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Via: <http://www.regulations.gov>

Re: Registration and Fee Assessment Program – PHMSA-2009-0201 (HM-208H)

The American Trucking Associations, Inc.¹ (“ATA”) is writing to comment on the Pipeline and Hazardous Materials Safety Administration’s (“PHMSA”) notice of proposed rulemaking amending the fee assessment for persons who transport hazardous materials (hereinafter the “Proposed Rule” or “NPRM”).² As the national representative of the trucking industry, ATA is interested in matters affecting the transportation of hazardous materials, including modifications to the regulatory fees assessed on hazardous materials transporters and shippers.

The Proposed Rule would increase the annual registration fees from \$1,000 to \$3,000 for those registrants that do not qualify as a small business or not-for-profit organizations, while maintaining the existing registration fees for all other registrants. PHMSA proposed and subsequently withdrew a similar increase in registration fees in 2008.³ ATA submitted detailed comments in response to that proposal. Unfortunately, almost two years later, PHMSA has not addressed the issues raised in ATA’s original comments to HM-208G.⁴

¹ ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

² See 75 *Federal Register* 5258 (February 2, 2010).

³ See 73 *Federal Register* 24519 (May 5, 2008) (“HM-208G”).

⁴ ATA’s comments to HM-208G were filed on July 14, 2008, and assigned Document ID: PHMSA-2008-0010-0007.1 and may be viewed through the following link:
<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480673aa2>

The NPRM makes no reference to the inequitable apportionment of the fee increase, PHMSA's efforts to ensure that the registration requirement is enforced, or the potential elimination of existing registration exemptions. Finally, the NPRM does not discuss or address the need to examine and revise the purposes for which grant monies are distributed. We address each of these issues in more detail below.

A. Inequitable Allocation of Program Expenses

Under SAFETEA-LU, Congress chose to double the maximum amount of the Hazardous Materials Emergency Preparedness (HMEP) grant program from \$14 million to \$28 million. This 100% increase in the HMEP grant program size creates a funding deficiency and requires an increase in the hazardous materials registration fees used to support the program. In response to this funding shortfall, PHMSA proposes to maintain the original fees for small businesses and non-profit organizations at \$300 (\$275 plus a \$25 administrative processing fee), while raising the fees of other businesses to the statutory maximum of \$3,000 (\$2,975 plus a \$25 administrative processing fee). This is an inequitable means of allocating the increased financial burden under this program

ATA agrees with PHMSA that the registration fee system should be easily administered, employ an equity factor reflecting the differences in level of risk to the public, and ensure adequate funding for the HMEP grants program. The Proposed Rule, however, does not provide the data necessary to reach the conclusion that large businesses should bear the entire financial burden of the increased size of the HMEP grants program. The preamble to the NPRM states that "small businesses and not-for-profit organizations generally offer . . . smaller hazardous materials shipments as compared to larger companies."⁵ This statement, however, is unsubstantiated and is contrary to PHMSA's overarching objective of being a data-driven regulatory agency.

The original HMEP grants program allocated the burden of the program between large companies and small companies. The 100% increase in the size of the program should similarly be allocated (perhaps using the current 3.3 to 1 ratio). Absent actual data showing that that larger transportation companies are consuming a disproportionate amount of local emergency responder resources, the HMEP increase should be apportioned equitably over all program registrants.

The Proposed Rule states that "increasing the registration fees only for other-than-small businesses will affect significantly fewer entities."⁶ This is a true statement; however, the NPRM also states that increasing the registration fees only for other-than-

⁵ 75 *Federal Register* at 5259/3.

⁶ *Id.*

small businesses “will affect entities that can more easily absorb the increase.”⁷ This is not true, especially during the current economic climate where some of the largest motor carriers are suffering staggering losses and are struggling to survive.

PHMSA should also revisit some of the exceptions to the registration requirements. ATA previously commented that PHMSA should consider eliminating the exemption for a farmer’s transportation of placarded materials that are in direct support of the farmer’s farming operations.⁸ Unfortunately, the preamble to the Proposed Rule does not mention this alternative. In evaluating an equitable means of apportioning the increased funding, PHMSA should revisit the farmer exception for the following reasons: (1) there is a safety and security benefit to identifying all entities that offer or transport hazardous materials; (2) responding to an incident involving the transportation of farm chemicals such as anhydrous ammonia, ammonium nitrate, and pesticides necessitates special training; and (3) these chemicals are ubiquitous in rural areas, which are precisely the areas where emergency responders have limited training resources. For these reasons, PHMSA should extend the registration requirements, and some portion of the funding burden, to farmers that transport hazardous materials.

