Oregon
Theodore R. Kulongoski, Governor

Department of Transportation
Motor Carrier Transportation Division
550 Capitol Street NE
Salem, OR 97301-2530

August 25, 2004

FILE CODE:

Annette M. Sandberg, Administrator
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
400 7 th Street, S.W.
Washington, D.C. 20590

RE: **Comprehensive Safety Analysis 2010 Initiative**; Notice of Public Listening Sessions; FMCSA-2004-18898; 69 FR 51748

Dear Ms. Sandberg:

I read with interest the August 20, 2004, Federal Register article regarding the notice of planned public listening sessions to facilitate your consideration of ways FMCSA can, "Improve its process of monitoring and assessing the safety of the motor carrier industry and how that information can be presented to the public." I applaud this current effort and desire on your part to consider how your agency can best monitor and assess the safety of the nation's motor carriers and ensure their compliance with federal regulations.

I would observe that this is not a new issue. I corresponded with then Acting Assistant Administrator Julie Anna Cirillo in September of 2000 and submitted a five page letter to her attention addressing this very subject matter and making three specific recommendations for her consideration. Two years later in September of 2002 I submitted those very same recommendations to Administrator Joseph Clapp and encouraged him to give them his serious consideration. I have attached copies of that earlier correspondence for your current review. It is my belief that the recommendations I originally made in 2000 and renewed in 2002 are equally valid today and responsive to the question you have presently posed.

Much has happened since September of 2000. The world is a very different place. The suggestions that I originally made make even more sense in the environment of today when homeland security concerns adds a new dimension to what originally began as a highway public safety discussion. I take this opportunity to once again dust off my suggestions and bring them to your attention. As before, I would be most happy to review these recommendations in greater detail with you or your staff.

Thank you for your consideration.

Respectfully,

Gregg Dal Ponte

Gregg Dal Ponte, Administrator
503-378-6351

Oregon
John A. Kitzhaber, M.D., Governor

Department of Transportation
Motor Carrier Transportation Division
550 Capitol Street NE
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FILE CODE:

September 20, 2002

Joseph M. Clapp
Administrator
Federal Motor Carrier Safety Administration
400 7th Street, S.W.
Washington, DC 20590

Dear Mr. Clapp:

My nature is to be optimistic. As a result, I am patient and expectant of an eventual good outcome. In that regard, I'd like to bring to your attention a letter that I submitted to FMCSA in September of 2000 which seemingly did not warrant a reply. For all I know, the attached correspondence may very well never have been actually received.

Nevertheless, I consider the recommendations in the attached letter to be as valid and as relevant today as they were when I originally composed them. I'd like to offer again these thoughts to you for your consideration at this time. If you would care to discuss any of my suggestions I would be most happy to review them with you or a member of your staff.

Thank you for your consideration.

Respectfully,

Gregg Del Ponte

Gregg Del Ponte, Deputy Director
Motor Carrier Transportation Division
Oregon Department of Transportation
503-378-6351

Oregon
John A. Kitzhaber, M.D., Governor

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550 Capitol Street NE
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FILE CODE:

September 13, 2000

Julie Anna Cirillo
Acting Assistant Administrator
Federal Motor Carrier Safety Administration
400 Seventh St., SW
Washington, D.C. 20590

Dear Ms. Cirillo:

Thank you very much for your letter of September 6, 2000, inviting my ideas and suggestions on how FMCSA can best go about achieving the goal established by Secretary of Transportation Rodney Slater to reduce commercial vehicle-related fatalities 50% by 2010. I would be delighted to share my initial opinions and to collaborate with you in an ongoing fashion.

I have examined the web site to which you referred me and I found in one of the links provided there the following quote attributed to you:

3/27/2000—"Which brings me to my final point. That is, we can't succeed at preventing truck and bus fatalities and injuries without everyone recognizing and assuming a role and responsibility for motor carrier safety. By everyone, I mean drivers of passenger and commercial vehicles, carriers, corporate America, Congress, law enforcement, safety groups, shippers, receivers, the insurance community, and other federal and state government agencies. I promise FMCSA will do its part. How about you?"

I think you have seized upon the critical formula for attainment of the goal established by Secretary Slater. In your remark I see an acknowledgment of the leadership role which FMCSA must play, as well as a realization that there is no singular silver bullet and that instead there must be a comprehensive approach that successfully recognizes and maximizes each and every distinct opportunity that becomes available to advance this very important public policy initiative. The commitment must be complete. The approach cannot be hit and miss or compromise this very important public policy initiative for the sake of another. In fact, the attainment of this goal should be the directive element that guides other related policy decisions. Indecision or failure to lead by not making difficult decisions will not work towards the ultimate attainment of your pronounced goal.

