RSPA's proposal departs from the statutory language and intent. PMAA stated that Congress meant to apply the registration fee only to ''large, national hazmat offerors and transporters'' who are directly involved in interstate commerce, and not to an offeror or carrier of ''any placarded load,'' because that criterion is not set forth in § 5108(a)(1). It also contended that the proposed exception for farmers is a political ''call'' which is not authorized in the statute and violates Article I § 8 of the Constitution. The Agricultural Retailers Association (ARA) acknowledged that the statute allows RSPA the discretion to require ''any hazmat carrier'' to register, but it ''believes Congress contemplated this to operate on a carrier-by-carrier basis, and not to operate in an across-the-board fashion.'' ARA urged RSPA to explain Congress's intent in setting the mandatory registration criteria in § 5108(a)(1) and the authority in § 5108(a)(2) for RSPA to require additional persons to register. Senator Conrad Burns (R-MT) expressed concern that the proposed rule contravenes the 1992 technical correction that added the words ''except in a bulk package'' to the mandatory registration provision now codified at § 5108(a)(1)(E), because it will require persons other than farmers who offer or transport nurse tanks with a capacity less than 3,500 gallons to register. PMAA also agreed with other commenters who stated that RSPA should not base the amount of the registration fee on business size instead of the ''eight specific factors'' listed in § 5108(g)(2)(A), and it urged RSPA to wait until congressional reauthorization of the appropriations language in § 5127 before increasing the registration fee.

RSPA believes that § 5108(a)(2) clearly reflects Congress's intent to allow the Secretary to require any person ''transporting or causing to be transported hazardous material in commerce'' to pay the registration fee. As reported by the House Committee on Energy and Commerce in April 1990, H.R. 3520 would have required all offerors and transporters of hazardous materials (among others) to register and allowed the Secretary to ''exempt any class or category of persons from the requirement of this paragraph.'' H.R. Rep. No. 101–444, Part 1, at 80 (Apr. 3, 1990). In contrast, the Senate bill reported in August 1990 contained a provision requiring the Secretary to ''initiate a rulemaking proceeding concerning the need to establish annual or other registration requirements for persons or any class or category of persons who transport, ship, or cause to be transported or shipped in commerce hazardous materials * * *'' S. Rep. No. 101–449 (Aug. 30, 1990), at 1990 U.S.C.C.A.N. 4595, 4623. These two approaches evolved into the provisions in HMTUSA specifying five categories for which registration is mandatory plus the authority for the Secretary to require other persons to register. Congress clearly left to the Secretary's discretion the determination of which additional categories of persons would be required to register and pay a registration fee, including the creation of exceptions from these categories. This conclusion is fully consistent with the direction in § 5103(b)(1) for the Secretary to ''prescribe regulations for the safe transportation of hazardous materials ''in intrastate * * * commerce'' and the broad definition of ''commerce'' in § 5102(l). Accordingly, RSPA has applied the registration requirement to purely intrastate carriers since 1992. See 57 FR 30620, 30622, 30630 (July 9, 1992).

RSPA does not believe that Congress somehow intended the agency to require additional persons to register under § 5108(a)(2) ''on a carrier-by-carrier basis,'' as ARA suggests. Nor does RSPA agree that an exception for farmers from the additional categories of persons to be required to register is irrational, improper, or inconsistent with the will of Congress as expressed in the 1992 technical correction that added the words ''except in bulk packagings'' to current § 5108(a)(1)(E). The technical correction enacted in Public Law 102–508 removed a contradiction between two categories for which registration was mandatory in HMTUSA. As enacted in 1990, one provision of HMTUSA required a person to register if it offers or transports hazardous materials in a bulk packaging, container, or tank that has a capacity of 3,500 gallons or more. However, another provision of HMTUSA required registration by a shipper or carrier of any shipment of at least 5,000 pounds of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required under RSPA's regulations. This meant that a shipper or carrier of hazardous materials (such as anhydrous ammonia) in a nurse tank or other bulk packaging with a 1,000-gallon capacity was covered by the latter provision (because the shipment weighed more than 5,000 pounds) but left out of the former provision. To eliminate this inconsistency, the law was clarified by adding the phrase ''except in a bulk packaging'' to the latter criterion. The 1992 technical change modified the language related to statutorily-mandated registrations and was not related to additional registrations that the Secretary could require by regulation.

Nothing in P.L. 102–508 or its legislative history restricts the Secretary's discretion to require additional persons to register under § 5108(a)(2).