B. Enforcement of the Registration Requirements

With approximately 41,000 registrants in the program, it appears that a significant number of obligated parties do not comply with the Part 107 registration requirements. While there is no way to determine the exact number of obligated parties that have failed to register, PHMSA does not devote adequate resources to the promotion of the regulatory requirement to register and the enforcement of its registration requirements. For example, written incident reports required pursuant to 49 CFR § 171.16 require respondents to provide their Hazmat Registration Number when applicable.⁹ PHMSA should ensure that respondents (and shippers/offers) identified on Form 5800.1 are properly registered where the incident report involves a placarded quantity of hazardous materials.

Expanding the number of entities that pay registration fees would lessen the financial burden that has been disproportionately borne by those entities that comply with the registration fee requirements. ATA raised this issue in response to PHMSA’s HM-208G rulemaking two years ago. Unfortunately, this NPRM does not discuss the efforts PHMSA has undertaken to address this problem.

⁷ *Id.*

⁸ *See* 49 CFR § 107.601(b).

⁹ *See* PHMSA Form 5800.1 (Part II, Item 10); OMB No. 2137-0039.

C. Use of Registration Fees

ATA supports the objectives of the HMEP program. We are, however, concerned with the amount of money that is dedicated to “planning” efforts. Considering that the grant program has been in existence for more than 15 years, we believe that more resources should be allocated to training emergency responders and fewer resources devoted to planning functions, which should have been completed by now.

1. Promoting the Uniform Permitting Program.

ATA believes that PHMSA should consider ways of using the registration fees collected to benefit those that are funding it. For example, ATA supports allocating a small portion of the fees collected to help transition those states that currently have hazardous materials transportation permits into the Alliance for Uniform Hazardous Materials Transportation Procedures (the “Uniform Program”). Incentivizing states with existing hazardous materials transportation permits to join the Uniform Program would benefit carriers that are subject to the myriad of confusing state-based permitting requirements. Moreover, as a condition of receiving monies for the transition to the Uniform Program, states could provide information on hazardous materials commodity flows, which can be collected through the Uniform Program’s application process, thereby providing a direct benefit to local emergency response planning activities.

2. Developing a Centralized Incident Reporting Broadcast System.

Another project that would dovetail with the stated purpose of improving emergency plans under the HMEP program is the facilitation of centralized incident reports. Currently, there are dozens of individual state and municipalities with distinct incident reporting requirements. These requirements obligate individuals involved in a release of hazardous materials to immediately notify the local jurisdiction. Identifying the various local reporting requirements, procedures, and reporting triggers (*e.g.*, type of material spilled and quantity spilled) make it impracticable for motor carriers that operate in virtually every jurisdiction to be fully aware of the local reporting requirements. This confounds motor carriers’ ability to operate in full compliance with applicable regulatory requirements. Rather than having motor carriers having to guess whether a particular spill triggers a local reporting requirement, it would be preferable for motor carriers to report incidents to the National Response Center (NRC) under 49 CFR § 171.15 and have the NRC push this information out to local responders. NRC could easily maintain a database of local reporting requirements and points of contact for such reports. Requiring thousands of motor carriers (the majority of whom are small businesses) to research and maintain such a database is impracticable.

3. Grantee Accountability

Finally, we raise the issue of grantee accountability. The NPRM provides statistics on the use of proceeds awarded under the HMEP program, but does not discuss how PHMSA verifies this information. We believe that PHMSA should review how grantees are spending the money they receive. For example, if money is spent on planning, the grantee should submit a copy of its existing hazardous materials response plan and a copy of the revised response plan, so that PHMSA has a means of determining whether the money was actually used for its intended purpose. If money is spent on training individuals, the grantee should provide copies of the training curricula and indicate not only how many individuals were trained, but also whether these individuals received initial training or more advanced training. Receipt of various training curricula would enable PHMSA to identify effective training methodologies and share those methodologies with other entities responsible for emergency response activities.

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For the reasons set forth above, we urge PHMSA to reassess the proposed fee structure and promulgate a more equitable apportionment of the HMEP program fees, which increases the fees for all participants rather than singling out a subset of registrants whom must bear the increased financial burden. ATA also believes that the financial burden of the HMEP program should be spread out over a larger group of entities by better publicizing the registration requirements, aggressively enforcing the requirements, and revisiting the decision to exempt farmers that offer or transport placarded hazardous materials. ATA believes that PHMSA should examine how the HMEP money is distributed and whether grantees are held accountable for the money they receive. Finally, ATA asks PHMSA to consider using a portion of the funds collected to benefit carriers and shippers by incentivizing states with existing hazardous materials permits to join the Uniform Program and developing a centralized reporting broadcast system that could replace the myriad of state and local incident reporting requirements.

If you have any questions concerning these comments, please contact the undersigned at (703) 838-1910.

Respectfully submitted,



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