



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

The Administrator

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

DEC 20 2001

The Honorable Marion C. Blakey
Chairman
National Transportation Safety Board
Washington, DC 20594

Dear Madam Chairman:

Thank you for your letter of July 23 concerning the National Transportation Safety Board's Safety 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.

This recommendation is currently classified as "Open – Unacceptable Response."

Clarifying the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) is an important and significant exercise. The HM-223 rulemaking will specifically identify those functions and operations that are regulated under the HMR, and those that are not. Further, the rulemaking will clarify the respective jurisdictional responsibilities of the Department of Transportation, the Department of Labor's Occupational Safety and Health Administration, and the Environmental Protection Agency for the regulation of hazardous materials in transportation and at fixed facilities, consistent with current statutory and regulatory requirements. 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.

The HM-223 rulemaking is not intended to address the loading and unloading operations at issue in your recommendation. Therefore, we request that you classify recommendation I-00-6 as "Closed – Acceptable Alternate Action."

On June 14, 2001, we published a notice of proposed rulemaking (NPRM) under Docket HM-223 proposing to clarify the applicability of the HMR to specific transportation-related functions and activities, including hazardous materials loading and unloading operations and storage of hazardous materials during transportation. A copy of the NPRM is enclosed.



In the NPRM, we propose to list in the HMR 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 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. We further propose to clarify that "transportation in commerce," for purposes 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.

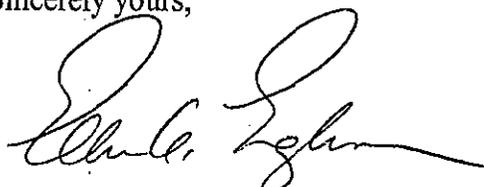
For the most part, the HM-223 NPRM proposes to codify in the HMR long-standing policies and interpretations concerning the applicability of the regulations to specific functions and operations. The NPRM includes guidance as to the relationship of the HMR to OSHA's worker protection regulations and EPA's environmental protection regulations. In addition, the NPRM provides guidance concerning the preemption provisions contained in Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*).

The HM-223 rulemaking does not include comprehensive safety standards and requirements for hazardous materials loading and unloading operations. We never intended this rulemaking to be the vehicle for establishing such requirements nor are we convinced that additional requirements are necessary. 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.

On November 27, 2001, we published a notice extending the comment period on the HM-223 NPRM until February 1, 2002, to provide commenters additional time because of delays they may have encountered in developing or submitting comments and to consider and comment on the proposed rule from the perspective of transportation security. The Safety Board's comments on the NPRM have been placed in the rulemaking docket and will be carefully considered as we develop a final rule.

Thank you for consideration of our request to classify recommendation I-00-6 as "Closed - Acceptable Alternate Action." If you have any questions, please contact me or Ms. Suzanne Te Beau, Associate Administrator for Policy and Congressional Affairs, at (202) 366-4831.

Sincerely yours,



Ellen G. Engleman

Enclosure