If the intent of your soon due report to Congress is to identify specific actions and strategies by which you will proactively improve vehicle, driver and carrier safety, then I would offer that you have available to you several distinct leadership opportunities which can move you toward your goal. I will briefly explain each of the initial ideas I would like to express to you.

First, your agency is championing the deployment of Intelligent Transportation System (ITS) technologies under the banner of the Commercial Vehicle Information Systems and Networks (CVISN) program, which provides among other things for automated bypass of truck weigh stations by safe and legal commercial motor vehicles. This is accomplished by identification of enrolled trucks by Automatic Vehicle Identification (AVI) devices using Dedicated Short Range Communication (DSRC) devices commonly referred to as transponders which permit enrolled trucks to be recognized by deployed preclearance systems, and for the driver to receive in the cab of his/her truck either bypass instructions or instructions to report to a scale based on the automated regulatory checks that transpire at a particular site. This technology is used substantially in Oregon. At an automated Oregon weigh station (21 sites) we check each and every truck's weight (individual axles, axle combinations, bridge weights, and total combination weight), height, registration status, highway use tax account status, and safety fitness rating before we make a decision to allow any truck to bypass an open weigh station. Event data that has historically been manually recorded by weigh station operators is now collected automatically at weigh stations equipped with this technology. This event data records that a particular truck license plate came through a particular weigh station on a given date at a precise time. This kind of information is used by Oregon safety enforcement personnel to successfully administer driver hours-of-service audits. Recently, Doug McKelvey of your staff corresponded with me and observed that:

"Removing any tool from the safety investigator's tool box makes their job more difficult and increases the likelihood of hours-of-service violations not being caught. The Oregon FMCSA Division Office routinely sends out State of Oregon - Scale Crossing Reports every year to other FMCSA offices and States. This information has probably been used in hundreds of enforcement cases by FMCSA and the States."

Doug was responding to my earlier observation to him that the operators of some weigh station automated preclearance systems have established as a policy the practice of withholding this weigh station event data from legitimate state safety enforcement staff. This is the basis of my first recommendation to you for action.

> I recommend that FMCSA take immediate action to establish a national policy of not allowing states or their technology partners to withhold weigh station event data from legitimate safety regulatory enforcement staff.

I agree with Doug's observation that current policies and practices increase the likelihood of hours-of-service violations not being caught. I don't think FMCSA should actively or passively endorse such a degradation in regulatory enforcement capacity. If the proliferation of this ITS technology continues and more and more weigh stations become automated, and the volume of weigh station event data shielded from regulatory scrutiny becomes larger and larger, then I

think the goal that Secretary Slater has put forth becomes more difficult to achieve. FMCSA has the ability to require that states comply with all legitimate data requests to support drivers hours-of-service enforcement efforts and can make such compliance a condition of states continuing to be eligible to receive Motor Carrier Safety Assistance Program federal grant dollars. Whether or not a given state has historically made use of such data in their regulatory enforcement activities is not the question. The question is whether or not states and federal investigators who have historically made legitimate use of such data should be increasingly denied such data. Finally on this point, Mike Onder, Information Technology Systems Program Manager for USDOT, is quoted in the June 26, 2000, edition of Transport Topics as having said:

"They market to [trucking] that this information is private. When they sign up with a state, they agree [the state] won't get access to the data. That goes against the CVISN architecture. PrePass is hurting interoperability."

This leads me to my second recommendation for your consideration. Let me provide some contextual information before I make that recommendation. It is the case that many automated weigh station preclearance programs being installed across the country do not employ any weigh in motion capability. Commercial trucks are being allowed to bypass open weigh stations without being weighed. That simple circumstance begs the question, "What do you call a weigh station that does not weigh trucks?" Is there any connection between truck weights and commercial motor vehicle safety? Of course there is. In his correspondence to me, Doug McKelvey observed the following:

"The second part of the question deals with FHWA not requiring weighings. Weight is an infrastructure issue as well as a safety issue. However the State of Oregon did a study, several years ago, that showed a correlation between overweight violations and crashes. This correlation only applied when the overweight violations were well in excess of what would normally be found. It basically showed that habitual violators had problems in many areas. Hopefully carriers approved for bypass will not fall into this category."

