

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

[Docket No. HM-208, Amdt. Nos. 107-26 and 171-115]

RIN 2137-AB43

**Hazardous Materials Transportation; Registration and Fee Assessment Program**

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

**ACTION:** Final rule.

**SUMMARY:** RSPA is establishing a national registration program for certain persons engaged in the offering for transportation, and transportation, of certain hazardous materials in foreign, intrastate or interstate commerce. Those persons are required to annually file a registration statement with RSPA. All persons who are required to be registered are assessed 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 the costs to DOT of processing each registration statement.

RSPA is imposing an initial deadline of August 31, 1992, for filing the registration statement and paying the registration and processing fees. After September 15, 1992, no person required to file a registration statement with RSPA may transport, or cause to be transported or shipped, any of the specified hazardous materials unless that person has on file a registration statement as prescribed by this final rule. This regulation is necessary to establish a national registration and fee collection system to fund a national emergency response training and planning grant program.

**EFFECTIVE DATE:** August 31, 1992. However, immediate compliance is authorized.

**ADDRESSES:** Copies of the "Hazardous Materials Transportation Uniform Safety Act of 1990" (HMTUSA), Public Law 101-615, may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371, (202) 275-2091.

**FOR FURTHER INFORMATION CONTACT:** Joseph S. Nalevanko, Office of Hazardous Materials Planning and Analysis, (202) 366-4109, or Beth Romo, Office of Hazardous Materials Standards, (202) 366-4488, Hazardous

Materials Safety, 400 Seventh Street SW., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:****I. Background**

On November 18, 1990, the President signed the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101-615, which amended the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.* Revised 49 App. U.S.C. 1805, requires, in part, certain carriers and shippers engaged in the transportation of hazardous materials to register with the Secretary of Transportation. Because the Secretary's responsibility in this matter has been delegated to the Research and Special Programs Administration (RSPA), most references in this final rule are to RSPA.

RSPA published a notice of proposed rulemaking (NPRM) in the Federal Register on October 10, 1991 (Docket HM-208; Notice No. 91-4; 56 FR 51294) proposing to establish a nationwide registration program for certain shippers, carriers, and packaging manufacturers engaged in intrastate, interstate, or foreign commerce. The proposed registration and fee collection program included those persons under a statutory obligation to file a registration statement. These registration and fee requirements apply to all modes of transportation (i.e., highway, air, water, and rail), in intrastate, interstate and foreign commerce. They apply to the transportation of highway route-controlled quantities of radioactive materials, certain explosives, hazardous materials extremely toxic by inhalation, certain bulk shipments of hazardous materials (e.g., shipments involving cargo tank trucks or rail tank cars having a capacity equal to or greater than 13,248 liters (3,500 gallons)), and shipments of 2170 kg (5,000 pounds) or more of a class of hazardous material for which placarding of a vehicle, rail car, or freight container is required.

In addition, RSPA proposed, under the discretionary authority in 49 App. U.S.C. 1805, to include all persons who are engaged in the manufacturing, fabricating, marking, retesting, or reconditioning of United Nations (UN) or Department of Transportation (DOT) specification or DOT exemption packages, except small business concerns, as described in 13 CFR 121.601, that manufacture, fabricate, or mark only boxes or bags, or both.

RSPA proposed two major alternative fee schedules. One alternative provided for a graduated fee schedule under which all persons (except foreign entities) required to file a registration

statement with RSPA would have the choice of deciding whether to pay a registration fee based either on the person's annual net income or on the number of activities which the person carries out and for which filing a registration statement is required. The second alternative provided a flat fee schedule under which each person subject to the registration program would pay the same fee. In addition to the registration fee, RSPA proposed a \$50 processing fee to cover the Department's costs in processing the registration statements.

The filing of a registration statement and the payment of a registration fee was proposed to be an annual requirement. The registration year was proposed to begin June 1 of one year and end May 31 of the following year. RSPA proposed May 31, 1992, for the effective date of the required filing of the initial registration statement and the required payment of the associated registration fee.

RSPA proposed that a "lock box" system be used by registrants for the filing of registration statements and the payment and processing of fees. The "lock box" is a post office box that a bank uses to collect mail frequently and transmit funds immediately to the U.S. Treasury. As proposed, persons subject to the registration program would mail their registration statements and their payments in full to a specific post office box on or before May 31 of each year. RSPA outlined the lock box procedures and proposed that payment be in U.S. dollars and by certified check, cashier's check, money order, or VISA or MasterCard credit card for the amount of the registration fee and the cost to DOT of processing the registration statement.

Proposed recordkeeping requirements included a requirement that copies of the registration statement and the Certificate of Registration be maintained at a person's principal place of business. RSPA further proposed that a copy of the Certificate of Registration be maintained at all fixed sites where applicable activities occur and also carried on board all transport vehicles, trains, vessels and aircraft. In addition, RSPA proposed that foreign entities subject to the registration requirements be required to designate an agent who is a resident of the United States.

**II. Discussion of Comments**

In addition to public hearings held in Burlingame, California; Des Plaines, Illinois; and Washington, DC, RSPA received over 160 written comments to Docket HM-208. Those submitting

comments represented a broad spectrum of interests in hazardous materials transportation.

RSPA received comments from small shippers, intermediaries such as warehousemen and freight forwarders, large chemical corporations, and trade associations representing the interests of the chemical manufacturers. Carriers in all modes provided comments and also were represented by rail, trucking, air, and ocean carrier associations. The packaging industry provided comments through individual companies and their associations.

United States agencies and foreign governments submitted comments on the proposed registration program. Because of the proposed rule's potential impact on foreign entities, there was considerable interest expressed by international air and vessel carriers, container lessors, corporations having foreign operations, and U.S. companies concerned with trade agreements.

Several State agencies and the National Governors' Association submitted comments addressing various issues. Small business entities responding to the proposed registration program included farmers and farm cooperatives, cleaning product suppliers, propane gas suppliers, petroleum marketers, contract haulers, and fireworks distributors.

#### Regulatory Review Comments

In response to the President's January 28, 1992, announcement of a federal regulatory review, DOT published a notice on February 7, 1992 (57 FR 4744) soliciting public comments on the Department's regulatory programs. In response to that notice, RSPA has received several comments to the proposed registration rule. These comments reiterated earlier comments to Docket HM-208 and addressed the applicability of the proposed registration requirements to packaging manufacturers and foreign entities, the separate registration of subsidiaries, the proposed requirement for maintaining proof of registration, and the amount of the annual fee.

All comments have been considered in preparing this final rule. Based on the merit of comments to the Notice and those received during the regulatory review, RSPA is modifying several requirements proposed in the Notice. Significant changes in this rule from the proposal published October 10, 1991, are discussed in detail below.

#### III. Scope and Exceptions—Sections 107.601–107.606

Section 107.601 defines the scope of the registration and fee collection

regulations with respect to certain domestic and international shippers and carriers of hazardous materials in foreign, intrastate and interstate commerce. In response to comments, several clarifications have been made to this section. In addition, the proposal in the Notice to include certain package manufacturers in the registration program is not adopted in this final rule.

RSPA received numerous comments concerning the proposed scope of the registration program; these comments generally fall into two categories: (A) Recommendations to expand the scope of the registration program beyond that proposed in the Notice, or to limit the program to those persons required by statute to be registered; and (B) requests for clarification on whether certain persons, functions and activities associated with the transportation of hazardous materials are subject to the registration requirement.

##### *A. Scope of the Registration Program*

Under 49 App. U.S.C. 1805, RSPA has discretionary authority to expand the registration program to include a broad spectrum of persons and activities involved in the transportation of hazardous materials; such persons and activities are in addition to those persons and activities which, under the HMTA, must be covered by the registration program. Under this authority, RSPA proposed to expand the scope of the registration program to include all persons who are engaged in the manufacturing, fabricating, marking, retesting, or reconditioning of UN or DOT specification or DOT exemption packages, except for small business concerns, as described in 13 CFR 121.601, that manufacture, fabricate, or mark only boxes or bags, or both.

