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Oregon

Theodore R. Kulongoski, Governor

DEPT. OF TRANSPORTATION

Department of Transportation

Motor Carrier Transportation Division

550 Capitol Street NE

Salem, OR 97301-2530

03 JAN 27 PM 3:26

January 24, 2003

FILE CODE:

U.S. Department of Transportation
Dockets Management Facility, Room PL 40 1
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Docket No. FMCSA-2002-13295-31

To Whom it May Concern:

I would like to add some additional information to the record upon which you will ultimately base your decision to approve or deny Oregon's request for exemption which is the subject of the above captioned docket.

Attached to this letter is a copy of a USDOT Memorandum dated August 17, 1988, which is signed by six USDOT officials constituting a technical review panel embodied to assess Oregon's FY-89 Grant Application. Please take note that the explicit observation of the panel was, "The State has full statutory authority, including declaration of knowledge and right-of-entry authorities." A similar review panel wrote in a 1995 document, "The Secretary's regulatory review panel ruled that Oregon's laws were either the same as, or compatible with, federal requirements." The latter comment in particular is precisely the argument that ODOT has put forward in our current exemption request. It is noteworthy that this basis for approving the exemption was in fact originally observed and reported by a federal review panel. The logic that USDOT officials applied in 1988 and again in 1995 is as valid today as it was then. Nothing in the relevant Oregon Revised Statutes has changed. What has changed is the USDOT assessment that a problem now exists.

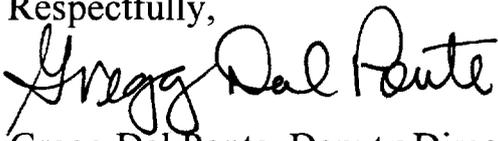
The whole thrust of the MCSAP program is that it is **performance-based**. That is to say that we are not simply trying to increase the number of vehicle and driver inspections as a goal in itself; rather, the program is intended to

expend scarce resources prudently to bring about safety improvements where trend data clearly indicates actual performance enhancements can be obtained. The overall safety of farm truck operations in Oregon do not even come up on the radar screen by that measure. In this regard, I would observe that eliminating Oregon's participation in the MCSAP program over a technicality that is apparently open to various interpretations would only bring about negative performance results.

Finally, I would offer that there is something else to be considered in a review of this exemption request. Oregon has been straight-forward and forthcoming in acknowledging what our practices are and what our statutes say. I believe it is probably the case that other states receiving MCSAP grants do in fact have fully conforming statutes regarding applicability of safety regulations to farm vehicles and yet choose to not enforce them as a matter of policy. If true, such a circumstance amounts to an unofficial constructive farm exemption in place in other jurisdictions. I would argue that Oregon should not be chastised for being honest and direct. USDOT should hold all states to the same standard and consider both action and inaction when making that assessment.

It is my hope that officials responsible for making the ultimate decision regarding this request for exemption consider the full ramifications of a decision to withdraw MCSAP funding from Oregon and base their decision on the obvious deleterious effects such action would have on safety regulation in Oregon.

Respectfully,

A handwritten signature in black ink that reads "Gregg Dal Ponte". The signature is written in a cursive, flowing style.

Gregg Dal Ponte, Deputy Director
Motor Carrier Transportation Division
Oregon Department of Transportation

W/attachments

08/24/88
DAA

U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Room 312 Mohawk Building
708 S. W. Third Avenue
Portland, Oregon 97204

Subject: Oregon FY-89 Grant Application
Technical Review Panel

Date: August 17, 1988

From: Technical Review Panel

Reply to
Att. of: EMC-010.2

To: Mr. Clinton O. Magby, II
Regional Director
Office of Motor Carrier Safety

The Panel consisted of:

Linda Taylor, Regional State Program Coordinator
Curnis King, Regional Hazardous Materials Program Coordinator
Lance Hanf, Assistant Regional Counsel
Leslie Harris, Fiscal Program Specialist, Portland, Oregon
Frank York, Officer In Charge, Boise Idaho
Roger Kraft, Officer In Charge, Olympia, Washington

Oregon is applying for funding for its sixth year implementation in the MCSAP. The State has full statutory authority, including declaration of knowledge and right-of-entry authorities. They will complete 12,800 inspections by the end of the project. They had projected 10,800. These are all Level I inspections. They projected 300 SMA's and will complete 325, 35 of which were hazardous materials carriers. Truck accidents were reduced by 13%.

The panel has reviewed the Part 1 application and requests clarification of the following.

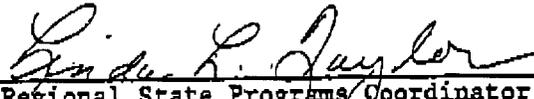
Page 33: Several lines do not equal the individual line totals indicated. For example, Motor Carrier Specialist(a) 17 x 2080 hours x 99.7 MCSAP dedicated x 18.69 = \$658,896 rather than \$660,878 indicated.

- Highway Weighmasters: 67 x 2080 hours x 25.8 MCSAP dedicated x 15.12 = \$543,637 versus \$275,373.
- Inspection Officers(c) should be \$72,259.
- Supervisor(d) there is no total annual cost shown.
- Inspection Officers(d) should be \$131,372.
- Supervisor(e) no total annual cost shown.
- Inspection Officers(e) should be \$70,220
- Inspection Officers(f): We understand that this figure will be submitted in the amended budget to include Marion County.

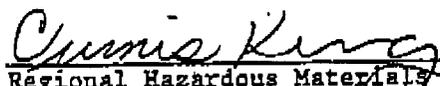
Obviously any changes on this page would require changes on pages 30 and 31.

RECOMMENDATION

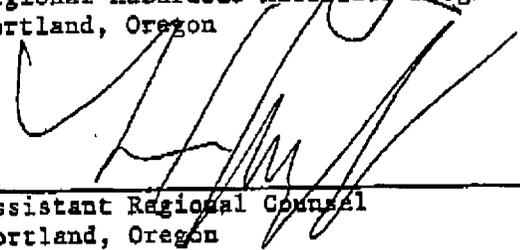
Approval of Oregon's FY-89 Grant Application is recommended contingent upon the State's clarification of the above item.



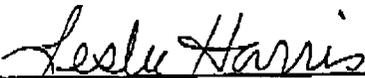
Regional State Programs Coordinator
Portland, Oregon



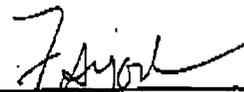
Regional Hazardous Materials Program Coordinator
Portland, Oregon



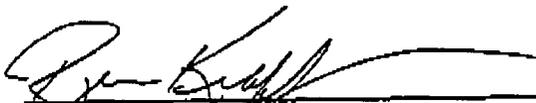
Assistant Regional Counsel
Portland, Oregon



Fiscal Program Specialist
Portland, Oregon



Officer in Charge
Boise, Oregon



Officer in Charge
Olympia, Washington

Attachment: Technical Review Checklist