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Hazardous Materials: Safety Standards for Preventing and Mitigating Unintentional Releases During the Unloading of Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 177, 178, and 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 intent to establish a Negotiated Rulemaking Committee and announcement of public meeting.

SUMMARY: RSPA proposes to establish a Negotiated Rulemaking 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 a process of negotiation. The Committee will consist 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; federal safety regulatory agencies; and state and local public safety and emergency response agencies. The purpose of this Notice is to invite interested parties to submit comments on the issues to be discussed and the interests and organizations to be considered for representation on the Committee. Also, RSPA is announcing an organizational meeting to be held in Washington, DC on June 23–24, 1998, to discuss Committee membership, ground rules, and procedural matters.

DATES: RSPA must receive written comments and requests for representation or membership on the Committee by July 6, 1998.

ADDRESSES: Address comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590–0001. Comments should identify the docket number and be submitted in two copies. Persons wishing to receive confirmation of receipt of their written comments should include a self-addressed, stamped postcard. Comments may also be submitted by e-mail to the following address: ''rules@rspa.dot.gov''. The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. Public dockets may be reviewed there between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Comments also may be reviewed on-line at the DOT Dockets Management System web site at ''http://dms.dot.gov/.''

FOR FURTHER INFORMATION CONTACT: Jennifer Karim, 202–366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001; or Nancy Machado, 202–366–4400, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–001.

SUPPLEMENTARY INFORMATION:

I. Background

The Issues

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) include provisions designed to promote safe unloading of DOT specification MC 330 and MC 331 cargo tank motor vehicles (CTMVs). Among these provisions are requirements for emergency discharge control systems that will automatically shut down unloading in the event of a complete hose or pipe separation and for a qualified person to attend the unloading operation by remaining within sight of the cargo tank and close enough to manually shut down the unloading operation in the event of an emergency. However, as a result of a serious unloading accident in 1996, RSPA has learned that the emergency discharge control systems currently installed on MC 330 and MC 331 CTMVs do not always function as designed. Further, RSPA has discovered that many operators of CTMVs do not comply with the regulatory requirements for attending the unloading operation. Based on comments received for the HM–225 rulemaking, RSPA intends to reevaluate the current regulatory requirements. RSPA has issued a temporary regulation designed to permit cargo tank motor vehicles with non-complying emergency discharge control systems to continue to operate, and is currently considering regulatory alternatives to assure the safety of cargo tank unloading operations.

Emergency Discharge Control Systems

On September 8, 1996, more than 35,000 gallons of propane were released during delivery at a bulk storage facility in Sanford, North Carolina. In that incident, the driver became aware of the system failure when the hose began to oscillate violently while releasing liquid propane. He immediately shut down the engine, stopping the discharge pump, but he could not access the remote closure control to close the internal stop valve. The excess flow feature of the emergency discharge control system (EDCS) did not function, and propane continued to be released from the vehicle. Adding to the problem, the back flow check valve on the storage tank system did not function, resulting in release of propane from the storage tanks.

Based on preliminary information from the Sanford incident, RSPA published an advisory notice in the **Federal Register** on December 13, 1996 [61 FR 65480], to alert persons who design, manufacture, assemble, maintain, or transport hazardous materials in MC 330 and MC 331 cargo tank motor vehicles of this problem with the excess flow feature of the EDCS. Subsequent to publication of the advisory notice, RSPA received information from the industry indicating that there is widespread noncompliance with the EDCS requirements of the HMR (49 CFR part 178.337–11(a)) and, further, that equipment that meets the performance standard for EDCS equipment may not be currently available.

