

39. For plans that offer lifetime annuities or similar lifetime income products, what percentage of eligible workers elect to annuitize at least some of their retirement assets and what percentage elect to annuitize all of their assets?

Signed at Washington, DC, this 27th day of January 2010.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

Signed at Washington, DC, this 27th day of January 2010.

**Nancy J. Marks,**

*Division Counsel/Associate Chief Counsel, Tax Exempt and Government Entities, Internal Revenue Service, Department of the Treasury.*

Signed at Washington, DC, this 26th day of January 2010.

**J. Mark Iwry,**

*Senior Advisor to the Secretary, Deputy Assistant Secretary for Retirement and Health Benefits, Department of the Treasury.*

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**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 107

[Docket No. PHMSA-2009-0201 (HM-208H)]

RIN 2137-AE47

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

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** PHMSA is proposing to adjust the statutorily-mandated registration and fee assessment program for persons who transport, or offer for transportation, certain categories and quantities of hazardous materials. PHMSA's proposal would provide that, for registration years beginning in 2010-2011, the annual fee to be paid by those registrants not qualifying as a small business or not-for-profit organization would increase from \$975 (plus a \$25 administrative fee) to \$2,975 (plus a \$25 administrative fee). The proposed fee increase is necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at its authorized level of approximately \$28,000,000.

**DATES:** Submit comments by March 4, 2010.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number PHMSA-2009-0201 by any of the following methods:

- *Fax:* 202-493-2251.

- *Mail:* Dockets Management System; U.S. Department of Transportation, Dockets Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

- *Hand Delivery:* U.S. Department of Transportation, Dockets Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* Include the agency name and docket number PHMSA-2009-0201 (HM-208H) or Regulatory Identification Number (RIN) RIN 2137-AE47 for this rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov> including any personal information provided. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

*Docket:* You may review the public docket through the Internet at <http://www.regulations.gov> or in person at the Dockets Operations office at the above address (See **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, PHMSA, (202) 366-4484, and Ms. Deborah Boothe or Mr. Steven Andrews, Office of Hazardous Materials Standards, PHMSA, (202) 366-8553.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Since 1992 PHMSA has conducted a national registration program under the mandate in 49 U.S.C. 5108 for persons who offer for transportation or transport certain hazardous materials in intrastate, interstate, or foreign commerce. The purposes of the registration program are to gather information about the transportation of hazardous materials, and to fund the Hazardous Materials and Emergency Preparedness (HMEP) grants program and additional related activities. See 49 U.S.C. 5108(b), 5116, 5128(b). PHMSA may set the annual registration fee between a minimum of \$250 and maximum of \$3,000. See 49 U.S.C. 5108(a)(2), 5108(g)(2)(A).

Since 2006, the annual registration fee has been set at \$250 (plus a \$25 processing fee) for small businesses and not-for-profit organizations and \$975 (plus a \$25 processing fee) for all other registrants. See 49 CFR 107.612(d). Because PHMSA had accumulated a surplus following a prior adjustment in 2000 (see 65 FR 7297, 7309 [Feb. 14, 2000]), notwithstanding a temporary reduction between 2003 and 2006, since Fiscal Year 2008, we have been able to fully fund the obligation limit of \$28,318,000 in the Consolidated Appropriations Act of 2008 (Pub. L. 110-116 [121 Stat. 1295], November 13, 2007), and the Omnibus Appropriations Act, 2009 (Pub. L. 111-8 [123 Stat. 945], March 11, 2009). However, that surplus has now been reduced to \$1,500,000, and it is necessary to adjust registration fees in order to collect additional monies in the 2010-2011 and following registration years and fully fund the current authorization and expected budget requests of \$28.3 million for Fiscal Years beginning in 2010. This can be done by leaving the annual registration fee at \$250 (plus a \$25 processing fee) for those persons who are a small business or not-for-profit organization and increasing to \$2,975 (plus a \$25 processing fee) the annual fee paid by all other persons required to register.

##### II. HMEP Grants Program

###### A. Purpose and Achievements of the HMEP Grants Program

The HMEP grants program, as mandated by 49 U.S.C. 5116, provides Federal financial and technical assistance to States and Indian tribes to "develop, improve, and carry out emergency plans" within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 *et seq.* The grants are used to: (1) Develop, improve, and implement emergency plans; (2) train public sector hazardous materials emergency response employees to respond to accidents and incidents involving hazardous materials; (3) determine flow patterns of hazardous materials within a state and between states; and (4) determine the need within a state for regional hazardous materials emergency response teams.