In summary, this regulation is consistent with the Secretary's § 5108(a)(2) authority to require additional persons to register and with the Secretary's § 5108(g)(2) authority to impose an annual fee based on at least one of several criteria. These criteria include several that support this regulation: (1) The type of hazardous material transported or caused to be transported; (2) the amount of such hazardous material; (3) the threat to property, individuals, and the environment from an accident or incident involving such hazardous materials; and (4) other factors the Secretary considers appropriate.

H. FY 2000 Hazardous Materials Program Funding

In the NPRM, RSPA noted that the Administration's Fiscal Year 2000 Budget and Hazardous Materials Transportation Reauthorization proposals to Congress include legislative authority to fund RSPA's entire Hazardous Materials Safety Program from the registration fee program, beginning with the fourth quarter of fiscal year 2000.

Several commenters expressed opposition to RSPA funding the entire Hazardous Materials Safety Program from the registration fee program. The Chemical Manufacturers Association (CMA) stated, ''CMA believes that the Hazardous Materials Safety Program (excluding the registration program) should continue to be funded through general purpose funds; user fees should not be assessed for a program that benefits the general public. CMA also questions whether user fees of that scope could be assessed in a fair and equitable manner. CMA's willingness to support RSPA's proposals in this NPRM does not extend to funding the entire Hazardous Materials Safety Program through the fees collected from the registration program.''

The American Petroleum Institute (API) is also opposed to this proposal to Congress. API stated: ''API does not believe that user fees are the appropriate method to fund the hazardous materials transportation program as its reason for existing is by design, to protect the public against risks to life and property that may result from the transportation of hazardous materials.''

The Association of American Railroads (AAR) expressed its opposition to funding RSPA's Hazardous Materials Safety Program through registration fees, and stated, ''AAR has consistently opposed requiring the regulated community to fund the hazardous materials program. That position extends to using registration fees to pay for RSPA's hazardous materials program.''

The Sulfur Institute expressed its concern about possibly funding RSPA's hazardous materials program from registration fees and believed the proposal needed more clarification to reduce potential confusion.

The proposal to fund RSPA's entire hazardous materials safety program from the registration fee program is unrelated to this rulemaking. The reauthorization proposal is currently pending in Congress, but the FY 2000 budget does not include fourth quarter funding of the entire program through registration fees. If Congress takes action on the reauthorization proposal, RSPA will take appropriate action.

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 reviewed by the Office of Management and Budget. This final rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the public docket. This final rule is intended to collect annual registration fees in the amount of $14.3 million to support the HMEP grants program. Because Federal hazardous materials transportation law mandates the establishment and collection of fees, the discretionary aspects of this rulemaking are limited to setting the amount of the fees within the statutory range for each person subject to the registration program, and to extending the registration requirements to persons who transport or cause the transportation of hazardous materials but who are not specifically required to register by law. The increased fees are not related to the operational cost of RSPA's hazardous materials safety program. The fees to be paid by shippers and carriers of certain hazardous materials in transportation are related to the benefits received by these persons from the sale and transportation of hazardous materials and from emergency preparedness and response services provided by public sector resources. The fees are also related to expenses incurred by State, Native American tribal, and local governments in carrying out hazardous materials emergency preparedness and response activities.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final 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 responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on State and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. Based on our assessment in the accompanying regulatory evaluation, and the absence of contradictory information submitted to the docket during the public comment period, I certify that the requirements adopted in this final rule are applicable to a substantial number of small businesses, but that the economic impact on these small businesses will not be significant.

Objectives and Legal Basis for the Final Rule

The goal of this rulemaking is to increase annual funding for the national Hazardous Materials Emergency Preparedness (HMEP) grants program from the current level of approximately $6.8 million to $14.3 million. Federal hazardous materials transportation law (49 U.S.C. 5108) directs the Secretary of Transportation to prescribe regulations

for the filing of a registration statement, and payment of an annual fee, by each person transporting or causing to be transported in commerce: (1) A highway-route controlled quantity of Class 7 (radioactive) materials; (2) More than 55 pounds of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container; (3) A package containing more than one liter of a hazardous material designated as extremely toxic by inhalation (Zone A); (4) A hazardous material in a bulk packaging, container, or tank with a capacity equal to or greater than 3,500 gallons for liquids or gases, or more than 468 cubic feet for solids; or (5) A shipment in other than a bulk packaging of 5,000 pounds or more gross weight of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required. In addition, § 5108 permits the Secretary to extend registration requirements to persons who: (1) Transport or cause to be transported hazardous materials in commerce but do not engage in the activities listed above; or (2) Manufacture, fabricate, mark, maintain, recondition, repair, or test packagings that the persons represents, marks, certifies, or sells for use in transporting in commerce hazardous materials. Section 5108 directs the Secretary to impose and collect an annual fee of between $250 and $5,000 from each person required to prepare and file a registration statement. Since 1992, RSPA has chosen to require registration only by those persons under a statutory obligation to do so, and to assess the minimum registration fee of $250 (plus $50 for processing).