RSPA issued an emergency interim final rule on February 19, 1997, under Docket No. RSPA–97–2133 (HM–225) [62 FR 7638]. This rule specified the conditions under which MC 330 and MC 331 CTMVs may continue to be operated while an EDCS that meets the requirements of the regulations is developed and implemented. A final rule extending and revising the provisions of the emergency interim final rule was issued on August 18, 1997 [62 FR 44038]; a final rule responding to petitions for reconsideration and clarifying certain provisions was issued on December 10, 1997 [62 FR 65187]. The December 10 final rule requires specific marking on affected CTMVs and requires motor carriers to comply with additional operational controls intended to compensate for the failure of the EDCS to function as required by the HMR. The operational controls specified in the December 10 final rule provide an alternative to compliance with the HMR and are intended to assure an acceptable level of safety while the industry and

government continue to work to develop an EDCS that effectively stops the discharge of hazardous materials from a cargo tank if any attached hose or piping is separated. The rule is temporary; its provisions will expire July 1, 1999.

Attendance During Unloading

During the rulemaking that resulted in issuance of the December 10 final rule described above, RSPA discovered that many operators of CTMVs transporting propane are not complying with provisions of the HMR that require that a qualified person ''attend'' the unloading of hazardous materials (49 CFR part 177.834(i)). The cargo tank unloading attendance requirements specify that a person attending the unloading operation must be awake, have an unobstructed view of the cargo tank, and be within 25 feet of the cargo tank. This provision of the HMR is intended to complement the EDCS requirements in that it is meant to assure that the person unloading the cargo tank can manually stop the flow of hazardous material by closing the internal stop valve if there is a leak in the delivery system. Because many CTMV operators are not complying with the attendance requirements of the HMR, they are having difficulty complying with the alternative measures permitted by the emergency interim final rule.

Challenge to the Alternative Regulatory Requirements

The emergency final rule is currently the subject of ongoing litigation arising out of two court challenges. The National Propane Gas Association, Northwest Butane Gas Company, and Huffhunes Gas, Incorporated, have brought an action in the United States District Court for the Northern District of Texas to seek preliminary injunctive and permanent declaratory relief from the December 10 final rule. Similarly, Ferrellgas, LP; Suburban Propane, LP; Agway Petroleum Corporation; Cornerstone Propane Partners, LP; and National Propane, LP, have brought an action in the United States District Court for the Western District of Missouri seeking declaratory and injunctive relief from the August 18 final rule. On February 13, 1998, the Missouri court preliminarily enjoined DOT enforcement of certain provisions of the alternative requirements, and enforcement of unloading attendance requirements applicable to small cargo tank motor vehicles (''bobtails'').

Advance Notice of Proposed Rulemaking

To address the need for a long-term resolution of safety and non-compliance issues, RSPA issued an advance notice of proposed rulemaking (ANPRM) under Docket No. RSPA–97–2718 (HM–225A) [62 FR 44059] on August 18, 1997, requesting comments concerning changes to the HMR that go beyond the scope of the emergency final rule, including new or revised provisions for operator attendance, hose management, and emergency discharge controls. Specifically, the ANPRM requested comments on: (1) whether RSPA should continue to regulate unloading operations of liquefied compressed gases in CTMVs or relinquish regulatory control in this area to other federal, state, local and tribal authorities; (2) the feasibility of developing emergency discharge control systems that would function in the event of full or partial separations or failures of pipes and hoses; (3) the ability of the industry to meet a possible 1–, 2–, or 3-year retrofit schedule; (4) standards for the qualification, testing, and use of hoses used in unloading; and (5) safety procedures for persons performing unloading operations. To date, RSPA has received over 150 comments to the ANPRM. The comment period closed October 17, 1997.

II. Negotiated Rulemaking

RSPA has analyzed the comments received for the December 10 final rule and the ANPRM and believes that this proposed rulemaking is a good candidate for negotiated rulemaking. The safety issues are fairly well-defined, as are the interests that would be affected by a proposed rule. Moreover, RSPA believes that the face-to-face discussion and open exchange of ideas that occur during a negotiated rulemaking may promote more effective communication and development of creative solutions. Particularly in light of the ongoing litigation, the traditional notice and comment process for regulations development may not result in a solution acceptable to all affected interests.