The HMEP grants program encourages the growth of the hazardous materials planning and training programs of state, local, and tribal governments by limiting the Federal funding to 80 percent of the cost a state or Indian tribe incurs to carry out the activity for which the grant is made. See 49 U.S.C. 5116(e).

HMEP grants supplement the amount already being provided by the state or Indian tribe. By accepting an HMEP grant, the state or tribe makes a commitment to maintain its previous level of support. *See* 49 U.S.C. 5116(a)(2)(A) and 5116(b)(2)(A).

Since 1993, PHMSA has awarded all states and territories and 45 Native American tribes planning and training grants totaling \$203 million. These grants helped to:

- Train 2,420,000 hazardous materials responders;
- Conduct 9,282 commodity flow studies;
- Write or update more than 55,826 emergency plans;
- Conduct 13,372 emergency response exercises; and
- Assist 25,059 local emergency planning committees (LEPCs) or approximately 1,670 per year.

Since the beginning of the program, HMEP program funds have also supported the following related activities in the total amounts indicated:

- \$3.4 million for the development and periodic updating of a national curriculum used to train public sector emergency response and preparedness teams. The curriculum guidelines, developed by a committee of Federal, state, and local experts, include criteria for establishing training programs for emergency responders at five progressively more skilled levels: (1) First responder awareness, (2) first responder operations, (3) hazardous materials technician, (4) hazardous materials specialist, and (5) on-scene commander.
- \$2.6 million to monitor public sector emergency response planning and training for hazardous materials incidents, and to provide technical assistance to state or Indian tribe emergency response training and planning for hazardous materials incidents.
- \$7.6 million for periodic updating and distribution of the North American Emergency Response Guidebook. This guidebook provides immediate information on initial response to hazardous materials incidents, and is distributed free of charge to the response community.
- \$3.5 million for the International Association of Fire Fighters (IAFF) to train instructors to conduct hazardous materials response training programs.

#### *B. Funding of the HMEP Grants Program*

An estimated 800,000 shipments of hazardous materials make their way through the national transportation system each day. It is impossible to predict when and where a hazardous

materials incident may occur or what the nature of the incident may be. This potential threat requires state and local agencies to develop emergency plans and train emergency responders on the broadest possible scale.

The HMEP training grants are essential for providing adequate training of persons throughout the nation who are responsible for responding to emergencies involving the release of hazardous materials. There are over 2 million emergency responders requiring initial training or periodic recertification training, including 250,000 paid firefighters, 850,000 volunteer firefighters, 725,000 law enforcement officers, and 500,000 emergency medical services (EMS) providers. Due to the high turnover rates of emergency response personnel, there is a continuing need to train a considerable number of recently recruited responders at the most basic level.

In addition, training at more advanced levels is essential to ensure that emergency response personnel are capable of effectively and safely responding to serious releases of hazardous materials. The availability of funding for the HMEP grants program will encourage state, tribal, and local agencies to provide more advanced training.

The funding for HMEP grants will enable PHMSA to help meet previously unmet needs of state, local and tribal governments, and public and private trainers by providing for the following activities authorized by law:

- \$21,800,000 for training and planning grants;
- A new \$4,000,000 grant program for non-profit hazmat employee organizations to train hazmat instructors who will train hazmat employees;
- \$1,000,000 for grants to support certain national organizations to train instructors to conduct hazardous materials response training programs, an increase of \$750,000;
- \$625,000 for revising, publishing, and distributing the North American Emergency Response Guidebook;
- \$188,000 for continuing development of a national training curriculum; and
- \$150,000 for monitoring and technical assistance;
- \$555,000 for administrative support.

#### **III. Summary of Proposal To Fund HMEP**

A registration fee system should: (1) Be simple, straightforward, and easily implemented and enforced; (2) employ an equity factor reflecting the

differences in level of risk to the public and the financial impact associated with the business activities of large and small businesses; and (3) ensure adequate funding for the HMEP grants program. PHMSA considered the following alternatives for maintaining the funds available for the HMEP grants program: (1) To increase the fee for all businesses offering for transportation or transporting the covered hazardous materials, and (2) to maintain the current fee for small businesses and not-for-profit organizations while adjusting the fee for larger businesses.