Under the current regulations, the approximately 27,000 persons that register and pay the fee of $250 generate annually funds in the amount of $6.8 million. As indicated elsewhere in this preamble, that $6.8 million is inadequate to meet funding levels necessary to carry out critical elements ($7.8 million for training grants, and $5 million for planning grants) of § 5116 of the law at the levels intended by Congress. The means adopted in this final rule for collecting sufficient monies to adequately fund the HMEP grants program is determined to be the best of all evaluated alternatives. This is particularly the case with regard to the potential impact on small businesses.

Identification of Potentially Affected Small Entities

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of ''small business'' has the same meaning as under the Small Business Act. Since RSPA has established no such special definition, we employ the thresholds established by SBA and codified at 13 CFR 121.201.

Expanded Scope of Registration Rule. As noted in the preamble to this rule and the associated regulatory evaluation, RSPA anticipates an additional 15,000 to 18,000 persons will be required to register each year, with all but 500 of those persons being small businesses. Of this expanded base of registrants, RSPA estimates that potentially as many as 7,000 dealers of refined petroleum products (residential fuel oil, diesel fuel, propane, gasoline, etc.) comprise the single greatest segment of industry engaged in the transportation of hazardous materials that will now be required to prepare and file a registration statement and pay the required fee. Essentially all of these newly affected entities (a substantial number) are thought to meet the applicable SBA criteria for a small business, thereby subjecting them to an annual fee of $300 (including a $25 processing fee).

Based on RSPA's assessment of generally available information, we believe the following is a reasonable generalization of the scope of operations for some of the smaller of small businesses engaged in the distribution of petroleum products. For liquid petroleum products, we considered a theoretical marketer operating three small cargo tank motor vehicles for an average annual delivery to residences of 2 million gallons of distillate number 2 (home heating oil). For liquefied gases, we considered a theoretical marketer operating three small cargo tank motor vehicles for an annual delivery to residences of 400,000 gallons of consumer grade propane.

For the smaller marketer of liquid petroleum products, RSPA notes that over the five-year period between 1994–1998, the national average price per gallon by all sellers of distillate number 2 to residences (excluding tax) ranged from $0.852 to $0.989. (*Source:* Energy Information Administration, *Annual Energy Review, All Sellers Sales Prices for Selected Petroleum Products, 1983–1998*). With sales of 2 million gallons per year, the business would generate annual revenues of at least $1.7 million. Given this scenario, the $300 registration fee represents 0.000176% of sales, which is an amount that should not have a significant impact on the viability of the business. In fact, it is more reasonable to expect that rather than absorbing the $300 fee as overhead, the fuels dealer would pass this cost on to the ultimate consumer. Of 2 million gallons sold, the $300 fee represents an additional cost per gallon of $0.00015, or an increased cost to the consumer of $0.02 on a delivery of 150 gallons of distillate number 2. It is unlikely that a consumer would choose an alternate source of energy on the basis of such a price increase.

For the smaller marketer of liquefied gas products, RSPA notes that over the five-year period between 1994–1998, the national average price per gallon by all sellers of consumer grade propane (excluding tax) ranged from $0.766 to $0.886. (Source: Energy Information Administration, Annual Energy Review, All Sellers Sales Prices for Selected Petroleum Products, 1983–1998). With sales of 400,000 gallons per year, the business would generate annual revenues of at least $306,000. Given this scenario, the $300 registration fee represents 0.001% of sales, an amount that should not have a significant impact on the viability of the business. In fact, it is more reasonable to expect that rather than absorbing the $300 fee as overhead, the propane marketer would pass this cost on to the ultimate consumer. Of 400,000 gallons sold, the $300 fee represents an additional cost per gallon of $0.00075, or an increased cost to the consumer of $0.11 on a delivery of 150 gallons of propane. It is unlikely that a consumer would choose an alternate source of energy on the basis of such a price increase.

Alternate Requirements for Small Businesses

The Regulatory Flexibility Act suggests that it may be possible to establish exceptions and differing compliance standards for small business and still meet the objectives of the applicable regulatory statutes. RSPA believes it has met that goal through the adoption of a two-tier fee schedule in which a small business must pay an annual fee of $300 (including a $25 processing fee) while persons that do not meet SBA criteria for a small business must pay an annual fee of $2,000 (including a $25 processing fee).