In a negotiated rulemaking, representatives of interests that will be affected by a regulation meet to discuss the safety problem and related issues and identify potential solutions. The group attempts to reach consensus on a proposed solution and prepares a recommendation for a proposed rule for consideration by the agency. This inclusive process is intended to make the rule acceptable to all affected interests and to preclude filing of petitions for reconsideration or legal challenges that can follow promulgation of a final rule.

The Negotiated Rulemaking Act of 1990, 5 U.S.C. § 561 *et seq.*, establishes a framework for conducting negotiated rulemakings. In September 1993, the National Performance Review issued a recommendation encouraging consensus-based rulemaking (REG 03). President Clinton issued Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), which states the need to reform the current regulatory process into one that is effective, consistent, and understandable. Section 6(a) of the EO charges government agencies with providing the public meaningful participation in the regulatory process. On May 1, 1998, President Clinton issued a memorandum to heads of executive departments and agencies encouraging greater use of negotiated rulemaking.

Negotiated rulemakings have been used successfully by the Department of Transportation, including the Federal Aviation Administration, the United States Coast Guard, the Federal Highway Administration, and the National Highway Traffic Safety Administration. RSPA will soon publish an NPRM addressing the qualification of pipeline personnel that was developed through negotiated rulemaking. The Environmental Protection Agency and the Occupational Safety and Health Administration have also successfully used the process.

The Negotiated Rulemaking Act, 5 U.S.C. § 563(a), recommends that an agency considering the feasibility of regulatory negotiations to resolve a specific issue should consider whether:

(1) There is a need for the rule.

(2) There are a limited number of identifiable interests.

(3) These interests can be adequately represented by persons willing to negotiate in good faith to reach a consensus.

(4) There is a reasonable likelihood that the committee will reach consensus within a fixed period of time.

(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking.

(6) The agency has adequate resources and is willing to commit such resources to the process.

(7) The agency is committed to use the result of the negotiation in formulating a proposed rule if at all possible.

The Act authorizes an agency to use the services of a convener to assist it to determine the feasibility of regulatory negotiation in specific instances (5 U.S.C. § 563(b)). RSPA contracted with

a convener to make this determination for a rulemaking that would resolve the safety issues that were the subject of the August 18, 1997, ANPRM. With RSPA input, the convener identified interests that will be significantly affected by a proposed rule and conducted discussions with persons representing these interests to identify issues of concern. Based on these discussions, the convener concluded that a negotiated rulemaking is feasible and appropriate and has a reasonable likelihood of success. A copy of the convener's final report has been placed in Docket No. RSPA–97–2718 (HM–225A).

Based on the recommendation of the convener, RSPA has decided to charter a negotiated rulemaking committee (Committee) under the Federal Advisory Committee Act (FACA; 5 U.S.C. App. § 1) to develop a proposed rule for preventing and mitigating unintentional releases during the unloading of DOT specification MC 330 and MC 331 CTMVs that transport and deliver liquefied compressed gases.

III. Procedures and Guidelines

The following proposed procedures and guidelines will apply to this process, subject to appropriate changes made as a result of comments on this Notice or as determined to be necessary during the negotiating process.

(A) Notice of Intent to Establish Advisory Committee and Request for Comment

In accordance with the requirements of FACA, an agency of the federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a federal advisory committee. It is the purpose of this Notice to indicate RSPA's intent to create a federal advisory committee, to identify the issues involved in the rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the use of regulatory negotiation and on the identification of the issues, interests, procedures, and participants.

(B) Facilitator

Pursuant to § 566 of the Negotiated Rulemaking Act, a facilitator will be selected to serve as an impartial chair of the meetings; assist committee members to conduct discussions and negotiations; and manage the keeping of minutes and records as required by FACA. RSPA is currently considering persons to serve as facilitator for the negotiating group. This individual will chair the negotiations, may offer alternative suggestions toward the desired consensus, will help participants define and reach consensus, and will determine the feasibility of negotiating particular issues.

