



December 21, 2022

Mr. William Schoonover
Associate Administrator for
Hazardous Material Safety, PHMSA
1200 New Jersey Avenue, SW
Washington, D.C. 20590

**RE: Energy Marketers of America Comments
Docket No. PHMSA-2022-0033 (HM208-J): Hazardous Materials Adjusting
Registration and Fee Assessment Program.**

VIA ELECTRONIC TRANSMISSION

INTRODUCTION:

The Energy Marketers of America (EMA) thanks the Pipeline and Hazardous Materials Safety Administration's (PHMSA) for the opportunity to comment on the agency's Advance Notice of Proposed Rulemaking (ANPRM) regarding potential changes to the hazardous materials registration and fee assessment program.

The Energy Marketers of America (EMA), formerly the Petroleum Marketers Association of America (PMAA), is a federation of 47 state and regional trade associations representing small business energy marketers throughout the United States. Energy marketers represent a vital link in both the wholesale and retail motor fuels and home heating energy distribution chain. EMA members supply 80 percent of all finished petroleum products sold nationwide. Products shipped by EMA members include renewable hydrocarbon biofuels, gasoline, diesel fuel, biofuels, heating fuel, jet fuel, kerosene, racing fuel and lubricating oils. These products are delivered to end users in DOT specification cargo tank vehicles. EMA members qualify as small business registrants under the Hazardous Materials Registration Program are assessed an annual fee of \$250 plus \$25 for processing.

COMMENTS:

EMA opposes any fee increase on small business registrants. The Infrastructure Investment and Jobs Act (IIJA) of 2021 authorized PHMSA to collect a total annual authorization ceiling of \$46,825,000 to carry out the emergency preparedness grant program for fiscal years 2022 through 2026. The IIJA increases the current funding authorization by \$18,500,00. EMA believes any resulting fee increases that may be permitted by Congress due to the increased funding authorization should be collected by increased fees for large business registrants and by expansion of the registration program to exempted materials and persons who acquire approvals or special permits. EMA's opposition to a small business fee increase is

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the same whether or not Congress authorizes an increase in annual registration fees beyond the current \$3,000 maximum amount.

Two-Tier Business Size Fee Determination

EMA believes the current two-tier registration fee framework based on business size alone, is unfair to small businesses transporting lower risk hazardous materials. Instead of business size alone, PHMSA should also consider risk factors posed by shipment of hazardous materials included in Packing Group I. In addition, PHMSA should add those hazardous materials in Class 2.3 (dangerous by inhalation), Class 6.1 (poisonous), Class 6.2 (infectious) and Class 7 (radioactive) when determining the fee each class of registrant should pay. EMA believes that the greater the risk posed by a hazardous material, the higher the fee assigned to large business registrants transporting those products. Risk based fee determinations are particularly appropriate for large business registrants because the degree of risk posed by these materials drives the cost of emergency preparedness. The greater the risk, the more specialized emergency response resources and training are needed to mitigate the risk.

EMA believes factoring in the risk posed by the number of shipments made by a registrant, other than those based on the current business size categories, is not an accurate measurement of risk. Considering the frequency of shipments as a risk factor ignores variables that make individual shipments more or less risky. Many factors determine the degree of risk posed by a shipment. Some of these factors may include distracted driving, road configuration, geographic location, equipment maintenance, length of trip or weather-related driving conditions at the time the shipment is in transit. The number of shipments doesn't say much about risk without consideration of these variables. EMA believes it would be impossible for PHMSA to consider, or even compile all the variables that make a shipment more or less risky for individual registrants. In any event, the paperwork burden involved with collecting, reporting and evaluating trip frequency data would impose an unreasonable burden on both registrants and PHMSA. The only factors that can accurately assign risk for purposes of determining annual fees without placing onerous collection and reporting burdens on registrants is the current business size categories and PHMSA's own packing group and hazard class assignments. EMA believes that the risk posed by a hazardous material, together with current business size categories should drive the registration fee amount.

EMA believes that along with business size and risk factors, PHMSA should also expand the registration base to make the fee program more equitable generally and to prevent possible fee increases for small business registrants. To accomplish this, PHMSA should expand the registration base to those hazardous material shipments not currently subject to placarding requirements when shipped domestically. Entities transporting these materials are not currently required to register or pay a fee under current regulations despite the hazardous risks they pose. Exempt materials require the same degree of emergency preparedness as placarded shipments. Unfortunately, the current fee structure fails to capture entities transporting exempted products who should be contributing to the cost of emergency response. Expanding the registration base to include exempted materials is more equitable approach to determining registration fees. Also, doing so would further PHMSA's ongoing efforts to harmonization the Hazardous Material Regulations with international standards. Finally, PHMSA should

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expand the registration base even further by requiring persons who acquire approvals or special permits to pay a fee based on risk factors and business size. Currently, these parties are not required to register and pay a fee despite the hazard risks posed by their shipments. Expansion of the class of registrants would bring a greater number of hazardous material shipments under the registration and fee requirements, making the program more equitable for all registrants required to fund emergency response.

CONCLUSION

EMA opposes higher registration fees for small business hazardous material registrants. Instead, large businesses should bear the burden of higher fees based on the risk factors posed by the hazardous material they ship. High risk shipments require more extensive and specialized emergency preparedness training, equipment and response personnel than lower risk shipments. Under the current registration program, registrants with shipments in lower risk Package Group II and III are paying the same fee as those in high-risk Packing Group I who ship nuclear material and infectious substances. As a result, the current two-tier fee structure based on business size alone does not equitably distribute the fee burden among all registrants. Calculating risk factors based on packing groups and hazard class in addition to business size is a more equitable way to fund the emergency response grant program.

Finally, if PHMSA is not prepared to employ risk-based factors to determine registration fees, EMA supports any of the alternative scenarios listed in the ANPRM provided small business registrants pay no more than the current \$275 combined registration and processing fees.

EMA is ready to provide PHMSA with any additional information you may require. Thank you for the opportunity to comment on the ANPRM. Should you have any questions do not hesitate to contact me at (202) 487-4536 or markmorgan@emamerica.org.

Sincerely,

A handwritten signature in black ink that reads "Mark S. Morgan, Esq." in a cursive script.

Mark S. Morgan, Regulatory Counsel

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