Conclusion

For small businesses, the cost of compliance with the requirement adopted in this final rule is so little that RSPA is confident that it will not have a significant impact on their ability to continue to successfully conduct operations related to the transportation of placarded shipments of hazardous materials. Based on its analysis, RSPA determined that although the requirement adopted in this final rule applies to a substantial number of small businesses, its economic burden is not

significant, even for the smaller of the universe of affected small businesses.

E. Unfunded Mandates Reform Act of 1995

This final rule will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objectives of the rule.

F. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), reporting and recordkeeping requirements pertaining to the registration rule are specifically excepted from the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Impact on Business Processes and Computer Systems

We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to ''Y2K'' or related computer problems. This final rule does not mandate business process changes or require modifications to computer systems. Because this rule does not affect organizations' ability to respond to those problems, we are not delaying the effectiveness of the requirements.

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.

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, 49 CFR part 107 is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

Subpart G—Registration of Persons Who Offer or Transport Hazardous Materials

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. Section 107.601 is revised to read as follows:

§ 107.601 Applicability.

(a) The registration and fee requirements of this subpart apply to any person who offers for transportation, or transports, in foreign, interstate or intrastate commerce—

(1) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this chapter;

(2) More than 25 kg (55 pounds) of a Division 1.1,1.2.or 1.3 (explosive) material (see § 173.50 of this chapter) in a motor vehicle, rail car or freight container;

(3) More than one L (1.06 quarts) per package of a material extremely toxic by inhalation (*i.e.*, ''material poisonous by inhalation,'' as defined in § 171.8 of this chapter, that meets the criteria for ''hazard zone A,'' as specified in §§ 173.116(a) or 173.133(a) of this chapter);

(4) A shipment of a quantity of hazardous materials in a bulk packaging (see § 171.8 of this chapter) having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class, under the provisions of subpart F of part 172 of this chapter; or

(6) Except as provided in paragraph (b) of this section, a quantity of hazardous material that requires placarding, under provisions of subpart F of part 172 of this chapter.

(b) Paragraph (a)(6) of this section does not apply to those activities of a farmer, as defined in § 171.8 of this chapter, that are in direct support of the farmer's farming operations.

(c) In this subpart, the term ''shipment'' means the offering or loading of hazardous material at one loading facility using one transport vehicle, or the transport of that transport vehicle.

3. In § 107.608, paragraphs (a), (b), and (d) are revised to read as follows:

§ 107.608 General registration requirements.

(a) Except as provided in § 107.616(d), each person subject to this subpart must submit a complete and accurate registration statement on DOT Form F 5800.2 not later than June 30 for each registration year, or in time to comply with paragraph (b) of this section, whichever is later. Each registration year begins on July 1 and ends on June 30 of the following year.

(b) No person required to file a registration statement may transport a hazardous material or cause a hazardous material to be transported or shipped, unless such person has on file, in accordance with § 107.620, a current Certificate of Registration in accordance with the requirements of this subpart.

* * * * *

(d) Copies of DOT Form F 5800.2 and instructions for its completion may be obtained from the Hazardous Materials Registration Program, DHM–60, U.S. Department of Transportation, Washington, DC 20590–0001, by calling 617–494–2545 or 202–366–4109, or via the Internet at ''http://hazmat.dot.gov''.

* * * * *

4. Section 107.612 is revised to read as follows:

§ 107.612 Amount of fee.

(a) *Registration year 1999–2000 and earlier.* For all registration years through 1999–2000, each person subject to the requirements of § 107.601(a)(1)–(5) of this subpart must pay an annual fee of $300 (which includes a $50 processing fee).

(b) *Registration year 2000–2001 and following.* For each registration year beginning with 2000–2001, each person subject to the requirements of this subpart must pay an annual fee as follows:

(1) *Small business.* Each person that qualifies as a small business under criteria specified in 13 CFR part 121 applicable to the standard industrial classification (SIC) code that describes that person's primary commercial activity must pay an annual fee of $275 and the processing fee required by paragraph (b)(3) of this section.

(2) *Other than a small business.* Each person that does not meet criteria specified in paragraph (b)(1) of this section must pay an annual fee of $1,975 and the processing fee required by paragraph (b)(3) of this section.

(3) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for

one, two, or three registration years as provided in § 107.616(c).

5. In § 107.616, paragraphs (c) and (d)(2) are revised to read as follows:

§ 107.616 Payment procedures.

* * * * *

(c) Payment must correspond to the total fees properly calculated in the ''Amount Due'' block of the DOT form F 5800.2. A person may elect to register and pay the required fees for up to three registration years by filing one complete and accurate registration statement.