A number of commenters suggested that RSPA further expand the scope of the registration program to include: (1) Persons who offer or transport hazardous waste in any quantity; (2) persons who offer or transport Division 1.1 or 1.2 explosives in quantities less than 25 kilograms (55 pounds); and (3) persons offering or transporting hazardous materials in any quantity requiring placards, and not just in quantities of 2,170 kilograms (5,000 pounds) or more of a class of a hazardous material for which placarding is required. In addition, one commenter suggested that RSPA request Federal, State and local government agencies who offer or transport certain hazardous materials to register on a voluntary basis since, under the HMTA, these agencies are not required to be registered with RSPA.

Other commenters believed that the scope of the registration program should be expanded to include agents, property brokers, non-vessel operating common carriers (NVOCCs), consolidators, freight forwarders, warehousemen and other intermediaries involved in the transportation of hazardous materials, regardless of whether or not these entities are currently subject to the Hazardous Materials Regulations (HMR). These commenters maintained that all entities associated with, and benefiting from, the movement of hazardous materials should contribute toward emergency response training and planning. However, many commenters, including associations representing warehousemen, NVOCCs, brokers, freight forwarders, container lessors, and the intermodal tank container industry, were opposed to expanding the scope of the registration program beyond the minimum required by the HMTA. For example, the American Warehousemen's Association stated that Congress did not intend that the registration program apply across-the-board to every person involved in the transportation process.

In deciding whether to expand the scope of the registration program beyond the mandatory provisions of the HMTA, RSPA has evaluated and sought to balance a wide range of considerations. First, there is the fact that all persons involved in the transportation of hazardous materials—including storage incidental to transportation—have an important role to play in the safe transportation of these materials. The actions of each person involved in the transportation of hazardous materials can contribute to increasing or decreasing the risk associated with the distribution of these materials throughout the United States, thus affecting the workload and planning and training requirements of State and local emergency response personnel.

Twenty-eight percent of all hazardous materials incidents reported to RSPA between 1986 and 1990, and as published in RSPA's 1990 annual report to Congress on the transportation of hazardous materials, were attributable to package failures; these incidents certainly have contributed to the workload of emergency response personnel. The design, production and quality control processes used in the manufacturing of packages for the transportation of hazardous materials can affect the risk associated with these materials, in terms of fatigue and stress problems induced by the transportation

environment, or in terms of defective fittings, valves, or closures.

Package manufacturers, however, are only one component of a very large universe of shippers, carriers and other persons involved in the transportation of hazardous materials. This universe can vary significantly from year to year and includes physicians working in hospitals or operating out of private offices; technicians in clinics and laboratories; dry cleaners; gasoline station operators; photo developers; new and used car dealers; wholesale and retail distributors of paints, alcoholic beverages, and garden products; and a host of other persons and activities. Although individually each may not contribute significantly to the risk associated with the transportation of hazardous materials, in the aggregate they can account for a substantial portion of the total risk and workload faced by State and local emergency response personnel.

Given the diverse nature of the persons involved in the transportation of hazardous materials, RSPA has concluded that it is both reasonable and prudent that the registration program begin by focusing solely on those persons and activities subject to the mandatory registration requirements of the HMTA. This will ensure that the initial registration procedures and fee collection process operate in an orderly and efficient manner. To expand the registration program at this time either on a selective or on a more comprehensive basis could create unnecessary confusion and result in needless burdens on domestic commerce.

Further, as pointed out in the Notice, RSPA does not have an accurate picture of the universe of persons subject to the HMR nor the number of persons subject to the mandatory filing of registration statements. This uncertainty supports the decision that the initial steps of the registration program should be as simple and as streamlined as possible, provided that the basic purposes and integrity of the registration program are not undermined.

Also, limiting the registration program to those persons who are under a statutory obligation to register will enable RSPA and State and local compliance and enforcement personnel to carefully focus and concentrate their efforts, and gain additional experience with the registration process. However, RSPA may propose expanding the scope of the registration program in the future.

### *B. Persons Under Statutory Obligation to Register: Requests for Clarification*

#### **1. RSPA's Authority to Grant Exceptions**

In responding to the question posed in the Notice on the possible broadening or narrowing of the registration program, several commenters mistakenly assumed that RSPA has the authority to except certain classes of persons explicitly covered by 49 App. U.S.C. 1802 and 1805 from the requirement to be registered with RSPA. RSPA has no such authority.

Thus, under 49 App. U.S.C. 1805, each person who carries out one or more of the following activities must file a registration statement with RSPA:

(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 of 2170 kilograms (5,000 pounds) or more of a class of a hazardous material for which placarding of a vehicle, rail car, or freight container is required.

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. This definition appears in § 171.8 of the HMR.

However, 49 App. U.S.C. 1805 exempts from the registration requirement 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."

#### **2. Applicability of Registration Requirements to Intrastate Offerors and Carriers**

A number of commenters questioned whether intrastate offerors and carriers are subject to the mandatory registration requirements of the HMTA. The registration and other provisions of the HMTA make no distinction between interstate and intrastate carriers and shippers of hazardous materials. Further, it would be illogical to presume that intrastate offerors and carriers are excepted from the registration program when they will be primary recipients of the enhanced emergency response capabilities derived from the national emergency response training and planning grant program for States and local governments. State and local emergency personnel, in responding to incidents involving the transportation of hazardous materials, do not and cannot make distinctions between intrastate and interstate offerors and carriers; and the HMTA neither requires nor, in RSPA's view, permits such an illogical and counterproductive result. Such a result would seriously vitiate the purposes of both the registration and the emergency response planning and training grant programs. This final rule requires that intrastate offerors and carriers be registered with RSPA in the same manner and to the same extent as foreign and interstate offerors and carriers of hazardous materials.

#### **3. Applicability of Registration Requirements to Federal Contractors**

Commenters representing air carriers requested an exception from the registration requirements for certain air carriers operating under Civil Reserve Air Fleet or Military Airlift Command charter programs on the grounds that these programs may obligate such carriers to engage in activities subject to the registration program. The Air Transport Association of America stated that such carriers should be excepted from the registration requirement because they are under a highly-structured government contract, subject to ongoing safety fitness reviews, and have no discretion as to the types of cargoes they transport. The U.S. Department of Energy, in discussing the applicability of the registration requirement to government contractors, was uncertain whether such carriers are exempt from the registration requirement.

RSPA's lack of authority to grant exceptions to the mandatory registration

requirements is particularly clear in the case of Federal contractors who offer or transport hazardous materials. In part, 49 App. U.S.C. 1818 states that:

Any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government, transports, or causes to be transported or shipped, a hazardous material \* \* \* shall be subject to and comply with all provisions of this title, all orders and regulations issued under this title, and all other substantive and procedural requirements of Federal, State, and local governments and Indian tribes (except any such requirements that have been preempted by this title or any other Federal law), in the same manner and to the same extent as any person engaged in such activities that are in or affect commerce is subject to such provisions, orders, regulations, and requirements.

#### 4. Applicability of Registration Requirements to Foreign Offerors, Carriers, and Governments

Foreign air carriers expressed the belief that they should be excepted from the registration requirement for a wide variety of reasons: The need for international reciprocity and cooperation; the potential imposition by foreign entities of similar or more stringent requirements on U.S. carriers and offerors; and the existence of various international agreements which purportedly take precedence over U.S. statutory law. The British Government stressed the issue of equity, and stated that just as U.S. government agencies are excepted from the registration program, foreign governments and agencies also should be excepted, especially for the transportation of defense materials. In a similar vein, another commenter maintained that Congress could not possibly have intended that the emergency response training and planning grant program for State and local governments be funded, at least in part, by foreign governments through the registration program, but not the U.S. Government itself.

