

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 107 and 171**

[Docket No. HM-208A, Notice No. 94-4]

RIN 2137-AC50

Hazardous Materials Transportation Registration and Fee Assessment Program

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

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: In July 1992, RSPA published a final rule establishing a national registration and fee assessment program for persons offering for transportation or transporting certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. The fees collected under the registration program are to fund a grant program to enhance State, Indian tribal, and local hazardous materials emergency preparedness and response activities. This notice proposes certain changes to the current registration program which, if adopted, will become effective July 1, 1994, the beginning of the next registration year. The proposed changes would delay the requirement for foreign offerors to register and would specify that each person who offers for transportation or transports a hazardous material for which registration is required may offer or transport that material only if both the offeror and transporter are currently registered with RSPA. The intended effect of the latter proposed change is to enhance nationwide compliance with the registration requirements.

DATES: *Comments.* Comments must be received by May 2, 1994.

ADDRESSES: *Comments.* Address comments to Dockets Unit (DHM-30), Hazardous Materials Safety, RSPA, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and notice number and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The comment period is less than 60 days in order to ensure publication of a final rule before the July 1, 1994 start of the 1994-1995 registration year. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street S.W., Washington, DC 20590-0001. Office

hours are 8:30 am to 5:00 pm Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT:

Joseph S. Nalevanko, Office of Hazardous Materials Planning and Analysis, (202) 366-4484, or Beth Romo, Office of Hazardous Materials Standards, (202) 366-4488, RSPA, Department of Transportation, 400 Seventh Street S.W., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:**I. Background**

On July 9, 1992, RSPA published a final rule under Docket HM-208 [57 FR 30620], establishing a national registration program, as mandated by Congress in the 1990 amendments to the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, for persons engaged in the offering for transportation or transportation of certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. Persons currently subject to the registration program are required to annually file a registration statement with RSPA and pay an annual fee of \$250 to fund a nationwide emergency response training and planning grant program for States, local governments, and Indian tribes, and a \$50 administrative fee to offset DOT processing costs. The fee of \$250 is the minimum amount permitted to be collected for purposes of funding the emergency response preparedness and planning grant program.

Under the authority of the HMTA, RSPA has developed and implemented a reimbursable emergency preparedness grant program. The regulations establishing this program were issued in a final rule entitled "Public Sector Training and Planning Grants" under Docket HM-209 on September 17, 1992 [57 FR 43062]. The purpose of the grant program is to provide funds, technical assistance, and support to States, Indian tribes, and political subdivisions to develop, implement, and improve planning and training programs for emergency responders in the public sector. RSPA utilizes a monitoring system to evaluate each training and planning program and ensure that funds are used in accordance with approved plans. The information obtained from effective monitoring is used to assist grantees in strengthening all planning and training to meet applicable Federal requirements.

As of January 1994, RSPA has awarded emergency preparedness grants to 47 States, the District of Columbia,

three Territories, and seven Indian tribes. The funding for the grant program comes from the fees received from RSPA's registration program. Approximately 26,000 persons have registered with RSPA for the current registration year, substantially fewer in number than originally anticipated. RSPA is concerned that many persons who are required to register have not. Therefore, RSPA is proposing two compliance-related requirements in the NPRM to enhance nationwide compliance.

RSPA has implemented an extensive outreach effort to increase awareness of the registration requirement. Over 200,000 informational brochures have been distributed through direct mailing campaigns and during presentations to industry. RSPA's enforcement policy is designed to encourage compliance with the registration requirement and includes a request that each of the modal administrations establish a uniform approach to registration enforcement. DOT's current focus is on identifying persons subject to the registration requirement who have failed to register. Cases have been completed in most of the Federal Highway Administration's nine regions, resulting in civil penalties and increased compliance with the registration requirement among shippers and highway carriers. The Federal Railroad Administration also has an active enforcement program, and has identified and cited persons within its jurisdiction for failure to register, resulting in increased compliance.

Persons who are required to be registered but negligently fail to do so are subject to civil penalties of between \$250 and \$25,000 for each day they are in violation (49 App. U.S.C. 1809(a)). Persons who are required to be registered but willfully fail to do so are subject to five years' imprisonment and criminal fines of up to \$250,000 for individuals and up to \$500,000 for corporations (49 App. U.S.C. 1809(b)). These penalties are in addition to the requirement to pay the registration fee for each year the person has failed to register. RSPA, the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, and the U.S. Coast Guard are delegated authority to enforce the registration requirements and apply these penalty provisions. In addition, several States have adopted the registration requirements as State law or regulation and, therefore, also have authority to impose penalties for violations. Suspected violations of the registration requirements should be brought to the attention of Federal or

State enforcement agencies and specifically may be brought to RSPA's attention by calling RSPA's Registration Program Office at 202-366-4484.

