



National Transportation Safety Board

Washington, D.C. 20594

JUN 25 2004

Office of the Chairman

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

Dear Mr. Bonasso:

This letter addresses Safety Recommendations H-92-4 and -5, which the National Transportation Safety Board issued to the Research and Special Programs Administration (RSPA) as a result of the Safety Board's 1992 special investigation of cargo tank rollover protection.

H-92-4

Assist the Federal Highway Administration [FHWA] to improve the performance of the rollover protection devices in bulk highway cargo tanks by promulgating performance standards for rollover protection devices that are based on the engineering modeling and analysis conducted in response to Safety Recommendation H-92-3.

H-92-5

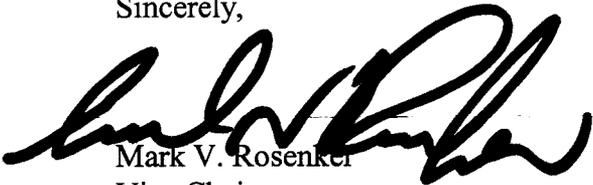
Assist the Federal Highway Administration to improve the performance of the rollover protection devices in bulk highway cargo tanks by phasing out from hazardous materials service the use of all cargo tanks that fail to meet the new performance standards promulgated in response to Safety Recommendation H-92-4.

In response to these recommendations, the FHWA (now the Federal Motor Carrier Safety Administration) and RSPA contracted with the University of Michigan Transportation Research Institute (UMTRI) to conduct a study on cargo tank rollover protection. The study was completed in 1999, at which point, RSPA published an Advance Notice of Proposed Rulemaking (ANPRM) in the *Federal Register* seeking comments on the validity of the UMTRI study and soliciting ideas about formulating performance-based rollover protection regulations. The FMCSA subsequently contracted with the Battelle Memorial Institute in 2001 to address the comments received on the ANPRM.

The Safety Board notes that on May 13, 2004, RSPA published in the *Federal Register*, under docket HM-213A, a notice to withdraw and terminate rulemaking. According to the notice,

the Battelle study is not scheduled for completion until 2006. RSPA stated in the notice that "Because of the extended period expected for completing the study, and evaluating the findings, we are terminating further rulemaking action under this docket." Although the notice also states that termination of this rulemaking does not preclude addressing the Board's safety recommendations, the Board is concerned that any rulemaking would likely be several years after completion of the Battelle study, at which time the Board's recommendations would be more than 14 years old at a minimum. Because of RSPA's action to terminate rulemaking under docket HM-213A and the timeframe for possible initiation of any additional rulemaking, the Board has no alternative but to classify Safety Recommendations H-92-4 and -5 "Closed—Unacceptable Action."

Sincerely,

A handwritten signature in black ink, appearing to read "Mark V. Rosenker", is written over the typed name and title.

Mark V. Rosenker
Vice Chairman

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