I assert that an over-laden truck poses a greater safety risk to everyone that shares the road with it. Oregon published a study in September of 1997 that, in part, concluded:

- A strong statistical correlation was found between the rate of size/weight violations and a carrier's total accident rate.
- Motor carriers violating size/weight regulations are over-represented in truck accidents and safety violation rates.
- Carriers who violate size/weight regulations also tend to violate safety regulations.
- Carrier-specific size/weight violation information is a useful indicator of carrier operating habits.

A 1989 Wisconsin study found that as many as 70% of over-loaded trucks also were in violation of driver and vehicle safety regulations. Doug opined that carriers approved for bypass would not fall in that category. The question is whether or not this is a reasonable expectation. Some would assert that it is of no consequence to not weigh a truck at a weigh station because the

historical weight violation rate wherever there are fixed scales is so low. Please examine that argument in a little greater detail. Why, do you suppose, the weight violation rate is low where there are fixed scales? It is generally agreed that the overloading violation rate is a function of enforcement visibility. A fixed weigh station site is a very visible reminder of weight enforcement. However, when it becomes generally known that a transponder-equipped truck will not be subject to being weighed, do you think it might be reasonable to assume that the violation rate might increase? I think so. That conclusion has been demonstrated to be true time and time again by various state agencies that have published studies concluding that the weight violation rate varies inversely with the level of enforcement visibility. High enforcement yields low violation rates. Low enforcement levels yields markedly higher violation rates. A higher violation rate for over-laden trucks translates into adverse safety impacts. That should be of concern to the Federal Motor Carrier Safety Administration.

> Therefore, my second recommendation is that USDOT provide policy guidance that discourages states from allowing trucks to bypass open weigh stations without being weighed.

Again, USDOT has a method available to make such policy guidance meaningful to states. Each year every state must submit both a Size and Weight Enforcement Plan and an Annual Size and Weight Certification document to USDOT. Your critical review of these documents should appropriately conclude that weigh stations that do not weigh trucks are neither fulfilling their intended role in infrastructure preservation nor contributing towards the attainment of Secretary Slater's goal to reduce commercial vehicle-related fatalities 50% by 2010.

My final current recommendation to you also involves the growing use of Intelligent Transportation Systems technology. I have already observed that the identifier device that makes AVI work is the individual transponder that is installed in the cab of participating trucks. I envision a transponder-equipped truck being enabled to seamlessly navigate, without having to overcome any artificial barriers, a tapestry woven out of individual installations of ITS technology that are being propagated all over this country and together constitute our national transportation system. I think USDOT shares that vision as is evidenced by the priority it places on the continuing deployment of CVISN technologies, including weigh station preclearance. The fact of the matter is that not all weigh station preclearance systems will allow a transponder that they have issued to be used in the preclearance system operated by another state. This restrictive practice is not conducive to deriving the maximum productivity from the multiple preclearance systems that have been deployed across this country. In this regard, Jeff Secrist, CVISN Coordinator, Federal Motor Carrier Safety Administration, was quoted in the June 26, 2000, edition of Transport Topics as having said:

"(Truckers) want to be able to travel unencumbered nationwide without coping with different preclearance programs. From a safety perspective, there's a major benefit in sharing information . . . so that unsafevehicles can't travel between states. HELP - PrePass doesn't allow other systems to have access to its data. And that means it can't be compliant."

You are vigorously supporting the expanding deployment of CVISN, which imagines, in part, a nationwide preclearance system for interstate trucking. But for it to work, the various systems offered by vendors today must be compatible and allow data sharing.

> My third and final recommendation to you is that USDOT demonstrate leadership and mandate that states provide for universal transponder interoperability. The USDOT should depart from its historic approach of taking no position and waiting optimistically for market forces to resolve these open issues.

In fact, the June 26, 2000, edition of Transport Topics reports that on this subject Mike Onder of USDOT said:

"We're holding a mandate in our hip pocket, but it would really be disastrous to use that if we didn't have to do so."

If it is correct that USDOT does have a mandate in their hip pocket, then I would assert that it is incongruous with the goal established by Secretary Slater to continue to forestall taking such deliberate action.

Again, thank you for taking the time to write to me and to invite my thoughts on this subject. I do appreciate the opportunity to share my thinking with you and I commit on behalf of Oregon to continue to work diligently as your partners in promoting commercial motor vehicle safety.

Respectfully,

Gregg Dal Ponte

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