

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 171, 177, 178, 180****[Docket No. RSPA-97-2718 (HM-225A)]****RIN 2137-AD07****Hazardous Materials: Safety Standards for Preventing and Mitigating Unintentional Releases During the Unloading of Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice of establishment of advisory committee for negotiated rulemaking and notice of first meeting.

**SUMMARY:** RSPA announces the establishment of an advisory committee to develop recommendations for alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles in liquefied compressed gas service. The Committee will develop and adopt its recommendations through negotiation. The Committee is composed of persons who represent the interests affected by the proposed rule, such as businesses that transport and deliver propane, anhydrous ammonia, and other liquefied compressed gases; manufacturers of DOT specification MC 330 and MC 331 cargo tank motor vehicles used to transport liquefied compressed gases; state and local public safety and emergency response agencies; and the federal Department of Transportation. This notice also announces the time and place of the first advisory committee meeting. The public is invited to attend; an opportunity for members of the public to make oral presentations will be provided if time permits.

**DATES:** The first meeting of the advisory committee will be from 9:30 a.m. to 4:00 p.m. on Tuesday, July 28, 1998 and will continue from 9:30 a.m. to 4:00 p.m. on Wednesday, July 29, 1998.

**ADDRESSES:** The first meeting of the advisory committee will take place at the Department of Transportation, Room 2230, 400 Seventh Street, S.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Karim, 202-366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation; or Nancy Machado, 202-366-4400, Office of the Chief

Counsel, Research and Special Programs Administration, U.S. Department of Transportation. *Facilitator:* Philip J. Harter, The Mediation Consortium, 202-887-1033.

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

On June 4, 1998, RSPA published a notice of intent to establish an advisory committee (Committee) for a negotiated rulemaking to develop recommendations for alternative safety standards for preventing and mitigating unintentional releases of hazardous materials during the unloading of cargo tank motor vehicles (CTMVs) in liquefied compressed gas service. The notice requested comment on membership, the interests affected by the rulemaking, the issues the Committee should address, and the procedures it should follow. The reader is referred to the June 4 notice (63 FR 30572) for further information on these issues.

RSPA received 19 written comments on the notice of intent. In addition, 43 people participated in a public meeting in Washington, D.C., on June 23-24, 1998. All endorsed the negotiated rulemaking process. Based on this response, and for the reasons stated in the notice of intent, RSPA has determined that establishing an advisory committee on this subject is appropriate and in the public interest. In accordance with the Federal Advisory Committee Act (FACA; 5 U.S.C. App. I sec. 9(c)), RSPA prepared a Charter for the Establishment of a Negotiated Rulemaking Advisory Committee. RSPA intends to file the charter within fifteen (15) days from the date of this publication.

**II. Membership**

A total of 29 individuals were nominated or applied for membership to the Negotiated Rulemaking Committee either through written comments or at the June 23-24 public meeting.

In considering requests for representation on the Committee, the task before RSPA was to decide whether the requesters represent interests significantly affected by the proposed rulemaking. As identified in the notice of intent, in addition to the Department of Transportation (DOT), these interests are: the National Propane Gas Association (NPGA); The Fertilizer Institute (TFI); National Tank Truck Carriers, Inc. (NTTC); the National Fire Protection Association (NFPA); small businesses that transport and deliver propane, anhydrous ammonia, and other liquefied compressed gases; large businesses that transport and deliver

propane, anhydrous ammonia, and other liquefied compressed gases; manufacturers of DOT MC 330 and MC 331 specification CTMVs used to transport liquefied compressed gases; state safety regulatory agencies; state safety enforcement agencies; and state/local emergency response and fire services agencies.

In response to comments, RSPA has modified the list of interests to add the Compressed Gas Association to represent the interest of companies that produce and use liquefied compressed gases other than propane and anhydrous ammonia, such as oxygen and nitrogen. In addition, to accommodate the separate interests of large and small companies that may be affected by the rulemaking and the separate interests of companies that transport propane versus anhydrous ammonia, RSPA has identified as distinct interests small propane distribution companies, large propane distribution companies, small anhydrous ammonia distribution companies, and large anhydrous ammonia distribution companies. Finally, RSPA believes that the interests of companies that manufacture so-called "bobtail" CTMVs (most commonly defined as truck-mounted tanks having a capacity under 3,500 gallons) differ sufficiently from the interests of companies that manufacture "transport" CTMVs (most commonly defined as semi-trailers or full trailers having a capacity greater than 3,500 gallons) as to justify separate representation on the Committee.