With respect to foreign offerors, carriers and governments, it is noted that 49 App. U.S.C. 1802 defines these entities as "persons" and thus subject to the registration program to the extent they engage in any of the activities covered by the registration program. However, because of the extraordinary complexity of international commercial relations and significant problems associated with informing and identifying the parties concerned, RSPA is providing a two-year delay of application to foreign offerors, including foreign governments which offer hazardous materials for transportation.

For purposes of this delay of application, offerors which are foreign subsidiaries of U.S. corporations will be considered foreign offerors, except as noted below (see discussion below). The delay of application does not apply to foreign carriers. Foreign carriers operating in the United States are more familiar with U.S. requirements than foreign offerors. These carriers also come under the immediate surveillance of U.S. inspection and enforcement personnel. Therefore, foreign carriers operating in the United States are not excepted from registration requirements under the two-year delay. This means, for example, that any Canadian or Mexican motor or rail carrier, foreign airline carrier, or merchant vessel carrier transporting any of the specified hazardous materials in or on U.S. territory, airspace or territorial sea is subject to the registration program and must register with RSPA before entering the United States with any of those hazardous materials.

Application of these requirements to foreign carriers entering the United States is consistent with international law and international agreements to which the United States is a party. The registration fee is being used to support emergency response to hazardous materials incidents, response which will benefit foreign, as well as interstate and intrastate, offerors and carriers of hazardous materials into and in the United States by all modes of transportation. Moreover, the fee itself does not exceed the cost of supporting the response programs, including RSPA's costs of processing registrations, and is assessed fairly among the parties creating risks.

#### 5. Applicability of Registration Requirements to Parent Companies and Their Subsidiaries

RSPA received a variety of comments on its proposal that each independently incorporated subsidiary must register and pay a fee separate from its parent company. As indicated in the Notice, RSPA proposed this regulatory approach because corporations are explicitly defined as "persons" under 49 App. U.S.C. 1802. Comments to Docket HM-208 provide no basis for excepting incorporated subsidiaries of a parent from the mandatory registration requirements under the HMTA. Therefore, each separate corporate entity under a parent company that engages in any of the activities subject to the registration program, and the parent company itself if it engages in any such activity, must be separately registered and pay the full registration and processing fee. For example, if a

shipping company has a subsidiary trucking company and both are engaged in an activity subject to the registration program, each company must file a separate registration statement and each must pay a registration fee of \$300 (including a processing fee of \$50).

A number of commenters expressed concern that separate registration for corporate entities might be inappropriately applied to federated farmer cooperatives, because both local and regional cooperatives are separately incorporated. However, whether each local farm cooperative would be subject to separate registration depends on whether the cooperative is a separate person under applicable State law. Commenters also suggested that a parent company should be allowed to file one consolidated registration statement listing its subsidiaries with appropriate information and enclosing one combined total fee. They claimed that having one integrated filing would promote compliance, reduce administrative burdens, ensure the accuracy of information, facilitate updating, and give RSPA one point of contact.

RSPA is willing and able to partially accommodate these requests. RSPA has developed a "registration statement", DOT Form F 5800.2 (see Attachment #1), that is designed to capture the minimum amount of information required by the HMTA; facilitate processing and entry of the information into a computerized database; and result in the rapid issuance of a Certificate of Registration. Registrants must use this form in order to be properly registered with RSPA. Furthermore, the information provided on the registration statement must be specific to each registrant. Although the HMTA requires that each person subject to the registration program file a registration statement, a parent company can 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 enclose one combined registration fee payment. Registrants are advised that if there are discrepancies in the information provided on the registration statement (e.g. failure to sign each separate registration statement), or in the amount of the fee to be paid, the issuance of the certificates of registration for some, and possibly for all, of the companies on behalf of which the parent company has submitted the registration statements inevitably will be delayed.

## 6. Applicability of Registration Requirements to Owner-Operators of Motor Vehicles

RSPA received several comments on the issue of requiring separate registration from owner-operators under permanent or long-term lease to motor carriers. These commenters requested that RSPA exempt owner-operators under permanent or long-term lease arrangements to registered motor carriers. For example, the Chemical Waste Transportation Institute stated that owner-operators under long-term leases are virtually indistinguishable from employee drivers and should not be required to file separately. On the other hand, some commenters believed RSPA must require the separate registration for owner-operators acting as motor carriers under their own operating authority. The American Trucking Associations and the Independent Truckers and Drivers Association supported this view. They stated that an owner-operator acting solely as a separate motor carrier and maintaining separate liability insurance should be required to file a separate registration.

RSPA has considered these comments in light of 49 App. U.S.C. 1802 and 1805, and finds that there is a statutory basis for distinguishing between owner-operators operating under term lease arrangements, and owner-operators acting under their own operating authority. First, 49 App. U.S.C. 1805(c)(14) states that notwithstanding any other provisions of this subsection, an employee of a hazmat employer is not required to file a registration statement by or under this section. Also, 49 App. U.S.C. 1802, the term "hazmat employee" means "an individual who is employed by a hazmat employer and who in the course of the individual's employment directly affects hazardous materials transportation safety as determined by the Secretary by regulation. Such term includes an owner-operator of a motor vehicle which transports in commerce hazardous materials."

Whether or not owner-operators are under a 30-day or longer lease (in the same manner as prescribed by the Interstate Commerce Commission in 49 CFR 1057.11 and 1057.12 or an equivalent contractual relationship) is a reasonable basis for distinguishing between owner-operators who are in fact "hazmat employees" and owner-operators who are operating as independent companies. Accordingly, owner-operators of motor vehicles having a 30-day or longer lease

arrangement are excepted from the requirement to register with RSPA.

## 7. Applicability of Registration Requirements to Certain Shipments of Hazardous Materials

Many commenters asked RSPA to clarify paragraphs (a)(4) and (a)(5) of proposed § 107.601. First, the Fertilizer Institute (TFI) claimed that Congress did not intend to impose registration and fee requirements on farmers and small businesses involved in offering or transporting small cargo tanks with a capacity of less than 3,500 gallons and that this intent is negated by the 5,000-pound placarded quantity registration requirement of paragraph (a)(5). Further, TFI maintained that this apparent contradiction will have a major economic impact on the farming industry because, for example, a cargo tank carrying 1,000 gallons of liquid fertilizer would weigh 8,300 pounds, and thus be subject to the registration requirements. In addition, these commenters point out that several Congressmen have indicated their intent to introduce legislation which would exempt farming and other operations from the mandatory registration requirements of the HMTA.

Again, the language of the HMTA is clear and explicit: a person need only engage "in one" of the activities explicitly mentioned under 49 App. U.S.C. 1805 in order to be subject to the mandatory registration requirements. "Transporting or causing to be transported or shipped in commerce a shipment of 5,000 pounds [2,170 kilograms] or more of a class of a hazardous material for which placarding of a vehicle, rail car, or freight container is required" is one of the activities described in the HMTA.

Second, one commenter stated that clarification between the apparent overlap in proposed paragraphs (a)(4) and (a)(5) could be achieved by inserting the phrase "placarded shipments" into paragraph (a)(5). Without such clarification, the commenter claimed, RSPA would be double-charging for a single activity, which is unfair and contrary to Congressional intent. Another commenter stated that RSPA should clarify the placarded quantity provision of paragraph (a)(5) and believed that it should apply to dry freight only. As another alternative, the State of Maryland Department of Environment recommended that RSPA add "in non-bulk packaging" in § 107.601(a)(5) after "or hazardous materials."

In addition, statements on the floor of both the House of Representatives (Cong. Rec., January 3, 1992) and the

Senate (Cong. Rec., January 21, 1992) have raised questions about Congressional intent in enacting 49 App. U.S.C. 1805 and indicated that this provision might be amended. Furthermore, on May 8, 1992, the Secretary of Transportation formally proposed amendment of 49 App. U.S.C. 1805(c)(1)(C) to avoid requiring registration of farmers transporting ammonia in nurse tanks as if they were commercial transporters of hazardous materials.