PHMSA believes adjusting the fee solely for larger, for-profit businesses is the best approach to meet the objectives listed above. Although there are exceptions, small businesses and not-for-profit organizations generally offer for transportation or transport fewer and smaller hazardous materials shipments as compared to larger companies. Raising the registration fee only for other-than-small businesses rather than for all businesses correlates the fee structure to the level of risk associated with shipments offered for transportation and transported by larger companies.

Moreover, increasing the registration fees only for other-than-small businesses will affect significantly fewer entities and will affect entities that can more easily absorb the increase. Presently, PHMSA has received approximately 41,000 registrations for each registration year. Small businesses and not-for-profit organizations make up 83%, or 34,025 of the registrants, while large businesses make up 17%, or 6,975, of the registrants.

Accordingly, PHMSA is proposing to increase the registration fees for persons other than small businesses from \$975 (plus \$25 processing fee) to \$2,975 (plus \$25 processing fee) for registration year 2010–2011 and following, in order to maintain the statutorily mandated goal of funding the HMEP grants program activities at approximately \$28,000,000.

#### **IV. Multi-Year Registrations**

We allow a person to register for up to three years in one registration statement (49 CFR 107.612(c)). PHMSA has received approximately 2,100 advance registrations for the 2010–2011 registration year from other-than-small businesses that have paid the fee previously established for those years. Approximately 1,250 also included advance registrations for the 2011–2012 registration year. PHMSA applies fees according to the fee structure ultimately established by regulation for the registration year rather than according to the fee set at the time of payment.

Thus, if PHMSA adopts the increase in registration fees proposed in this NPRM, additional fees would be required for registrations paid in advance at the lower levels in effect at the time of payment. When PHMSA lowered the fees for all registrants in 2003, PHMSA provided more than 7,100 refunds amounting to over \$2.3 million within the first year to registrants who had overpaid the newly established fees. If PHMSA adopts this proposal, PHMSA will notify each registrant who will be required to pay additional fees for the 2010–2011 and following registration years.

#### V. Prior Year Registration Information

PHMSA proposes to revise § 107.612 to remove information on previous years' registration fees. This information is no longer needed. Information on fees in effect for registration years 1999–2000 to 2009–2010 is available in the registration brochure, previous editions of the CFR, and on the registration Web site (<http://www.phmsa.dot.gov/hazmat/registration>). Note that persons subject to registration requirements must pay the annual registration fee, including the processing fee, in effect for the specific registration year for which the person is submitting registration information.

#### VI. Rulemaking Analyses and Notices

##### A. Statutory/Legal Authority for This Rulemaking

This proposed rule is published under the authority of the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5108 of the Federal hazmat law authorizes the Secretary of Transportation to establish a registration program to collect fees to fund HMEP grants. The HMEP grants program, as mandated by 49 U.S.C. 5116, authorizes Federal financial and technical assistance to states and Indian tribes to “develop, improve, and carry out emergency plans” within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 *et seq.*

The Federal hazmat law makes available funding for the HMEP grants program at approximately \$28,000,000, and directs PHMSA to establish an annual registration fee between a minimum of \$250 and a maximum of \$3,000.

##### B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under

section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget. This proposed rule is considered non-significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The cost to industry of increasing registration fees will be an additional \$14 million per year. The funding for the HMEP grants program will provide essential training of persons throughout the nation who are responsible for responding to emergencies involving the release of hazardous materials. In addition, training at more advanced levels is essential to assure emergency response personnel are capable of effectively and safely responding to serious releases of hazardous materials. The funding for the HMEP grants will enable PHMSA to help meet previously unmet needs of state, local and tribal governments, and public and private trainers by providing funding for activities such as: (1) Planning and training grants for local emergency planning committees; (2) a new program for non profit hazmat employee organizations to train hazmat instructors that will train hazmat employees; (3) support to certain national organizations to train instructors to conduct hazardous materials response training programs; (4) revising, publishing, and distributing the North American Emergency Response Guidebook; (5) continuing development of a national training curriculum; and (6) monitoring and technical assistance.