In the notice of intent, RSPA requested comments on how best to include manufacturers of cargo tank components, such as internal self-closing stop valves, pumps, meters, and other components of emergency discharge control systems and remote shut-off systems. RSPA believes that component manufacturers have technical expertise that would be valuable to the Committee's deliberations. As noted in the notice of intent, the convener's report examined several options for integrating component manufacturers into the negotiated rulemaking process. The convener recommended that they participate as members of work groups that the Committee may establish to gather information and develop proposals for specific issues related to the rulemaking, but not as members of the Committee itself.

Many commenters support the recommendation of the convener's report and oppose inclusion of component manufacturers on the Committee because these manufacturers may have a vested interest in

developing a solution that includes their equipment. However, other commenters believe that component manufacturers should be members of the Committee because they will be significantly affected by any rulemaking that results from the Committee's deliberations. RSPA agrees with these commenters and believes that technology interests, such as manufacturers of internal self-closing stop valves, hoses, remote shut-off systems, and leak detection sensors and monitors, should be included on the Committee. Thus, RSPA has modified the list of interests that will be represented to include a technology interest.

Following is the list of Committee members, identified by interest. Members are encouraged to designate alternates who can serve in place of the member if necessary. As noted in the notice of intent, the Committee will make its decisions through a process of negotiation leading to consensus. "Consensus" means the unanimous concurrence among the interests represented on the Committee, unless the Committee explicitly adopts a different definition. Where two representatives are identified, RSPA expects that they will act together to represent the interest's views and perspectives in the negotiations.

For the interest identified as "Cargo Tank Manufacturers—Bobtail," RSPA has requested that the three individuals identified below consult with each other to determine how their interest will be represented on the Committee. Similarly, for the interest identified as "Technology," RSPA has asked the three identified individuals to consult with each other to determine how the technology interest will be represented on the Committee.

1. *Department of Transportation*  
Edward Mazzullo, Research and Special Programs Administration
2. *National Propane Gas Association*  
Charles Revere, Revere Gas and Appliance
3. *The Fertilizer Institute*  
Charles Rosas, Farmland Industries
4. *National Tank Truck Carriers*  
Clifford Harvison
5. *Compressed Gas Association*  
Ronald McGrath
6. *National Fire Protection Association*  
Theodore Lemhoff
7. *Propane Distribution—Small*  
Mike Gorham, Northwest Gas, and Lin Johnson, Lin's Propane
8. *Propane Distribution—Large*  
Russell Rupp, Suburban Propane, and Ken Faulhaber, Ferrellgas
9. *Anhydrous Ammonia/Dual Use*  
*Anhydrous Ammonia-Propane—Small*

Charles Whittington, Grammer Industries

10. *Anhydrous Ammonia/Dual Use*  
*Anhydrous Ammonia-Propane—Large*  
Jean Trobec, Growmark, and Jim York, National Private Truck Council
11. *State Safety Enforcement Agencies*  
Steve Herman, Cooperative Hazardous Materials Enforcement Development (COHMED), and Eric Adair, Commercial Vehicle Safety Alliance (CVSA)
12. *State Safety Regulatory Agencies*  
Vicki O'Neill, Bureau of Liquefied Petroleum Gas Inspections/Florida Department of Agriculture and Consumer Services, and Ronald Coleman, California State Fire Marshal
13. *State/Local Emergency Response Agencies and Fire Services*  
Ronald Dykes, International Association of Fire Chiefs
14. *Cargo Tank Manufacturers—Transports*  
Mike Pitts, Mississippi Tank
15. *Cargo Tank Manufacturers—Bobtails* (one of the following)  
David Auxier, Bulk Tank and Transport, or Jerry Kowalski, Arrow Tank and Engineering, or David Fulbright, White River Distributors
16. *Technology* (one of the following)  
Jim Griffin, Fisher Controls, or David Stainbrook, REGO Valve, or Bob Lyons, Thermolite, or Todd Coady, Rocket Supply

In addition to those listed above, the following people asked to be members or were nominated for membership on the Committee: Gary Nelson, Nevada Propane Board (Nelson); Douglas Buchan (Buchan); Paul Horgan, California Highway Patrol (Horgan); and Terry Pollard, Nebraska Highway Patrol (Pollard).

Buchan asked to participate based on his expertise and experience with the issues that are the subject of the regulatory negotiation; however, because he does not represent an interest that will be affected by the rulemaking, he was not selected. Horgan and Pollard were nominated by a commenter; RSPA agrees that they are well qualified to represent the interests of state safety enforcement agencies on the Committee. However, the number of state representatives on the Committee is necessarily limited. Both Horgan and Pollard have been invited to participate as alternate members and on working groups that the Committee may establish to make recommendations on technical issues. Nelson was nominated by a commenter to represent the interest of state regulatory agencies. RSPA

agrees that state regulatory agencies should be represented on the Committee. However, RSPA believes that the Committee should also reflect geographic diversity. Since many of the members selected are from the western United States, RSPA decided to select a representative of a state regulatory agency—Bureau of Liquefied Petroleum Gas Inspections/Florida Department of Agriculture and Consumer Services—from an eastern state.