It is likely, therefore, that confusion about applicability of this rule exists among farmers and other transporters of hazardous materials weighing more than 2,170 kg (5,000 pounds) in a bulk packaging, container or tank with a capacity less than 13,248 liters (3,500 gallons). To alleviate this problem, RSPA is delaying application of this rule to those persons until July 1, 1993.

The option of charging a higher registration fee for persons who engage in more than one activity subject to the registration program is within the discretionary authority of RSPA, as pointed out in the Notice (see also 49 App. U.S.C. 1815). However, this is no longer an issued because RSPA is imposing the same fee on all registrants, regardless of their number of covered activities.

Third, a number of commenters believed RSPA should define the term "shipment", in paragraph (a)(5). One commenter maintained that the term "shipment" should mean a single package or container or single tank, and expressed concern that the absence of a definition for "shipment" would require registration by a carrier transporting a number of packages of different types in a single aircraft container. Another commenter stated that a shipper might elect to offer two or more shipments, described on separate waybills and hazardous materials shipping papers, together amounting to more than 5,000 pounds. This commenter also asked whether a carrier accepting such separately documented packages from a single shipper or forwarder for transportation would be subject to the registration requirements.

The term "shipment" is used in a wide variety of ways by persons in commerce and industry and by regulators and enforcement agencies. Rather than attempting to define the term in a meaningful way for purposes of § 107.601, RSPA is providing a qualification of the "5000 pound proviso" that limits it to hazardous materials being loaded at one loading facility. This is consistent with the applicability of § 172.504(b) in regard to



placarding, which was the basis for the limitation specified in Section 8 of HMTUSA. This qualification, contrary to the view discussed above, is necessary because the meaning of the term "shipment" is not explicit and it would be unnecessarily burdensome on carriers to require them to calculate aggregations of offerings (small shipments) during pickup and delivery operations. In addition, it is likely that most "less than truckload" carriers would be subject to the registration requirement due to the probability that at one time or another during the registration year they will handle a one class offering of 5000 pounds or more that is loaded at one facility.

In the context of paragraph (a)(5), a person who offers, at any one time and from any one facility, a package or combination of packages the gross weight of which is 5,000 or more pounds, is engaged in the "shipment" of materials. If these materials are in a hazard class for which placarding of a vehicle, rail car or freight container is required, both the offeror of the material and the carrier accepting the material for transportation are subject to the registration program. Again, in the context of paragraph (a)(5), if a person who offers, at any one time and from any one facility, a package or combination of packages the gross weight of which is less than 5,000 pounds, even if these materials involve a class of hazardous material for which placarding of a vehicle, rail car or freight container is required, neither the offeror of the material nor the carrier accepting the material meets the criteria of paragraph (a)(5) with respect to the requirement to be registered with RSPA. The nature of the materials, however, may require registration under other paragraphs in § 107.601.

In this final rule, paragraph (a)(5) is redesignated paragraph (e) and revised to clarify that the weight of the shipment refers to "gross weight". RSPA also has revised paragraph (e) to mirror the provisions of the HMTA which mandate registration for a shipment of 2170 kg (5000 pounds) or more of a class of a hazardous material or hazardous materials. The phrase "of a class" was inadvertently omitted in the Notice.

#### 8. Applicability of Registration Requirements to Persons Who Offer (or Cause to be Transported) or Transport in Commerce Hazardous Materials.

Many commenters asked RSPA to more clearly define the terms "cause to be transported or shipped" or "offer," noting that definitions for these terms appear neither in the HMTA nor in the Notice. One commenter recommended

that RSPA define "shipper" and "carrier," with the definition of "shipper" to include wholly-owned private carriers. Another commenter sought guidance as to who the "shipper" is in transactions where more than one party is involved at the shipment's origin. This commenter also added that it is unclear whether a firm who is the shipper of record or a firm actually tendering the shipment is the person who is the offeror. Other commenters requested clarification of who must register and pay fees in situations where consignees return off/specification, residue, or recovered material on a one/time basis to the original shipper.

Members of the Intermodal Tank Container Association (ITCA) claimed to be uncertain and confused as to whether or not they would have a legal obligation to comply with the registration requirements. ITCA declared that intermediaries such as freight forwarders, brokers, and NVOCCs should not be left to determine "at their peril" whether or not to register and pay. Because the proposed regulations do not refer to persons acting in capacities other than as offerors or transporters, ITCA stressed the importance of clearly identifying those persons required to register. On February 26, 1990, RSPA published a formal interpretation of what constitutes an "offeror" or "shipper" of hazardous materials under the HMR [Int. No. 88-1-RSPA; 55 FR 6761]. In this interpretation, RSPA stated that determining regulatory responsibilities involves a case/by/case determination based on all relevant facts. No single factor, RSPA said, conclusively determines legal responsibility of performance of "offeror" functions under the HMR. The interpretation, among other things, stated:

The word "shipper" is not specifically defined in the HMR (49 CFR parts 171-180), due primarily to the fact that it is not possible for the Department to account for the numerous commercial arrangements that may exist under that concept. Although the word "shipper" does appear, it is used in an ordinary layman's manner rather than as a specific, technical term of art. Consequently, responsibilities generally are placed on "offerors" for performance of the functions associated with "offering" hazardous materials for transportation (e.g., see the general and applicability provisions in §§ 171.1, 171.2, 172.3, and 173.1).

The key issue in determining the regulatory responsibilities under the requirements of parts 171, 172, and 173 is determining which parties perform which functions. This involves a case-by-case determination based upon all relevant facts. Any person who performs, attempts to perform, or under the circumstances involved, is contractually or

otherwise responsible to perform, any of the functions assigned by the HMR to the offeror, is legally responsible under the HMR for the proper performance of those functions. Any person's performance or attempted performance of any "offeror" functions may be evidence of that person's responsibility for performance of other "offeror" functions. In many cases, more than one person may be responsible for performing, or attempting to perform, "offeror" functions, and each such person may be held jointly and severally accountable for all or some of the "offeror" responsibilities under the HMR.

More precise definitions of the terms "causes to be transported or shipped," and "offeror" would not be helpful in this context. However, it is clear that if in transportation an "intermediary" or "facilitator"—such as a freight forwarder, broker, warehouseman, consolidator, or non-vessel operating common carrier—performs any of the functions of an offeror as to any covered hazardous material, this intermediary is subject to the registration program.

Further, while commenters assume that there is only one offeror in any given situation, in actuality there may be one or more offerors, jointly and severally responsible for compliance with the HMR, in any transportation transaction—depending on the nature of the transaction. Each such offeror is subject to the registration program.

In addition, if a consignee returns off-specification, residue, or recovered material on a one-time basis to the original shipper, the consignee is an offeror of hazardous materials; thus, if the materials involved are covered by the registration requirements, the consignee must register with RSPA.

In summary, if a person performs any function of an offeror or carrier of hazardous materials, and if the materials or activities involved are subject to the registration requirements, that person must register with RSPA. This is consistent with the present scope of the HMR—except that the registration requirements also apply to *all* intrastate offerors and carriers of hazardous materials by highway (as well as all other modes) because of the HMTA statutory mandate.

#### 9. Preemption of State and Local Registration Programs And Use of Funds

The National Governors' Association and other commenters urged RSPA to specifically state in the final rule that the Federal registration and fee program does not preempt or restrict a State's ability to register or permit motor carriers. Several commenters were concerned about the purpose and the use of the funds collected as registration fees.

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.

RSPA encourages States, as well as local governments and Indian tribes, to incorporate by reference, or otherwise adopt and enforce, the HMR as State, local or Indian tribal law. This approach greatly enhances compliance with a nationally uniform set of regulations concerning the transportation of hazardous materials.

