



National Transportation Safety Board

Washington, D.C. 20594

MAR 29 2004

Office of the Vice Chairman

Mr. Samuel G. Bonasso
Deputy Administrator
Research and Special Programs Administration
Washington, D.C. 20590

Dear Mr. Bonasso:

Thank you for the February 4, 2004, letter to the National Transportation Safety Board regarding Safety Recommendation I-00-6, stated below. The Safety Board issued this recommendation to the Research and Special Programs Administration (RSPA) on June 29, 2000, as a result of hazardous materials accidents in Louisville, Kentucky, and Whitehall, Michigan, on November 9, 1998, and June 4, 1999, respectively. This recommendation was reiterated on March 12, 2001, in the Board's report on an accident in Clymers, Indiana.

I-00-6

Within 1 year of the issuance of this safety recommendation, complete rulemaking on Docket HM-223 "Applicability of the Hazardous Materials Regulations to Loading, Unloading Storage," to establish, for all modes of transportation, safety requirements for loading and unloading hazardous materials.

The Safety Board has closely followed the rulemaking under Docket HM-223 and provided extensive comments on October 29, 2001, to the notice of proposed rulemaking (NPRM). The Board has historically and consistently considered loading and unloading operations to be transportation-related functions, in operations involving bulk containers such as railroad tank cars, highway cargo tanks, and intermodal bulk containers.

The Safety Board has expressed concern in its comments to the NPRM, and in its reports of accident investigations, that the carrier-controlled criterion proposed by RSPA would have a significant negative impact on public safety. The Board further stated that application of the hazardous materials regulations would likely result in different standards being imposed by different agencies (Federal, State, or local). The Board also expressed concern that the Environmental Protection Agency and the Occupational Safety and Health Administration, the two agencies under the rulemaking that would assume a large portion of the responsibility for overseeing loading and unloading operations of tank cars, cargo tanks, and other bulk containers, did not have the expertise or the resources for overseeing these transportation-related operations.

The publication of the final rule under Docket HM-223 occurred on October 30, 2003. There was essentially no change to these areas, and, lacking any substantive response from RSPA to our stated concerns, the Safety Board continues to believe that effective Federal oversight of hazardous materials loading/unloading operations of bulk transportation containers will be seriously jeopardized. Consequently, the Board has no alternative but to classify Safety Recommendation I-00-6 "Closed—Unacceptable Action." The Board believes that the rule may result in the elimination of effective Federal oversight of hazardous materials loading/unloading operations of bulk transportation containers. The Board continues to believe that the Department of Transportation should strengthen its oversight rather than ignore these issues.

Sincerely,



Mark V. Rosenker
Vice Chairman

cc: Ms. Linda Lawson, Director
Office of Safety, Energy, and Environment
Office of Transportation Policy