Persons not selected as members of the Committee will have ample opportunities to participate in the negotiated rulemaking process. For example, RSPA expects that the Committee will establish one or more technical working groups to offer advice and recommendations on specific issues. Further, there will be opportunities for non-members to speak or provide written comments at meetings of the Committee. RSPA encourages all those who are interested in this rulemaking to take advantage of these opportunities to assure that the Committee considers their views.

One commenter recommended that committee membership be determined on a proportional basis, so that those interests having what they believe to be the most at stake in the rulemaking would be allotted the most representatives on the committee. RSPA does not agree and believes that this comment stems from a fundamental misunderstanding of the negotiated rulemaking process. A negotiated rulemaking is intended to be an inclusive process that affords all the interests that will be significantly affected by a rulemaking an opportunity to contribute to development of a consensus regulation. Each member of a negotiated rulemaking committee speaks for the interest he represents and has an equal voice in the process of negotiating towards consensus. The key to success for a negotiated rulemaking is to assure that all the interests that may be affected are represented.

This commenter also suggested that representatives of the propane industry could also adequately represent companies that transport both propane and other liquefied compressed gases. RSPA does not agree. Transportation of anhydrous ammonia in MC 330 and MC 331 CTMVs presents safety and operational issues that differ from those involved with the transportation of propane. For this reason, RSPA believes that companies that transport anhydrous ammonia have an interest in the negotiated rulemaking that is distinct and separate from the interest of propane transporters and should, therefore, have separate representation.

Similarly, RSPA believes that companies that transport liquefied compressed gases other than propane and anhydrous ammonia are a distinct and separate interest and should have separate representation on the Committee.

Several commenters recommended that a university transportation institute be included as a member of the Committee and specifically suggested the Pennsylvania Transportation Institute (PTI). These commenters believe that a transportation institute could be a valuable source of unbiased technical information and assistance. RSPA agrees. However, a transportation institute does not represent an interest that would be significantly affected by the rulemaking. It would, therefore, not be appropriate for a transportation institute to participate as a member of the Committee. RSPA expects that the Committee will gather information from a variety of sources and will encourage the Committee to consult with any organizations that can provide relevant data and technical information.

### III. Participation by Non-Members

Meetings of the advisory committee will be open to the public so that individuals who are not part of the Committee may attend and observe. Any person attending the Committee meetings may address the Committee if time permits or file statements with the Committee.

### IV. Key Issues for Negotiation

In its notice of intent, RSPA tentatively identified major issues that should be considered in this negotiated rulemaking and asked for comment concerning the appropriateness of these issues for consideration and whether other issues should be added. These issues were:

#### A. Prevention of Unintentional Releases

The Committee should examine possible preventive measures to reduce or eliminate the incidence of unintentional releases during unloading. For example, some commenters to the Advanced Notice of Proposed Rulemaking (ANPRM) issued under Docket No. RSPA-97-2718 (HM-225A) [62 FR 44059] on August 18, 1997, have suggested that RSPA adopt a rigorous hose management system that assures that delivery hoses and lines meet high standards for quality, strength, and durability, and that requires periodic examination and testing to assure continued suitability for use in the transfer of high risk hazardous materials. Advocates of such a system say that it could significantly

reduce the number of unloading incidents related to failures in hoses or hose assemblies. Similarly, the Committee should consider whether there are preventive measures, such as daily inspections or periodic testing, that should be implemented for other parts of the cargo tank delivery system, including pumps, valves, and piping.

#### B. Detection of Unintentional Releases

Preventive measures alone cannot assure the safety of cargo tank unloading operations. Despite the best efforts of the industry and the government, incidents will occur, and unintentional releases of high risk hazardous materials such as propane or anhydrous ammonia will occur. The Committee thus should consider methods to assure that unintentional releases can be detected and controlled. One such detection method is provided by the current regulatory requirement for continual visual observation of the cargo tank throughout the unloading process. Alternatives that have been suggested include remote monitoring and signaling systems, such as sensors, alarms, and electronic surveillance equipment, or "patrolling" whereby the person attending the unloading operation moves between the storage tank and the cargo tank to assure that each is monitored periodically throughout the unloading process.