The monies generated by this registration program will be used to fund a public sector grant program that is being established to increase the effectiveness of State and local hazardous materials emergency training and planning programs, as required by 49 App. U.S.C. 1815. This section authorizes DOT to provide assistance to States for emergency response planning and to States and Indian tribes for emergency response training. The program is to begin in fiscal year 1993 and extend through fiscal year 1998. Thus, the grant monies that will be distributed as a result of this registration program will be used to fund some of the hazardous materials transportation enforcement, compliance, planning, training, emergency response and cleanup programs of States, Indian tribes, and local governments. For a thorough discussion of the grant program, interested readers should refer to RSPA's proposed grants rule, which was published in the *Federal Register* on March 2, 1992, under Docket HM-209 (57 FR 7474).

The existence of this registration program and the related grants program is not to be construed as having any preemptive effect. Of course, State, local or Indian tribe requirements may be preempted by the Commerce Clause of the Constitution or by statutory provisions of the HMTA or other Federal laws. For example, 49 App. U.S.C. 1811 prohibits imposition of hazardous materials transportation fees which are not equitable or which are not used for purposes related to the transportation of hazardous materials. This provision was added to the HMTA by Congress in the HMTUSA—the same law which mandated the registration and grants program. It clearly demonstrates a legislative intent to authorize hazardous materials transportation fees so long as those fees meet the criteria of that section. Likewise, 49 App. U.S.C. 1819 addresses the uniformity of State motor carrier

registration forms and procedures. However, neither the HMTA registration provisions being implemented by this regulation nor this regulation itself provides any basis for preemption of State, local government or Indian tribal requirements relating to hazardous materials transportation.

#### 10. Motor Carrier Permitting Requirement

Several commenters recommended that RSPA clarify the relationship between registration and motor carrier permitting and emphasize that RSPA's registration rule does not preempt or restrict a State's ability to register or permit motor carriers. The major purposes of this registration program are threefold: (1) To identify and provide information on the activities and locations of certain persons engaged in the transportation of hazardous materials; (2) to encourage compliance with the HMR; and (3) to provide a mechanism for funding certain hazardous materials safety activities. The program is not intended to deny a person the right to engage in any of the activities covered by the registration program. On the other hand, a permitting or licensing program is primarily intended to establish criteria which certain offerors and carriers of hazardous materials must meet in order to operate. As discussed previously, the registration program has no preemptive effect on a State's ability to develop or implement a hazardous materials registration program. The potential burdens and problems of duplicative or inconsistent State and local registration programs are being addressed by a working group created under 49 App. U.S.C. 1819.

As discussed in the Notice, the HMTA requires motor carriers to obtain a safety permit if they carry certain hazardous materials. Carriage of these materials also may make them subject to registration requirements, which apply to all modes of transportation. In addition, carriers must comply with all applicable Federal motor carrier safety regulations and minimum Federal financial responsibility laws. The preemptive effect of the requirement for motor carriers transporting hazardous materials to obtain a safety permit from DOT under 49 App. U.S.C. 1805(d), has not yet been determined.

#### IV. General Registration Procedures—Section 107.608

##### A. Registration Statement

The HMTA specifically requires the submission of a registration statement from persons required to register, and

also requires that the statement include, at a minimum, the registrant's name and principal place of business, a description of each activity the registrant carries out for which filing of a registration statement is required, and the State or States in which the registrant carries out each such activity. RSPA has decided to collect additional information only as necessary for administrative purposes (e.g., certain existing identification numbers, and information relating to fee payment).

Several commenters urged RSPA to allow persons subject to the registration program an adequate period of time (to gather information, and prepare and file their registration statements) between the publication of the final rule and the beginning of the registration year. For the first year, RSPA is setting August 31, 1992, as the initial registration deadline, and September 15, 1992, as the date after which no person required to register may offer or transport hazardous materials unless such person has a current Certificate of Registration. In subsequent years, the registration year will begin on July 1 and end June 30 of the following year. Any person who at any time during the registration year engages in one or more of the activities subject to the registration program must file a registration statement with RSPA and pay the registration fee before engaging in any of those activities. Persons who expect to engage in any of the activities subject to the registration requirement are encouraged to register as soon as possible, since the time involved in obtaining a certificate validating the registration statement possibly could entail more than several days. RSPA realizes that many of the activities subject to the registration requirement may be conducted on an infrequent basis throughout the year, or involve delivery schedules that may have been contracted for months in advance. However, under this regulation, persons who violate the registration requirement after September 15, 1992, will be subject to civil and criminal penalties, and their shipments could be frustrated or temporarily delayed. Similarly, persons who submit incomplete or inaccurate registration statements may be subject to civil and criminal penalties.

Many commenters claimed that the proposal to renew registration annually is an unnecessary burden and would generate substantial paperwork with no comparable benefit. They further stated that activities do not change significantly in a year, and registration renewal should be required less

frequently and only if a person changes activities.

RSPA is retaining the annual filing requirement. In addition, RSPA has not implemented the suggestion that registrants be allowed to file for multiple years and pay a correspondingly larger fee. As pointed out in the Notice, the registration statement cannot be filed or renewed less frequently than once every year without severely impairing the efficiency and effectiveness of the registration program, and the integrity of the information collected under this program. The HMTA requires that an annual registration fee be paid by all persons subject to the registration program. Further, in order to identify the registrant, a document accompanying a check or money order or supplying credit card information is absolutely necessary. In addition, the registration statement provides a means for a person to annually update the information on the States within which it is carrying out activities subject to the registration program.

RSPA acknowledges the point made by several commenters that a complete and accurate listing of States in which a registrant engaged in certain activities may be difficult, especially in the case of air and merchant vessel operators. However, the use of airspace and waterways for the transportation of hazardous materials creates an increased need for emergency planning and response, the development of which is a primary objective of the registration and fee collection program. Registrants transporting hazardous materials by air or merchant vessel should, at a minimum, indicate all States in which loading and unloading operations were conducted, and also should make a good faith effort to indicate those States whose airspace or waterways were traversed.

In response to comments and on its own initiative, RSPA has simplified and clarified the proposed registration statement to the following extent: (1) The categories "Importer" and "Freight Forwarder" have been removed from the Prior-Year Survey Information. (2) A State group category, "48 Contiguous States," has been added to the lists of States for the convenience of registrants having widespread operations (marking this group designation will indicate that the registrant actually engaged in the activity in all 48 contiguous States). To indicate that activity was also conducted in Alaska, American Samoa, the District of Columbia, Guam, Hawaii, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, the appropriate abbreviation(s) must also be

circled. (3) The proposed category F (referring to the manufacturing, fabricating, or marking of a UN or DOT specification or DOT exemption packaging) has been removed. (4) The registrant's certification has been revised to indicate that the information is true, accurate, and complete to the best of the certifier's knowledge. (5) Some minor changes in the language of the statement have been made in order to provide clearer directions or to more accurately reflect the statutory or regulatory language. The registration statement is provided as Attachment #1 to this final rule. This form may be reproduced and used to register.

#### *B. Availability of Registration Statements*

Additional copies of the registration statement and a set of instructions to assist in completing the statement may be obtained by calling the Hazardous Materials Registration Program at 202-366-4109 or the Hazardous Materials Registration Support Center at 617-494-2545, or by writing to the Hazardous Materials Registration Program, DHM-60, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Although RSPA will make extensive efforts to distribute the registration statement, it is the responsibility of persons engaged in any of the activities requiring registration to obtain, complete, and submit the statement in a timely manner.

#### *C. Use of Electronic Data Information Systems and Methods of Payment*

Although RSPA intends to use a computer database to manage the information collected in the registration program, suggestions made by commenters that registrants be permitted to register through electronic transfer of the registration statement information or by electronic transfer of payment have not been adopted by RSPA at this time. Electronic transmittal of information and electronic transmittal of funds were considered by RSPA during the initial planning stages for internal program procedures. In order to keep the registration process as simple and consistent as possible, such methodologies have not been integrated into the management system. The use of electronic information submission and fund transfer may be reconsidered in the future.

