



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**



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The Administrator

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

JUL 21 2000

The Honorable Jim Hall  
Chairman  
National Transportation Safety Board  
Washington, DC 20594

Dear Mr. Chairman:

Thank you for your June 29, 2000 letter concerning safety recommendation I-00-6 issued to the Research and Special Programs Administration (RSPA). This recommendation was issued following the National Transportation Safety Board's (NTSB) investigation of two cargo tank unloading incidents in Louisville, Kentucky, on November 19, 1998, and in Whitehall, Michigan, on June 4, 1999. In both incidents, the cargo tank motor vehicle drivers were directed by facility employees to unload into storage tanks that contained materials that were incompatible with the cargo tanks' lading. In the Michigan incident, the cargo tank motor vehicle driver was killed. The Kentucky incident resulted in the evacuation of about 2,400 people. The recommendation states:

*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.*

We initiated Docket HM-223 to better define the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) 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. The HMR are promulgated under the mandate in 49 U.S.C. 5103(b) that the Secretary of Transportation "prescribe regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce." "Transportation" is defined as "the movement of property and loading, unloading, or storage incidental to the movement." (49 U.S.C. 5102(12)). Neither the statute nor the HMR defines the terms "loading incidental to movement," "unloading incidental to movement," or "storage incidental to movement." The legislative history of the statute does not clarify this matter.

We have issued a number of interpretations, inconsistency rulings, and preemption determinations in response to requests from the public for clarification regarding the meaning of "transportation in commerce" and whether particular activities are covered by that term and,

therefore, are subject to regulation under the HMR. Loading, unloading, and storage of hazardous materials are areas of particular confusion and concern. In addition, there is uncertainty concerning the extent to which other federal, state, and local agencies may regulate hazardous materials safety, particularly at fixed facilities where the line between transportation and non-transportation operations is not clearly articulated.

On July 29, 1996, we published an advance notice of proposed rulemaking (ANPRM) (enclosed) seeking comments on the applicability of the HMR to loading, unloading, and storage of hazardous materials. We also hosted three public meetings at which interested persons were invited to present ideas, proposals, and recommendations on the applicability of the HMR. Representatives of the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and DOT's Federal Railroad Administration participated in the public meetings. In addition to DOT, EPA, and OSHA, more than 200 interested persons participated in the public meetings. They included representatives of shippers, carriers, warehouses, state and local public safety agencies, and building and fire code safety organizations. We also received more than 70 written comments.

On April 27, 1999, we published a supplemental ANPRM (enclosed), highlighting comments received in response to the 1996 ANPRM and requesting additional information. In particular, the supplemental ANPRM discussed the three approaches most commonly suggested by commenters to the 1996 ANPRM for defining "transportation of hazardous materials in commerce" and asked a number of questions focused on the details of each approach. We received more than 60 comments in response to the supplemental ANPRM.

In addition to the above comments, the HM-223 docket also includes over 40 comments originally submitted on September 14, 1992 under Docket HM-212 (enclosed). On March 27, 2000, we withdrew the notice of proposed rulemaking (NPRM) issued under Docket HM-212 (enclosed) that addressed cargo tank loading and tank car unloading requirements. At the same time, we announced that tank car unloading issues would be addressed as part of Docket HM-223.

In developing this rulemaking, we have four goals. First, we want to maintain uniform national standards applicable to functions that affect the safe transportation of hazardous materials in commerce. Second, we want to maintain uniform national standards applicable to the movement of hazardous materials in commerce. Third, we want to distinguish functions that are subject to the HMR from functions that are not subject to the HMR. Finally, we want to clarify that facilities within which functions subject to the HMR occur may be subject to federal, state, or local regulations governing occupational safety and health, and environmental protection.

Clarifying the applicability of the HMR will reduce confusion on the part of the regulated public concerning where transportation requirements apply and where EPA and OSHA requirements for hazardous materials at fixed facilities apply. This should result in improved compliance with the separate regulatory requirements of DOT, EPA, and OSHA 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 are currently drafting an NPRM under Docket HM-223 and coordinating with the relevant DOT modes as well as OSHA and EPA. We anticipate publication early in 2001. After publication, we will likely host at least two public meetings to provide interested persons with an opportunity to comment on the proposals outlined in the NPRM. Because of the significance of this rulemaking, we expect that we will receive a substantial number of comments from the regulated industry, state and local government public safety and environmental agencies, and the general public. We hope to publish a final rule under Docket HM-223 by the end of 2001.

We request that you classify recommendation I-00-6 as "Open-Acceptable Action" pending completion of the HM-223 rulemaking. We thank you for consideration of our request.

If you have any questions, please contact me or Jack Murray, Associate Administrator for Policy and Program Support, at 202-366-4831.

Sincerely,

  
Kelley S. Coyner

Enclosures (4)