#### C. Mitigation of Unintentional Releases

Once a leak has been detected, methods to prevent catastrophic consequences are critical. A passive system for shutting down unloading when a leak has been detected operates automatically, that is, without human intervention. Examples include excess flow valves, which are intended to close the internal self-closing stop valve if the flow rate exceeds a threshold level, and thermal links, which are intended to close the internal self-closing stop valve if the temperature reaches a threshold level. A remote system provides a means to shut down cargo tank unloading operations using a mechanical device that is located on the CTMV but away from the valve(s) that it operates. Many CTMVs have remote mechanical shut-offs located near the vehicle cab. The remote shut-off may be manually activated. An off-truck electro-mechanical remote system includes a portable device that can shut down cargo tank unloading operations away from the CTMV. In many instances, an off-truck electro-mechanical remote is manually activated, although some systems default to the fail-safe mode under certain circumstances. The Committee should evaluate alternatives

with a view towards determining which methods or combination of methods provide the most cost-effective means for controlling unintentional releases during cargo tank unloading operations.

### V. Comments on Issues List

In response to the notice of intent, one person submitted comments on the issues involved in the regulatory negotiation. The commenter suggested that, in addition to the issues outlined in the notice of intent, the Committee should consider: (1) Defining an acceptable hose life and specific inspection pressures for hoses; (2) alternatives to the current attendance requirements; (3) specific requirements for off-truck remote systems; and (4) limiting the types of fittings and valves used directly on cargo tank walls to malleable steel or ductile iron construction for vessels in propane service. RSPA agrees that the first three issues should be considered by the Committee and notes that hose management, monitoring of unloading operations, and off-truck remotes are all included in the issues list in the notice of intent. However, RSPA does not agree that the issue of the material used for fittings or valves located directly on cargo tank walls should be included in the issues that will be considered by the Committee. This rulemaking is concerned only with operational issues related to unloading of MC 330 and MC 331 CTMVs and with the components of a CTMV's emergency discharge system. General issues related to cargo tank design and construction are more properly the subject of a separate rulemaking. This recommendation will be considered as part of RSPA's docket HM-213.

### VI. Procedure and Schedule

Staff support for the advisory committee will be provided by RSPA and the facilitator, and meetings will take place in Washington, D.C., unless agreed otherwise by the Committee.

Consistent with FACA requirements, the facilitator will prepare summaries of each Committee meeting. These summaries and all documents submitted to the Committee will be placed in the public docket for this rulemaking.

As stated in the Notice of Intent, the Committee's objective is to prepare a report containing an outline of its recommendations for a notice of proposed rulemaking with suggestions for specific preamble and regulatory language based on the Committee's recommendations, as well as information relevant to a regulatory evaluation and an evaluation of the impacts of the proposal on small

businesses. One commenter recommended that the Committee's final product be a Notice of Proposed Rulemaking (NPRM), with the Committee reaching consensus on the language of the NPRM and preamble. RSPA believes that this is a decision that the Committee should make as it develops ground rules and timetables for its deliberations.

The negotiation process will proceed according to a schedule of specific dates that the Committee devises at its first meeting on July 28–29, 1998. RSPA will publish notices of future meetings in the **Federal Register**. RSPA anticipates that the Committee will meet for up to five two-day sessions beginning in July 1998. If the Committee establishes working groups to support its work, additional meetings for the working groups may be necessary. RSPA expects the Committee to reach consensus and prepare a report recommending a proposed rule within six months of the first meeting. RSPA expects to publish an NPRM based on the Committee's recommendations by February 15, 1999, and a final rule by May 1, 1999. If unforeseen delays in the anticipated schedule occur, the Research and

Special Programs Administrator may agree to an extension of time if the consensus of the Committee is that additional time will result in agreement.

#### VII. Meeting Agenda

The first meeting of the negotiated rulemaking committee will begin at 9:30 a.m. on July 28 with consideration of Committee ground rules, procedures, and calendar. The Committee will then address the specific issues that should be included in the negotiation and how data to support its deliberations will be developed. In addition, the Committee will consider whether to establish working groups to provide technical support and recommendations for specific aspects of the negotiations. The first meeting will conclude at 4:00 p.m. on July 29.

Title 41 CFR Sec. 105–54.301 requires that notices of advisory committee meetings must be published at least 15 calendar days prior to a meeting. However, that section also permits less than 15 days notice of a meeting in exceptional circumstances provided that the reasons for doing so are included in the meeting notice published in the **Federal Register**. RSPA determined that

an early date for the first meeting was necessary because the agency timeframe for publication of an NPRM is very short. The temporary regulation that is an issue in this rulemaking expires on July 1, 1999. RSPA was unable to provide 15 days' notice for the first meeting because of delays in contacting potential committee members to confirm their interest in participating. However, RSPA indicated in its June 4 notice of intent that the first meeting of the committee would be scheduled for July 1998. Additionally, RSPA provided a tentative meeting schedule that included the July 28–29 meeting date at the June 23–24 public meeting. Thus, representatives of the identified interests were informed of the meeting date well in advance of the 15 day period. RSPA expects that all Committee members will be present for this first important meeting.

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**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.*

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