While the safety benefits resulting from improved emergency response programs are difficult to quantify, PHMSA believes these benefits significantly outweigh the annual cost of funding the grants program. The importance of planning and training cannot be overemphasized. To a great extent, we are a nation of small towns and rural communities served by largely volunteer fire departments. In many instances, communities' response resources already are overextended in their efforts to meet routine emergency response needs. The planning and training programs funded by the HMEP grants program enable state and local emergency responders to respond quickly and appropriately to hazardous materials transportation accidents, thereby mitigating potential loss of life and property and environmental damage. The regulatory evaluation to the final rule issued under Docket HM–208 (57 FR 30620) showed that the benefits to the public and to the industry from the emergency response grant program would at least equal, and

likely exceed, the annual cost of funding the grant program. Based on estimates of annual damages and losses resulting from hazardous materials transportation accidents, the analysis concluded that the HMEP program would be cost-beneficial if it were only 3% effective in reducing either the frequency or severity of the consequences of hazardous materials transportation accidents. Achieving this level of effectiveness is well within the success rates of training and planning programs to reduce errors and increase the proficiency and productivity of response personnel. A regulatory evaluation for this proposed rule is available for review in the public docket.

##### C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (Federalism). There is no preemption of state fees on transporting hazardous materials that meet the conditions of 49 U.S.C. 5125(f). This proposed rule does not propose any regulation having substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

##### D. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Because this proposed rule does not have adverse tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

##### E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. The provisions of this rule apply specifically to businesses not falling within the small entities category. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

#### F. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

#### G. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this proposed rule.

#### H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

#### I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this proposed rule. PHMSA is proposing in this rule changes to the requirements in the Hazardous Materials Regulations on the registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. The proposed increase in registration fees will provide additional funding for the HMEP program to help mitigate the safety and environmental consequences of hazardous materials transportation accidents.

#### J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://www.regulations.gov>.

#### List of Subjects in 49 CFR Part 107

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

In consideration of the foregoing, we propose to amend 49 CFR Part 107 as follows:

#### PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

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

**Authority:** 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

2. Revise § 107.612 to read as follows:

#### § 107.612 Amount of fee.

(a) For the registration year 2010–2011 and subsequent years, each person offering for transportation or transporting in commerce a material listed in § 107.601(a) must pay an annual registration fee, as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 applicable to the North American Industry Classification System (NAICS) code that describes that person's primary commercial activity, must pay an annual registration fee of \$250 and the processing fee required by paragraph (a)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual registration fee of \$250 and the processing fee required by paragraph (a)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (a)(1) or (a)(2) of this section must pay an annual registration fee of \$2,975 and the processing fee required by paragraph (a)(4) of this section.

(4) *Processing fee.* The processing fee is \$25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

(b) For registration years 2009–2010 and prior years, each person offering for transportation or transporting in commerce a material listed in § 107.601(a) must pay the annual registration fee, including the processing fee, in effect for the specific registration year.

Issued in Washington, DC, on January 28, 2010, under authority delegated in 49 CFR part 106.

**Magdy El-Sibaie,**

*Acting Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 2010–2174 Filed 2–1–10; 8:45 am]

**BILLING CODE 4910–60–P**

#### DEPARTMENT OF TRANSPORTATION

#### Surface Transportation Board

#### 49 CFR Part 1244

[STB Ex Parte No. 385 (Sub-No. 7)]

#### Waybill Data Reporting for Toxic Inhalation Hazards

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board proposes to amend its rules with respect to Waybill Sample information railroads are required to submit to the Board. Currently, railroads that are required to file Waybill Sample information report a random sample of as little as 1% of carloads on a waybill. The proposed amendment, set forth below, would expand the carload Waybill Sample information submitted to include all traffic movements designated as a TIH (Toxic Inhalation Hazard). The revised reporting would commence with the January 2011 Waybill Sample collection.

**DATES:** Comments on this proposal are due by March 4, 2010. Replies are due by April 5, 2010.

**ADDRESSES:** Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 385 (Sub-No. 7), 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments received by the Board will be posted to the Board's Web site at <http://www.stb.dot.gov> and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Paul Aguiar, (202) 245–0323. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** A carload waybill is a document describing the