#### *D. Availability of Data to State and Local Governments*

A number of commenters questioned whether the information collected from

the registration statements would be made available to State and local governments. RSPA intends to make the data available to Federal, State and local government agencies in accordance with its general policy of sharing information with hazardous materials safety regulatory and enforcement personnel. As specified in 49 App. U.S.C. 1805, a registration statement will be made available for inspection by any person, for a fee to be established by the Secretary, except that any information protected by law from disclosure to the public may not be released. Inquiries about the availability of information may be directed to the Hazardous Materials Registration Support Center at 617-494-2545 or the Hazardous Materials Registration Program at 202-366-4109.

#### *E. Proof of Submission and Amendments*

Several commenters were concerned about the § 107.608(b) proposal that registrants must have on file a current annual registration statement before conducting any activity subject to registration requirements. One commenter recommended that RSPA reconsider this requirement, citing the potential difficulties faced by many U.S. air carriers on a "stand-by" arrangement with the Department of Defense to provide supplemental airlift in the event of a declared national emergency. Several commenters also objected to the proposed requirement that registrants furnish an amended registration statement and receive an amended Certificate of Registration in advance of engaging in any new activity subject to the registration program.

First § 107.608(b) is closely patterned on the statutory language of 49 App. U.S.C. 1805, which states that no person subject to the registration requirement may engage in any activity for which registration is required, unless that person has on file a registration statement.

Second, the expedited registration provisions address the concerns of those who, for whatever reason, may wish to be registered in an expedited manner. Applicants unable to register through the regular process will have the option of registering through an expedited process if they are willing to pay an additional \$50 processing fee (see discussion below). Third, in § 107.608(c), RSPA has retained only one requirement concerning the need for registrants to amend their registration statements during the registration year. Because there is no longer a connection between the number of activities conducted and the amount of the registration fee, there



is no need to amend the statement when a new activity is conducted by a registrant. Registrants must file an amended registration statement only when there has been a change of name or principal place of business during the registration year.

#### *F. Designation of Resident Agent by Foreign Entities*

Several commenters suggested various alternative procedures on how foreign offerors and carriers could be registered and how best to enforce the registration requirements. However, RSPA is retaining the requirement as proposed in the Notice that a person who is not a resident of the United States and who is subject to the registration requirements must designate an agent for service of process who is a resident of the United States. The designated U.S. agent is required to file (or ensure filing of) the registration statement and pay (or ensure payment of) the fee for, and on behalf of, the non-U.S. resident. The agent also is required to maintain records required by this rule.

#### **V. Fee Schedule—Section 107.612**

This section has been greatly simplified. As revised, persons subject to the registration program must pay an annual registration fee of \$300. This fee represents a combination of the minimum \$250 fee required by the HMTA plus a processing fee of \$50. All registrants, regardless of size, income, or hazardous materials activities, must pay the same registration fee.

After a careful analysis of the many diverse comments on this subject, RSPA has considered all appropriate factors and decided to charge an annual minimum flat fee for several reasons. It is the most simple and straightforward fee schedule possible. It will be easily understood by the regulated parties. It is easily administered and enforceable. It minimizes paperwork burdens on industry and the government and any unintended competitive impacts or undesirable market entry constraints on domestic and international commerce. And, because it is the minimum registration fee possible under the HMTA, it provides the maximum relief possible for small businesses. Under these circumstances, a registration fee of \$300 (including a \$50 processing fee) strikes a practical balance between equity considerations and the virtue of regulatory simplicity.

The collection of a processing fee is authorized under the HMTA in order to cover the costs of the Department of Transportation in processing the registration statements. This authority is

distinct from that relating to the collection of fees to fund the Public Sector Training and Planning Programs. Although several commenters thought that the proposed processing fee of \$50 was excessive, other commenters considered the proposed fee reasonable, at least for the start-up year. RSPA had determined that a \$50 processing fee collected from the estimated minimum number of registrants is necessary to ensure that sufficient funds are collected to cover the costs of processing the registration statements. The amount of this fee may be adjusted in succeeding years based on the number of registrants.

#### **VI. Payment Procedures and Expedited Registration—Section 107.616**

In response to several comments, and in recognition that there may be special circumstances in which a person will need to register within a short period of time, RSPA is adopting an expedited method for registration and fee payment that will immediately provide, for \$300 plus an additional \$50 fee, a temporary registration number via telephone, if the registrant furnishes credit card information, name, and address. RSPA will assign the registrant a Temporary Registration Number, which the registrant may immediately use to prove compliance with the registration requirement and which will remain effective for 45 days from the date of issuance. A letter containing the Temporary Registration Number, accompanied by a blank copy of the registration statement, will be sent by RSPA to the registrant to prove compliance and payment after the credit card payment is verified. The registrant must complete the registration statement within 30 days and submit it with a copy of the letter as proof of payment to RSPA. RSPA then will issue a regular Certificate of Registration with a new Registration Number. This service will be continuously available through the Hazardous Materials Registration Support Center at 800-942-6990 or 617-494-2545. The expedited registration process is being offered to accommodate registrants with a clear and immediate need to register, and is not intended to be the normal means of registration. RSPA may limit, or alter the procedures related to, the provision of this service. Registrants who opt to use this service should note that failure to comply with the instructions issued relating to expedited registration will result in a significant delay in processing the request.

#### **VII. Recordkeeping Requirements—Section 107.620**

##### *A. Issuance of a Certificate of Registration*

Although several commenters opposed issuance of a Certificate of Registration, RSPA maintains that the issuance of such a document as a means of confirming registration and of notifying the registration and of notifying the registrant of the assigned Registration Number serves a useful and necessary function. A Certificate will not be issued until all registration requirements have been met, including the submission of a completed registration statement and payment of the required fees in full. As noted elsewhere, failure to comply with any requirement or instruction relating to the registration process will result in delays in the issuance of a Certificate. RSPA will endeavor to provide a Certificate within a reasonable time after receipt of a registration statement and payment in full. Inquiries related to the receipt of a registration statement or the issuance of a Certificate of Registration should be directed to the Hazardous Materials Registration Support Center at 617-494-2545.

##### *B. Maintaining Proof of Registration*

Practical concerns were raised by commenters to RSPA's proposals that a copy of the registration certificate issued by RSPA be carried on board transport equipment and also be maintained at each fixed site where a registrant engages in activities subject to registration requirements. One commenter stated that these requirements are the most burdensome aspect of the registration proposal because they could create errors, waste enforcement resources, and generate volumes of paper. Another commenter stated that duplicate documentation on board transport equipment and at fixed sites was contrary to RSPA's goal of a simplified system. Other commenters suggested that RSPA should assign a unique registration number to each registrant which could be affixed to a truck in the form of a decal or entered on shipping papers. The National Transportation Safety Board (NTSB) stated that such a system could facilitate Federal, State and local government compliance and enforcement efforts, especially for persons having a history of noncompliance.

RSPA has revised § 107.620 to require that a copy of the registration certificate be maintained only at a registrant's principal place of business. In addition,

motor carriers subject to the registration requirements either: (1) Must carry a copy of their Certificate of Registration on board all transport vehicles used to transport hazardous materials subject to the registration program; or (2) must display the carrier's unique registration number on any document in the motor vehicle that can be made available, upon request, to enforcement personnel.

A few commenters interpreted the requirement for carriers to have a Certificate of Registration on board transport equipment to mean that an offeror must provide a carrier with a copy of the offeror's certificate of registration when offering a shipment within the scope of the registration requirements. This is not the case.

Another commenter thought that copies of checks, money orders, or credit card billings must be maintained at each location. This also is not the case; in fact, this requirement applies only to the principal place of business.

#### VIII. Summary

In this final rule, RSPA is imposing registration and fees on persons engaged in offering or transporting certain hazardous materials. RSPA is not adopting the proposed requirement to require registration of persons who manufacture, fabricate, mark, retest, or recondition UN or DOT specification or DOT exemption packaging. In addition, owner-operators of motor vehicles under a 30-day or longer lease to registered motor carriers are excepted from the registration requirements. Certain foreign carriers are required to register by the initial deadline of August 31, 1992, but a two-year delay of application is provided to foreign offerors, including foreign subsidiaries of domestic corporations and foreign governments performing an offeror function. Finally, RSPA is retaining the proposed requirement that each independently incorporated subsidiary must register and pay a fee separate from its parent company.