(C) Representation

The Committee will include representatives from DOT and from the organizations and interests listed below. Each representative may also name an alternate, who will be encouraged to attend all Committee meetings and will serve in place of the representative if necessary. The DOT representative is the Designated Federal Official (DFO) as required by FACA (5 U.S.C. App. § 10) and will participate in the deliberations and activities of the Committee with the same rights and responsibilities as other Committee members. The DFO will be authorized to fully represent the agency in the discussions and negotiations of the Committee.

RSPA intends to invite the following organizations and interests to participate in the negotiated rulemaking by identifying an individual to serve as a member of the Committee. The organizations listed have been contacted by the convener and have indicated a willingness to serve on the Committee. RSPA believes that, in addition to the organizations listed, there are additional interests that should be included on the Committee. RSPA recognizes that it may be difficult for the interests not directly associated with a trade association or organization to identify an appropriate individual to represent them and invites comments on how best to assure that they are adequately represented on the Committee. RSPA will host a meeting in June 1998 (see below) at which those with a common interest in the proposed rule will be encouraged to meet and agree on a representative to the Committee.

The organizations and interests that should participate in the negotiated rulemaking are:

1. National Propane Gas Association.
2. The Fertilizer Institute.
3. National Tank Truck Carriers, Inc.
4. National Fire Protection Association.
5. Small businesses that transport and deliver propane, anhydrous ammonia, and other liquefied compressed gases.
6. Large businesses that transport and deliver propane, anhydrous ammonia, and other liquefied compressed gases.
7. Manufacturers of DOT MC 330 and MC 331 specification CTMVs used to transport liquefied compressed gases.
8. State safety regulatory agencies.
9. State safety enforcement agencies.
10. State/local emergency response and fire services agencies.

RSPA will consider applications for representation from organizations or interests not appropriately represented by those listed above. Please identify such interests and organizations if they exist and explain why such organizations and interests should have separate representation on the Committee.

RSPA is also considering how best to include manufacturers of cargo tank components, such as internal self-closing stop valves, emergency discharge control systems, and remote shut-off systems, in the negotiated rulemaking process. RSPA believes that component manufacturers have technical expertise that would be extremely valuable to the Committee's deliberations. 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. RSPA has tentatively decided to accept this recommendation because it would allow all interested parties to have a significant role in discussions leading to improved understanding of technical issues and possibilities, while leaving ultimate decisions to be made by the agency and those directly responsible for compliance with applicable regulations. However, RSPA recognizes that other approaches could accomplish the same end and requests comments on the most appropriate role for component manufacturers on the Committee.

(D) Applications for Membership

Each application for membership or nomination to the Committee should include: (i) The name of the applicant or nominee and the interest(s) such person would represent; (ii) evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent; and (iii) a written commitment that the applicant or nominee would participate in good faith. Please be aware that each individual or organization affected by a final rule need not have its own representative on the Committee. Rather, each interest must be adequately represented, and the Committee should be fairly balanced.

(E) Good Faith

Participants must be committed to negotiate in good faith. Therefore, it is important that senior individuals within each interest group be designated to represent that interest. No individual will be required to ''bind'' the interests he or she represents, but the individual should be able to represent the interest with confidence. For this process to be successful, the interests represented should be willing to accept the final Committee product.

(F) Notice of Establishment

After evaluating comments received as a result of this notice, RSPA will issue a notice announcing the establishment and composition of the Committee, unless it determines that such action is inappropriate in light of comments received. After the Committee is chartered, the negotiations will begin.

(G) Administrative Support and Meetings

Staff support will be provided by RSPA, and meetings will take place in Washington, DC, unless agreed otherwise by the Committee.

(H) Consensus

The purpose of the Committee is to develop consensus on an outline for a proposed rule. ''Consensus'' means the unanimous concurrence among the interests represented on the Committee, unless the Committee explicitly adopts a different definition.

