



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

400 Seventh St., S.W.  
Washington, D.C. 20590

FEB - 4 2004

The Honorable Ellen Engleman Conners  
Chairman  
National Transportation Safety Board  
Washington, DC 20594

Dear Chairman Conners:

This letter provides an update on National Transportation Safety Board Recommendation I-00-6 issued to the Research and Special Programs Administration (RPSA). The recommendation states:

**Recommendation I-00-6:**

*Within one year of this safety recommendation, complete rulemaking on Docket HM-223 "Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage," to establish, for all modes of transportation, safety requirements for loading and unloading hazardous materials.*

On October 30, 2003, we published a final rule under Docket HM-223 to clarify the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to specific functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. The final rule is effective October 1, 2004. A copy of the final rule is enclosed.

The final rule specifies pre-transportation and transportation functions to which the HMR apply. Pre-transportation functions are functions performed to prepare hazardous materials for movement in commerce by persons who offer a hazardous material for transportation or cause a hazardous material to be transported. Transportation functions are functions performed as part of the actual movement of hazardous materials in commerce, including loading, unloading, and storage of hazardous materials that is incidental to their movement. The final rule further clarifies that "transportation in commerce," for purposes of applicability of the HMR, begins when a carrier takes possession of a hazardous material and continues until the carrier delivers the package containing the hazardous material to its destination, as indicated on shipping documentation.

For the most part, the HM-223 final rule codifies in the HMR long-standing policies and interpretations concerning the applicability of the regulations to specific functions and operations. We initiated the rulemaking to better define the applicability of the HMR to loading,

unloading, and storage operations at fixed facilities and to clarify the relationships among Federal, state, local, and tribal agencies involved in the regulation of hazardous materials. To this end, the final rule includes guidance as to the relationship of the HMR to worker protection regulations promulgated by the Occupational Safety and Health Administration (OSHA) and environmental protection regulations issued by the Environmental Protection Agency (EPA). In addition, the final rule provides guidance concerning the preemption provisions contained in the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*). We are currently considering a number of appeals filed by the regulated industry asking that we reconsider certain aspects of the final rule.

The HMR currently include regulations for loading and unloading operations and for training persons who perform loading and unloading operations subject to HMR requirements. Further, since many loading and unloading activities are actually part of manufacturing processes at fixed facilities, OSHA regulations include a number of requirements governing such activities. OSHA regulations cover operational procedures for loading and unloading operations with which a facility must comply and include requirements for facility equipment used for such loading and unloading operations. Similarly, EPA requirements for environmental protection that relate to loading or unloading operations – such as requirements for secondary containment or vapor recovery – may also apply. Given the comprehensive regulations currently in effect, we do not believe that additional requirements governing loading and unloading of hazardous materials are necessary.

The HM-223 final rule clarifies the respective jurisdictional responsibilities of the Department of Transportation, OSHA, and EPA for the regulation of hazardous materials in transportation and at fixed facilities. This should result in improved compliance with the separate regulatory requirements of Federal and non-Federal agencies and, thus, enhance hazardous materials transportation safety, reduce risks to the environment from hazardous materials, and promote workplace safety at facilities that manufacture or handle hazardous materials. We therefore request that you classify recommendation I-00-6 as “Closed-Acceptable Alternative Action.” We thank you for consideration of our request.

If you have any questions, please contact me or you may call James Wiggins, Director, Office of Policy and Program Support, at (202) 366-4831.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'S. G. Bonasso', with a stylized flourish extending to the right.

Samuel G. Bonasso  
Deputy Administrator

Enclosures