An August 31, 1992 filing deadline has been set for initial registration. In subsequent years, registrants will be required to submit their registration renewals and appropriate fees by June 30. Registrants are required to pay an annual fee of \$300 (including a \$50 processing fee). RSPA is adopting an expedited registration and fee payment system to provide an immediate, temporary registration. A registrant utilizing the expedited registration system will pay an additional fee of \$50, for a total fee of \$350.

The registration statement has been modified to provide registrants with an optional "48 Contiguous States"

category, and the certification language appearing on the proposed registration statement has been rewritten to provide greater flexibility to the person signing the statement. The proposed requirement for registrants to maintain a copy of the certificate of registration at all fixed sites has been withdrawn. However, each registrant must maintain a copy of the certificate at its principal place of business. In addition, motor carriers must maintain a copy of the certificate on board each transport vehicle transporting hazardous material subject to registration requirements or annotate the registration number on a document readily available for inspection, upon request, by enforcement personnel.

The following is a section-by-section review of this final rule:

#### *Part 107: Hazardous Materials Program Procedures*

A new Subpart G, "Registration of Hazardous Materials Offerors and Carriers" is added to part 107.

*Section 107.601* describes the applicability of the registration and fee collection regulations. The requirements apply to offerors and carriers whose hazardous materials transportation activities involve certain specific types or quantities of hazardous materials in foreign, intrastate or interstate commerce. Under 49 App. U.S.C. 1805, RSPA interprets "transport container" to mean "freight container". Therefore, when more than 25 kg of a Division 1.1, 1.2, or 1.3 material is transported in a freight container in any mode, it is subject to the registration requirements.

RSPA has revised paragraph (e) to mirror the provisions of the HMTA which mandate registration for a shipment of 2,170 kg (5,000 pounds) or more of a class of a hazardous material or hazardous materials. The phrase "of a class" was inadvertently omitted in the Notice. Also, application of paragraph (e) has been delayed until July 1, 1993, for shipments in a bulk packaging, container, or tank.

The proposed inclusion of persons who manufacture, fabricate, mark, retest or recondition a UN or DOT specification or DOT exemption packaging has not been adopted, but RSPA may reconsider this issue in the future.

*Section 107.606* provides exceptions from the requirements. The registration and fee assessment requirements would not apply to Federal agencies, State agencies, political subdivisions of States, employees of those agencies, or hazmat employees (including owner-operators under a 30-day or longer lease to a registered motor carrier). In

addition, in paragraph (f), foreign offerors, including foreign subsidiaries of U.S. corporations, would be excepted from all registration requirements until June 30, 1994.

*Section 107.608* outlines general registration requirements. Paragraph (a) indicates the annual deadline for submitting registration statements. Paragraph (b) prohibits a person required to file a registration statement from engaging in any hazardous materials transportation activities for which a registration statement is required unless that person has complied with all applicable registration requirements. Paragraph (c) requires submission of an amendment if a change in the registrant's name or place of business occurs during the registration year. Paragraph (d) provides an address for obtaining copies of the registration statement form. Paragraph (e) requires foreign entities subject to the registration requirements to use a designated agent.

*Section 107.612* adopts a flat fee of \$300 (including a \$50 processing fee) to be imposed on each person required to register.

*Section 107.616* prescribes payment procedures. Paragraphs (a) through (c) outline the procedures to be followed when submitting the registration statement and payment. A new paragraph (d) is added to summarize the procedures for expedited registration.

*Section 107.620* outlines recordkeeping requirements. The proposed requirement to maintain a copy of the certificate at all fixed sites is not adopted. The requirement to maintain a copy of the registration statement and the Certificate of Registration at a person's principal place of business has been retained in paragraph (a) and applies to all registrants. As provided in redesignated paragraph (b), motor carriers would also be required to maintain a copy of the Certificate of Registration on board transport vehicles or annotate their registration number on any document in the vehicle readily available to enforcement personnel. Redesignated paragraph (c) requires registrants to provide any relevant records and information requested by DOT.

#### *Part 171: General Information, Regulations and Definitions*

*Section 171.2*. Paragraphs (a) and (b) are revised to mandate compliance with Subpart G of Part 107, as proposed in the Notice.

**IX. Regulatory Analyses****A. Executive Order 12291 and DOT Regulatory Policies and Procedures**

These regulations have been evaluated in accordance with existing regulatory policies and are considered to be non-major under Executive Order 12291. The regulations are considered to be significant under section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures ("the Procedures") (44 FR 11034; February 26, 1979) because they implement a substantial regulatory program or change in policy. In accordance with section 10(e) of the Procedures, RSPA has determined that a Regulatory Impact Analysis is not required because the regulations do not meet any of the criteria mandating the preparation of such an analysis. As a result, in accordance with section 10(e), RSPA has prepared a Regulatory Evaluation which includes an analysis of the economic consequences of the regulation and an analysis of its anticipated benefits and impacts. The Regulatory Evaluation is available for review in the Dockets Unit.

**B. Regulatory Flexibility Act**

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Under 49 App. U.S.C. 1815, the amount of the annual fee which may be collected from a person required to register with RSPA may not be less than \$250 and may not exceed \$5,000. Because of the required minimum fee of \$250, RSPA's ability to treat small entities differently is restricted. RSPA expects that the impact of a \$300 fee (including a \$50 processing fee) on small business entities will be minimal, and without significant economic consequences. The rule will have no direct impact on small units of government.

**C. Executive Order 12612**

The rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). As noted above, States and local governments are "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, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

**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 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.

**F. National Environmental Policy Act**

RSPA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impacts of RSPA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, executive orders, and DOT Order 5610.1c. These regulations meet the criteria that establish this as a non-major action for environmental purposes.

**List of Subjects****49 CFR Part 107**

Administrative practice and procedure, Hazardous materials transportation, 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 are amended as follows:

**PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES**

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1802, 1804, 1806, 1808-1811; Public Law 89-670, 80 Stat. 933 (49 App. U.S.C. 1653(d), 1655); 49 CFR 1.45 and 1.53 and app. A of 49 CFR part 1.

2. Subpart G is added to part 107 to read as follows:

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

Sec.

- 107.601 Applicability.
- 107.606 Exceptions.
- 107.608 General registration requirements.
- 107.612 Amount of fee.
- 107.616 Payment procedures.
- 107.620 Recordkeeping requirements.

**Subpart G—Registration of Persons Who Offer or Transport Hazardous Materials****§ 107.601 Applicability.**

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

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

(b) 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;

(c) More than one L (1.06 quarts) per package of a material extremely toxic by inhalation (Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A) (see §§ 173.115 and 173.132 of this chapter);

(d) A hazardous material in a bulk packaging, container, or tank having a capacity equal to or greater than 13,248 L (3,500 gallons) or more than 13.24 cubic meters (468 cubic feet); or

(e) A shipment of 2,170 kg (5,000 pounds) gross weight or more of a class of a hazardous material(s) for which placarding of a vehicle, rail car, or freight container is required. Prior to July 1, 1993, this provision does not apply to a hazardous material in a bulk packaging, container, or tank. For applicability of this subpart, the term "shipment" is further limited to the hazardous material being loaded at one loading facility.

**§ 107.606 Exceptions.**

The following are excepted from the requirements of this subpart:

- (a) An agency of the Federal Government;
- (b) A State agency;
- (c) An agency of a political subdivision of a State;
- (d) An employee of any of those agencies in paragraphs (a), (b), and (c) of this section with respect to is or her official duties;

(e) A hazmat employee (including, for purposes of this subpart, the owner-operator of a motor vehicle which transports in commerce hazardous materials if that vehicle, at the time of those activities, is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR part 1057 or an equivalent contractual relationship);

(f) Until July 1, 1994, a person domiciled outside the United States who offers, solely from locations outside the United States, hazardous materials for transportation in commerce. This exception includes a foreign subsidiary of a United States corporation.