Scope of the Current Registration Program

The current registration program is focused on persons who, under the HMTA, are under a statutory obligation to register with RSPA. Under 49 App. U.S.C. 1802 and 1805, each person who carries out one or more of the following activities must file a registration statement with RSPA and pay an annual registration fee:

(1) Transports or causes to be transported or shipped in commerce highway-route controlled quantities of radioactive materials;

(2) Transports or causes to be transported or shipped in commerce more than 25 kilograms (55 pounds) of Division 1.1, 1.2, or 1.3 (Class A or Class B explosives) materials in a motor vehicle, rail car, or transport container;

(3) Transports or causes to be transported or shipped in commerce more than one liter (1.06 quarts) per package of a hazardous material which has been designated by RSPA as extremely toxic by inhalation;

(4) Transports or causes to be transported or shipped in commerce a hazardous material in a bulk package, container, or tank if the package, container, or tank has a capacity equal to or greater than 13,248 liters (3,500 gallons) or more than 13.24 cubic meters (468 cubic feet); or

(5) Transports or causes to be transported or shipped in commerce a shipment in other than a bulk packaging of 2,268 kilograms (5,000 pounds) or more of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required.

RSPA has no authority to except from the registration requirements any person engaged in any of the foregoing activities.

Fee Schedule Under the Current Program

Under section 117A(h)(3) of the HMTA, and for purposes of funding the grant program, the amount of the annual fee which may be collected from a person required to register with RSPA may not be less than \$250 nor more than \$5,000. The current fee is a flat \$300 for all persons required to be registered with RSPA. This basic registration fee represents a combination of the minimum \$250 registration fee permitted under the HMTA plus a processing fee of \$50. All registrants, regardless of the size of their companies, their levels of income, or the extent to

which they engage in hazardous materials transportation activities, currently pay the same registration fee.

Clarification of Registration Requirements for Owner-Operators

Owner-operators of motor vehicles who are not under a 30-day or longer lease to another company and engage in any of the activities subject to the registration program must register with RSPA, pay an annual registration fee and carry proof of registration on board their vehicles. However, owner-operators of motor vehicles who are under a 30-day or longer lease to another company and engage in any of the activities subject to the registration program are not required to be registered with RSPA on their own behalf as a separate entity. Under current § 107.606(e), the latter owner-operators are "hazmat employees" of the company to whom they are under lease. Any company with whom the owner-operator is under lease must be registered with RSPA and pay the annual registration fee. That company must also ensure that proof of registration is carried on all vehicles under its operational control when used in any of the activities subject to the registration program. (See § 107.620(b).)

II. Proposal

Transporter and Offeror Responsibilities

During the almost two years of registration operational experience, RSPA has received numerous inquiries from offerors and transporters subject to the registration program on the extent to which transporters accepting hazardous materials offered for transportation are required to determine whether a person offering such materials is registered with RSPA and, similarly, the extent to which offerors are required to determine whether their transporters are registered with RSPA. Although the current registration program does not contain such a requirement, RSPA is aware that many offerors and transporters do make such determinations. RSPA believes that this practice will help to ensure that all persons required to register and pay the fee are properly fulfilling this responsibility.

In view of these considerations, RSPA is proposing that each person who offers or transports a hazardous material for which registration is required may do so only if both the transporter and the offeror (if required) are registered. They would be required, on an annual basis, to obtain each other's registration number or a copy of each other's current Certificate of Registration. On the basis of comments on this proposal, RSPA

may modify or expand this proposed requirement (e.g., by allowing certain alternate means of obtaining or providing proof of registration). Comments are solicited on this proposal and possible refinements of it.

Foreign Offerors

Under the HMTA, foreign offerors are defined as "persons" who are subject to the registration program to the extent that they engage in any of the activities covered by the registration program. However, because of the potential for reciprocal actions by other governments, and significant problems associated with informing and identifying the parties concerned, RSPA has delayed the application of the registration program to these entities until July 1, 1994. Both Houses of Congress are considering legislation which would grant DOT the discretionary authority to waive the registration or fee requirement for any person domiciled outside the United States, if that person's country does not impose registration or fee requirements on U.S. persons offering hazardous materials to that country (see, for example, H.R. 2178 which passed on November 21, 1993). Pending the outcome of these legislative initiatives, RSPA proposes to further extend the delay in application of the registration program to foreign offerors until July 1, 1996.