(d) * * *

(2) Pay a registration and processing fee of $350 (including a $50 expedited handling fee). For registration years 2000–2001 and following, persons who do not meet the criteria for a small business, as specified in § 107.612(b)(1), must enclose an additional payment of $1,700 with the expedited follow-up material, for a total of $2,050 (including a $50 expedited handling fee); and

* * * * *

Issued in Washington, D.C. on February 8, 2000, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Administrator.

[FR Doc. 00–3300 Filed 2–11–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA–2000–6744 (HM–145L)]

RIN 2137–AD39

Hazardous Materials: Hazardous Substances—Revisions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is amending the Hazardous Materials Regulations (HMR) by revising the ''List of Hazardous Substances and Reportable Quantities'' that appears in Appendix A, ''Hazardous Substances other than Radionuclides,'' to the Hazardous Materials Table. This action is necessary to comply with the Superfund Amendments and Reauthorization Act (SARA) of 1986, which amended the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) to mandate that RSPA regulate, under the HMR, all hazardous substances designated by the Environmental Protection Agency (EPA). The intended effect of this action is to enable shippers and carriers to identify CERCLA hazardous substances, thereby enabling them to comply with all applicable HMR requirements and to make the required notifications if a discharge of a hazardous substance occurs. No notice of proposed rulemaking (NPRM) has preceded this final rule because, in light of RSPA's lack of discretion concerning the regulation of hazardous substances under the HMR, RSPA finds that under the Administrative Procedure Act notice would serve no purpose and thus is unnecessary.

DATES: This amendment is effective on August 14, 2000. However, immediate compliance with the regulations as amended herein is authorized.

FOR FURTHER INFORMATION CONTACT: Michael Johnsen (202) 366–8553, Office of Hazardous Materials Standards, RSPA, 400 7th Street, SW, Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the Environmental Protection Agency (EPA) at the RCRA/Superfund hotline at (800) 424–9346 or, in Washington, DC, (202) 382–3000.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202 of SARA (Pub. L. 99–499) amended Section 306(a) of CERCLA (Pub. L. 96–510), 42 U.S.C. 9656(a), by requiring the Secretary of Transportation to list and regulate hazardous substances, listed or designated under Section 101(14) of CERCLA, 42 U.S.C. 9601(14), as hazardous materials under the Federal hazardous materials transportation law (49 U.S.C. 5101–5127). RSPA carries out the rulemaking responsibilities of the Secretary of Transportation under the Federal hazardous materials transportation law, 49 CFR 1.53(b). This final rule is necessary to comply with 42 U.S.C. 9656(a) as amended by section 202 of SARA.

In carrying out that statutory mandate, RSPA has no discretion to determine what is or is not a hazardous substance or the appropriate reportable quantity (RQ) for materials designated as hazardous substances. This authority is vested in EPA. Therefore, under the CERCLA scheme, EPA must issue final rules amending the list of CERCLA hazardous substances, including adjusting RQs, before RSPA can amend its list of hazardous substances. In the preamble to a final rule on this subject issued under Docket HM–145F (51 FR 42174; November 21, 1986), RSPA included the following statement:

> It is RSPA's intention to make changes from time to time to the list of hazardous substances or their RQ's in the Appendix as adjustments are made by EPA.

This rulemaking adjusts the ''List of Hazardous Substances and Reportable Quantities'' that appears in Appendix A to § 172.101, based on the following final rules that were published by EPA in the **Federal Register** and added and removed entries to the EPA table in 40 CFR 302.4 List of Hazardous Substances and Reportable Quantities under CERCLA:

June 17, 1997 (62 FR 32974) rule added three new waste codes (K156, K157, K158) from the industrial production of carbamate chemicals;

May 4, 1998 (63 FR 24596) rule added 2,4,6-Tribromophenol and an associated waste code (K140);

August 6, 1998 (63 FR 42110) rule added four waste codes from petroleum refining (K169, K170, K171, K172); and

December 15, 1998 (63 FR 69116) rule removed caprolactam.

This rulemaking will enable shippers and carriers to identify CERCLA hazardous substances and thereby enable them to comply with all applicable HMR requirements and to make the required notifications if a discharge of a hazardous substance occurs. In addition to the reporting requirements of the HMR found in §§ 171.15 and 171.16, a discharge of a hazardous substance is subject to EPA reporting requirements at 40 CFR 302.6 and may be subject to the reporting requirements of the U.S. Coast Guard at 33 CFR 153.203.

II. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does preempt State, local, and Indian tribe requirements but does not adopt any regulation that has substantial