which it did not offer or transport hazardous material of the type, and quantity, for which registration is required would pay the minimum registration fee of \$250.00, plus the \$50.00 processing fee, for a total fee of \$300.00.

RSPA believes that this regulatory approach provides fee levels which broadly address many of the factors contained in 49 U.S.C. 5108. Thus, it addresses the types and quantities of hazardous materials transported or caused to be transported; the threat to property, persons, and the environment from an accident or incident involving the hazardous materials transported or caused to be transported; gross revenues from the transportation of hazardous materials-to the extent that these revenues are a function of hazardous materials transportation-related activity; and the need to adequately fund the mandated training and planning grant program.

In addition, the proposal provides a reasonably fair and equitable solution to the great disparity between many small companies who are engaged in the shipment and transportation of hazardous materials, and large companies which annually manufacture, offer and transport thousands of tons of hazardous materials. RSPA is also confident that the revised fee structure would provide a sound basis for the funding and continued integrity of the emergency response training and planning grant program at a level authorized by law.

## VIII. Discussion of Proposed Fee Levels

## A. General

Under this proposal, all persons currently required to file a registration statement with RSPA would continue to be assessed, at a minimum, a registration fee of \$250.00, plus a processing fee of \$50.00, for a total of \$300.00. In addition, offerors and transporters who handle quantities of hazardous materials that pose a greater hazard potential would pay higher registration fees, up to \$5,000.00, plus the \$50.00 processing fee, for a total of \$5,050.00.

The proposed fee schedule is a tiered system that follows the mandatory registration filing criteria specified in 49 U.S.C. 5108 and reflects the hazard potential posed by various transportation activities. The complete fee schedule appears in the table in § 107.612 later in this document. For Class 7 (radioactive materials), a total annual fee of \$5,050.00, the maximum permitted by § 5108, is assessed for transportation of any highway route controlled quantity. For explosives and for poison inhalation hazard (PIH), Zone A, materials there is a three-tiered subsystem of fees. The tiered fees, including the \$50.00 processing fee, are \$5,050.00 for larger quantities, \$2,550.00 for intermediate quantities, and \$300.00 for smaller quantities.

The schedule of registration fees for hazardous materials in bulk packagings is keyed to the number of *different* bulk packagings used during the year. As used in the Table in §107.612, "different" bulk packagings refers to bulk packagings that are separately identifiable through permanent markings, serial numbers, or the like. Fees would be incrementally assessed based upon the number of different bulk packagings, including tank cars, cargo tank motor vehicles, portable tanks (e.g., IM-101/102), hopper vehicles, and hopper cars. Total annual fee levels would be based, in three increments (\$5,050.00, \$2,550.00, and \$500.00), upon the number of different bulk packagings offered for transportation or transported during the prior calendar year.

Finally, an annual registration fee of \$250.00, the minimum allowed by \$5108, plus the \$50.00 annual processing fee, for a total of \$300.00, is assessed for the transportation of 5,000 pounds or more of aggregated non-bulk packages of hazardous materials for which placarding is required, and for persons not engaged in any of the higher fee activities in the prior calendar year.

Persons who perform both offeror and carrier functions would be assessed fees based on the full scope of their transportation activities. However, no person would be required to pay more than the highest single annual fee associated with that person's operations, as specified in the Registration Fee Table in § 107.612(a).

The following are hypothetical examples of total annual fees payable by persons who, based upon their prior calendar year hazardous material transportation activity, are required to file a registration statement:

(1) A shipper that offered eight or more different tank cars would be assessed a total annual fee of \$5,050.00.

(2) A carrier that transported only eleven different cargo tank motor vehicles would be assessed a total annual fee of \$500.00.

(3) A shipper that offered fifteen different cargo tank motor vehicles and 75 different Class 106 multi-unit tank car tanks (nominal water capacity of 2,000 pounds) loaded with a PIH, Zone A, material would be assessed a total annual fee of \$2,550.00. RSPA believes this simplified distinction between large, medium, and small entities achieves the same level of equity as may be achieved by more complex calculations, such as the determination of revenue ton-miles or total number of shipments. The bulk transportation fee categories also would be mutually exclusive (e.g., a person that offers seven tank cars and 23 cargo tank motor vehicles would be assessed fees as a medium-size entity, since neither category by itself results in a classification as a large entity).

The requirement to register, and the amount of the fee, are based upon transportation that occurs to, from, or between points within the United States. Thus, even though a foreign motor carrier's fleet may comprise a large number of cargo tank motor vehicles, the carrier's registration fee level in this category is based upon the number of different cargo tank motor vehicles actually used during the prior year for hazardous materials transportation to, from, or between points within the United States.

Although the proposed fee schedule loses some of the simplicity of the current system, RSPA is proposing these changes in the interest of striking a balance between equity considerations, minimizing the impact on smaller businesses, and insuring the adequacy of funding for the emergency response training and planning grant program. In addition, it is important to recognize that the emergency response planning and training program focuses upon those situations involving materials presenting the greatest hazard potential. Accordingly, RSPA believes scaled registration fees should be applied in such a way that the highest fees are paid by persons who offer or transport those materials.

RSPA welcomes comments on the proposed graduated registration fee levels and the thresholds which trigger the increase in fees, as well as on any other factors that might be considered as the basis for the assessment of registration fees. For example, should there be more (or fewer) subdivisions in any of the five (5) categories of activities for which registration is required, and what should be the registration fee for each subdivision? Alternatively, should there be a progressive increase in the registration fee associated with an increase in activity (e.g., \$250.00 for each tank car shipment-not to exceed \$5,000.00 per year)?

## *B. Possible Expansion of the Registration Fee Base*

The regulatory evaluation prepared in support of this rulemaking action