(I) Notice of Proposed Rulemaking

The Committee's objective is to prepare a report containing an outline of its recommendations for a notice of proposed rulemaking. This report may also include 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. To this end, RSPA expects the Committee to address cost/benefit, paperwork reduction, and regulatory flexibility requirements. If consensus cannot be achieved for some issues, the report will identify the areas of agreement and disagreement, and explanations for any disagreement. RSPA will use the Committee report to draft a notice of proposed rulemaking, regulatory evaluation, and other analyses, as appropriate.

RSPA will accept the Committee proposal unless it is inconsistent with the statutory authority of the agency or other legal requirements or does not adequately address public safety. In that event, the preamble to an NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the agency decision to reject the Committee recommendations.

(J) Final Rule

RSPA may elect to ask the Committee to assist in the evaluation of comments received to the NPRM, depending on the nature of the comments received.

(K) Tentative Schedule

RSPA plans to host an organizational meeting to discuss Committee membership, procedural matters, and ground rules in advance of the first meeting of the Committee. Once the Committee is established and selected, RSPA will publish a notice announcing the first two meetings of the Committee in the **Federal Register**. Notice of subsequent meetings will also be published 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. The timeframe for the Committee to complete its work is short because the emergency interim final rule expires July 1, 1999. 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. The process may end earlier if the facilitator or DFO so recommends.

(L) Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the Committee will establish detailed procedures for the meetings. Meetings of the Committee will be open to the public. Any person attending the Committee meetings may address the Committee if time permits or file statements with the Committee.

(M) Record of Meetings

In accordance with FACA requirements, the facilitator will prepare minutes of all Committee meetings. These minutes will be placed in the public docket for this rulemaking.

IV. Key Issues for Negotiation

RSPA has reviewed written comments, petitions, incident reports, and industry operating practices, and has engaged in extensive dialogue on the issues related to the safe unloading of liquefied compressed gases from CTMVs. Based on this information, RSPA has tentatively identified major issues that should be considered in this negotiated rulemaking. Issues related to transportation and delivery of liquefied compressed gases in CTMVs not specifically listed in this Notice may be addressed as they arise in the course of the negotiation. RSPA understands that these issues are interrelated and is open to a systems safety approach for managing risk associated with unloading liquefied compressed gases. RSPA invites comments concerning the appropriateness of these issues for consideration and whether other issues should be added. Note that some of these issues were raised in the February 19, 1997, emergency interim final rule and the August 18, 1997, ANPRM.

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 ANPRM 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, accidents will happen, 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 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 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 device that is located on the CTMV but away from the valve(s) that it operates. Many CTMVs have remote shut-offs located near the vehicle cab. The remote shut-off may be manually activated. An off-truck remote system includes a portable device that can shut down cargo tank unloading operations away from the CTMV. An off-truck remote is manually activated. 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.

IV. Organizational Meeting

RSPA will host a meeting to discuss issues related to establishment of a Negotiated Rulemaking Advisory Committee for Safety Standards for Preventing and Mitigating Unintentional Releases During the Unloading of Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service. The meeting is scheduled for June 23–24, 1998, in Room 2230 of the U.S. Department of Transportation Headquarters Building, 400 Seventh Street, S.W., Washington, DC 20590. On June 23, the meeting will begin at 9:30 a.m. and will adjourn at 4:00 p.m.; on June 24, the meeting will begin at 9:30 a.m. and will adjourn at 12:30 p.m. RSPA invites all interested persons to attend. The meeting agenda will include discussion of the negotiated rulemaking process, designation of members to represent identified interests, ground rules for Committee deliberations, and procedural matters. Those who plan to attend this meeting should notify Jennifer Karim or Susan Gorsky, 202–366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590–0001 by June 19, 1998.

Issued in Washington, DC on June 1, 1998, under authority delegated in 49 CFR Part 1.

Alan I. Roberts,

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

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