#### **§ 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 not later than—

(1) August 31, 1992, or in time to comply with paragraph (b) of this section, whichever is later, on DOT Form F 5800.2; and

(2) June 30 for each subsequent registration year, or in time to comply with paragraph (b) of this section, whichever is later, on DOT Form F 5800.2.

(b) After September 15, 1992, no person required to file a registration statement may transport or cause to be transported or shipped hazardous materials, unless such person has on file, in accordance with § 107.620, a current annual Certificate of Registration in accordance with the requirements of this subpart.

(c) A registrant whose name or principal place of business has changed during the year of registration must notify RSPA of that change by submitting an amended registration statement not later than 30 days after the change.

(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 or by calling 617-494-2545 or 202-366-4109.

(e) If the registrant is not a resident of the United States, the registrant must attach to the registration statement the name and address of a permanent resident of the United States, designated in accordance with § 107.7, to serve as agent for service of process.

#### **§ 107.612 Amount of fee.**

Each person subject to the requirements of this subpart must pay

an annual fee of \$300 (which includes a \$50 processing fee).

#### **§ 107.616 Payment procedures.**

(a) Except as provided in paragraph (d) of this section, each person subject to the requirements of this subpart must mail the registration statement and payment in full to the U.S. Department of Transportation, Hazardous Materials Registration, P.O. Box 740188, Atlanta, Georgia 30374-0188. A registrant required to file an amended registration statement under § 107.608(c) must mail it to the same address.

(b) Payment must be made by certified check, cashier's check, or money order in U.S. funds and drawn on a U.S. bank, payable to the U.S. Department of Transportation and identified as payment for the "Hazmat Registration Fee" or by a VISA or MasterCard credit card authorization completed and signed on the registration statement.

(c) Payment must correspond to the annual fee indicated in § 107.612.

(d) A person may obtain a temporary registration number, valid for 45 days from the date of issuance, through an expedited registration process as follows:

(1) Contact RSPA by telephone (800-942-6990 or 617-494-2545) and provide name, principal place of business, and credit card payment information;

(2) Pay a \$350 registration and processing fee (including a \$50 expedited handling fee); and

(3) Submit a completed registration statement and proof of payment to RSPA before the expiration date of the temporary registration number.

#### **§ 107.620 Recordkeeping requirements.**

(a) Each person subject to the requirements of this subpart, or its agent designated under § 107.608(e), must maintain at its principal place of business for a period of three years from the date of issuance of each Certificate of Registration:

(1) A copy of the registration statement filed with RSPA;

(2) A copy of the certified or cashier's check, money order, or a copy of the credit card billing statement showing payment for the person's registration and processing fee; and

(3) The Certificate of Registration issued to the registrant by RSPA.

(b) In addition to the requirements of paragraph (a) of this section, each motor carrier subject to the requirements of this subpart must 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 all transport vehicles used to transport hazardous materials or shipments of hazardous materials subject to the requirements of this subpart. The Certificate of Registration or document bearing the registration number must be made available, upon request, to enforcement personnel.

(c) Each person subject to this subpart must furnish its Certificate of Registration (or a copy thereof) and all other records and information pertaining to the information contained in the registration statement to an authorized representative or special agent of DOT upon request.

### **PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

4. The authority citation for part 171 continues to read as follows:

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

5. In § 171.2, paragraphs (a) and (b) are revised to read as follows:

#### **§ 171.2 General requirements.**

(a) No person may offer or accept a hazardous material for transportation in commerce unless that person complies with subpart G of part 107 of this chapter, and the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by this subchapter (including §§ 171.11, 171.12, and 176.11).

(b) No person may transport a hazardous material for transportation in commerce unless that person complies with subpart G of part 107 of this chapter, and the hazardous material is handled and transported in accordance with this subchapter, or an exemption issued under subpart B of part 107 of this chapter.

\* \* \* \* \*

Issued in Washington, DC, on July 6, 1992, under the authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

Note: This is an appendix to the preamble of the document and will not appear in the Code of the Federal Regulations.

### **Appendix to Preamble—Registration Statement Form**

BILLING CODE 4910-60-M





- \_\_\_ B. Offered or transported in commerce 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.

\_\_\_ 1. Shipper \_\_\_ 2. Carrier

AL AR AZ CA CO CT DE FL GA ID IL IN IA KS KY LA MA MD ME MI MN  
MO MS MT NC ND NE NH NJ NM NV NY OH OK OR PA RI SC SD TN TX UT  
VT VA WA WV WI WY 48 CONTIGUOUS STATES AK AS DC GU HI MP PR VI

- \_\_\_ C. Offered or transported in commerce more than 1 liter (1.06 quarts) per package of a material extremely toxic by inhalation (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A).

\_\_\_ 1. Shipper \_\_\_ 2. Carrier

AL AR AZ CA CO CT DE FL GA ID IL IN IA KS KY LA MA MD ME MI MN  
MO MS MT NC ND NE NH NJ NM NV NY OH OK OR PA RI SC SD TN TX UT  
VT VA WA WV WI WY 48 CONTIGUOUS STATES AK AS DC GU HI MP PR VI

- \_\_\_ D. Offered or transported in commerce a hazardous material in a bulk packaging, container, or tank having a capacity equal to or greater than 13,248 liters (3,500 gallons) or more than 13.24 cubic meters (468 cubic feet).

\_\_\_ 1. Shipper \_\_\_ 2. Carrier

AL AR AZ CA CO CT DE FL GA ID IL IN IA KS KY LA MA MD ME MI MN  
MO MS MT NC ND NE NH NJ NM NV NY OH OK OR PA RI SC SD TN TX UT  
VT VA WA WV WI WY 48 CONTIGUOUS STATES AK AS DC GU HI MP PR VI

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

\_\_\_ 1. Shipper \_\_\_ 2. Carrier

AL AR AZ CA CO CT DE FL GA ID IL IN IA KS KY LA MA MD ME MI MN  
MO MS MT NC ND NE NH NJ NM NV NY OH OK OR PA RI SC SD TN TX UT  
VT VA WA WV WI WY 48 CONTIGUOUS STATES AK AS DC GU HI MP PR VI

- \_\_\_ F. Did not engage in any of the activities listed in A through E during the applicable calendar year.

#### TWO-LETTER STATE ABBREVIATIONS

Alabama	AL	Georgia	GA	Maryland	MD	New York	NY	South Dakota	SD
Alaska	AK	Guam	GU	Massachusetts	MA	North Carolina	NC	Tennessee	TN
American Samoa	AS	Hawaii	HI	Michigan	MI	North Dakota	ND	Texas	TX
Arizona	AZ	Idaho	ID	Minnesota	MN	N. Mariana Is.	MP	Utah	UT
Arkansas	AR	Illinois	IL	Mississippi	MS	Ohio	OH	Vermont	VT
California	CA	Indiana	IN	Missouri	MO	Oklahoma	OK	Virgin Islands	VI
Colorado	CO	Iowa	IA	Montana	MT	Oregon	OR	Virginia	VA
Connecticut	CT	Kansas	KS	Nebraska	NE	Pennsylvania	PA	Washington	WA
Delaware	DE	Kentucky	KY	Nevada	NV	Puerto Rico	PR	West Virginia	WV
Dist. Columbia	DC	Louisiana	LA	New Hampshire	NH	Rhode Island	RI	Wisconsin	WI
Florida	FL	Maine	ME	New Jersey	NJ	South Carolina	SC	Wyoming	WY
				New Mexico	NM				

6. Certification of Information. I certify that, to the best of my knowledge, the above information is true, accurate, and complete.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_

Title \_\_\_\_\_

FALSE STATEMENTS MAY VIOLATE 18 U.S.C. 1001.

Mail completed form to:  
U.S. Department of Transportation  
Hazardous Materials Registration  
P.O. Box 740188  
Atlanta, GA 30374-0188