

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Parts 107 and 171

[Docket HM-208]

Hazardous Materials Transportation
Registration and Fee Assessment
Program; Clarification of Registration
Provisions**AGENCY:** Research and Special Programs
Administration (RSPA), DOT.**ACTION:** Clarification concerning
registration provisions.**SUMMARY:** In this document, RSPA
clarifies regulatory provisions and
corrects errors in an instructional
brochure, concerning registration
requirements of a final rule published
July 9, 1992 in the Federal Register under
Docket HM-208.**EFFECTIVE DATE:** The final rule at 57 FR
30620 is effective August 31, 1992. This
document clarifies portions of that rule.**FOR FURTHER INFORMATION CONTACT:**
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Hazardous Materials Planning and
Analysis (202) 368-4109, or Beth Romo,
Office of Hazardous Materials
Standards (202) 368-4488, Hazardous
Materials Safety, 400 Seventh Street
SW., Washington, DC 20590-0001.**SUPPLEMENTARY INFORMATION:** A final
rule was published July 9, 1992 under
Docket HM-208 (57 FR 30620) to
establish a national registration
program, as mandated by Congress in
the Hazardous Materials Transportation
Uniform Safety Act of 1980 (HMTUSA),
for persons engaged in the offering for
transportation and transportation of
certain categories and quantities of
hazardous materials in intrastate,
interstate, and foreign commerce.
Persons subject to the registration
program are required to annually file a
registration statement with RSPA and
pay an annual fee of \$300, \$250 of which
is to fund a nationwide emergency
response training and planning grant
program for States and local
governments and \$50 of which is to
offset DOT processing costs. An initial
filing deadline of August 31, 1992 was
imposed for filing the registration
statement and paying the fee.Immediately after the final rule was
published, RSPA publicized the
registration program in a number of
ways, including distribution of over
200,000 instructional brochures, entitled
Hazardous Materials Registration
Program—What You Need to Know,
containing a registration statement formas referenced in § 107.608(d). RSPA has
received a large number of inquiries
concerning who must register. In this
notice, RSPA is acknowledging errors in
the instructional brochure and providing
a correction of those errors and a
narrative discussion of who is subject to
the new registration requirements.**Error in the Instructional Brochure**On the second and third panels of the
brochure, paragraphs [E] and [G],
respectively, are in error. In paragraph
[E], the words "a hazardous material or"
should be removed. Paragraph [G]
incorrectly implies that certain large
bulk packagings are not subject to
registration. Paragraph [G] of the
brochure should read as follows:[G] Bulk packagings having capacities
less than 3500 gallons (or 468 cubic feet),
even when 5000 pounds or more of one
hazard class is offered for
transportation or transported (Note: this
exception is in effect until July 1, 1993).**Clarification on Registration Statement
Form—DOT Form F 5800.2**In the "Requirements" section and in
section 5 (Prior Year Survey
Information) of the registration
statement form, in paragraph E, the
words "a hazardous material or" should
be removed. Paragraph E should read:E. Offered or transported in commerce
a shipment of 2,170 kilograms (5,000
pounds) gross weight or more of a class
of hazardous materials for which
placarding of a vehicle, rail car, or
freight container is required.**Applicability Provisions of Paragraphs
(d) and (e) of § 107.601**RSPA has received hundreds of
telephone calls from persons who are
confused about the bulk packaging
exception in paragraph (e) and how it
relates to paragraph (d). The definition
of bulk packaging is found in § 171.8 of
the Hazardous Materials Regulations. A
bulk packaging is defined as a
packaging other than a vessel or a barge
which has no intermediate form of
containment and has:

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

It is important to note that paragraphs
(d) and (e) of § 107.601 are separate
provisions. The bulk packaging
exception in paragraph (e) applies only
to the provisions of paragraph (e) and
provides no exception to the bulk
packaging registration requirements in
paragraph (d).Under paragraph (d) of § 107.601, any
hazardous material offered for
transportation or transported in a bulk
packaging having a capacity equal to or
greater than 3500 gallons (or greater
than 468 cubic feet) is subject to
registration requirements, even when
placards are not required.Under paragraph (e) of § 107.601, a
hazardous material in a bulk packaging,
container or tank having a capacity of
less than 3500 gallons (or less than or
equal to 468 cubic feet) is excepted from
the registration requirements until July 1,
1993. Therefore, until July 1, 1993,
paragraph (e) only applies to a shipment
of hazardous materials in non-bulk
packagings which: (1) Has a gross
weight of 5000 pounds or more of one
hazard class; (2) requires placarding;
and (3) is loaded at one facility.**Aggregate Quantities Under § 107.601(e)**If an offeror or transporter loads a
shipment at one facility consisting of
3000 pounds gross weight of one hazard
class and 3000 pounds gross weight of
another hazard class, both hazard
classes require placards. However, this
shipment is not subject to the
§ 107.601(e) registration requirements
because the shipment must be 5000
pounds or more of one hazard class, not
an aggregate quantity of different
hazard classes.If a shipment consisting of 3000
pounds gross weight of one hazard class
is loaded at Facility A and is then
transported to Facility B where another
3000 pounds gross weight of the same
hazard class is loaded, this shipment is
not subject to the registration
requirements. Under § 107.601(e), there
must be a one hazard class offering of
5000 pounds gross weight or more that is
loaded at one facility.**Applicability of the Term "Person"**RSPA has received numerous
inquiries as to how companies having
diverse branches or plant locations must
register. As discussed in the preamble to
the final rule and also as defined under
49 App. U.S.C. 1802, the term "person"
means an individual, firm,
copartnership, corporation, company,
association, joint-stock association,
including any trustee, receiver, assignee,
or similar representative thereof, or
government, Indian tribe, or agency or
instrumentality of any government or
Indian tribe when it offers hazardous
materials for transportation in
commerce or transports hazardous
materials in furtherance of a commercial
enterprise.Each separately incorporated
subsidiary subject to § 107.601 must

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

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

Persons Excluded From Registration and Fee Requirements

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

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

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

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

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

Persons Not Excluded From Registration and Fee Requirements

As mandated by HMTUSA, the registration requirements apply to

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

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

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

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Alan I. Roberts,
Associate Administrator, Hazardous Materials Safety.

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