Merchant Vessel Carriers

Under § 107.601 of the current registration program, any foreign motor, rail, or airline carrier, or merchant vessel carrier transporting any of the specified hazardous materials subject to the registration program in or on U.S. territory, airspace or territorial seas is subject to the registration program and must register with RSPA before entering the United States with any of those hazardous materials. All registrants are required to maintain their Certificates of Registration at their principal places of business. Motor carriers, however, are also required to carry a document displaying their current registration number on board each vehicle used to transport hazardous materials that require registration. This requirement is to facilitate enforcement of, and compliance with, the registration requirements.

RSPA has determined that there is a need to further enhance the enforcement of the registration program, as it applies to foreign or domestic merchant vessel carriers. Accordingly, RSPA is proposing to require that each merchant vessel carrier 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 merchant vessel carrying a hazardous material subject to the registration requirements.

III. Summary of Regulatory Changes by Section

Part 107

Section 107.601 Paragraph (e) would be revised to clarify the term "shipment" as it pertains to the scope of the registration program.

Section 107.606 This section provides exceptions to the registration requirements. In paragraph (f), foreign offerors, including foreign subsidiaries of U.S. corporations, would be excepted from all registration requirements until July 1, 1996, an additional delay of two years.

Section 107.608 Paragraph (a) would be amended to remove outdated provisions referring to the first registration year's compliance dates.

Section 107.620 Paragraph (c) would be redesignated as paragraph (d). A new paragraph (c) would be added to require a merchant vessel carrier to maintain the Certificate of Registration on board each vessel carrying hazardous materials subject to the registration requirements or to annotate its registration number on any document readily available to enforcement personnel.

Part 171

Section 171.2 A new paragraph (h) would be added to specify that each person who offers for transportation or transports a hazardous material for which registration is required may offer or transport that material only if both the offeror and transporter are currently registered with RSPA (if required) and the parties exchange registration numbers or a copy of each other's current Certificate of Registration.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. A preliminary regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612

("Federalism"). States and local governments may be "persons" under the HMTA, but are specifically exempted from the requirement to file a registration statement. The regulations herein have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Indian tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials. Thus, preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

This proposed rule maintains the minimum fee requirement for small shippers and carriers of hazardous materials who are subject to the registration requirement. Therefore, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

Under 49 App. U.S.C. 1805, the information management requirements of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*] do not apply to this proposed rule.

E. 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 can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 107 and 171 would be amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 would continue to read as follows:

Authority: 49 App. U.S.C. 1421(c), 1653(d), 1655, 1802, 1804, 1805, 1806, 1808-1811, 1815; 49 CFR 1.45 and 1.53 and App. A of 49 CFR part 1.

2. In § 107.601, the last sentence in paragraph (e) would be revised to read as follows:

§ 107.601 Applicability.

* * * * *

(e) * * * For applicability of this subpart, the term "shipment" means the offering or loading of a hazardous material at one loading facility using one transport vehicle, or the transport of that transport vehicle.

§ 107.606 [Amended]

3. In § 107.606, in paragraph (f), at the beginning of the first sentence, the wording "Until July 1, 1994," would be revised to read "Until July 1, 1996,"

4. In § 107.608, paragraph (a) would be 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.

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5. Section 107.620 would be amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 107.620 Recordkeeping requirements.

* * * * *

(c) In addition to the requirements of paragraph (a) of this section, each person who transports by vessel a hazardous material subject to the requirements of this subpart must carry on board the vessel a copy of its current Certificate of Registration or another document bearing the current registration number identified as the "U.S. DOT Hazmat Reg. No.".

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

6. The authority citation for part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, and 1818; 49 CFR part 1.

7. In § 171.2, a new paragraph (h) would be added to read as follows:

§ 171.2 General requirements.

* * * * *

(h) No person subject to the requirements of subpart G of part 107 of this chapter may offer for transportation a hazardous material subject to the requirements of subpart G of part 107 of

this chapter to a transporter unless the transporter provides the offeror with the transporter's current registration number or a copy of the transporter's current Certificate of Registration. A transporter may not accept for transportation a hazardous material subject to the requirements of subpart G of part 107 of this chapter unless the offeror (if subject to the requirements of subpart G of part 107 of this chapter) provides the transporter with the

offeror's current registration number or a copy of the offeror's current Certificate of Registration.

Issued in Washington, DC, on March 29, 1994, under the authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94-7816 Filed 3-31-94; 8:45 am]

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