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BEFORE THE

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

UNITED STATES DEPARTMENT OF TRANSPORTATION

**NOTICE OF PETITION FOR DETERMINATION;
REQUEST FOR COMMENTS**

**IDENTIFICATION OF VEHICLES; OREGON DEPARTMENT OF
TRANSPORTATION TAX CREDENTIALS**

DOCKET NO. FMCSA-2006-25004 - 13

**COMMENTS SUBMITTED BY
THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.**

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July 13, 2006

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION**

I. INTRODUCTION

A. Procedural Statement

These comments are submitted by the Owner-Operator Independent Drivers Association, Inc. ("OOIDA" or "Association") in response to a Notice of Petition for Determination and Request for Comments on the Oregon Department of Transportation's ("ODOT") petition for a determination as to "whether the State may continue to require motor carriers to display weight-mile tax credentials." The notice of this request was published in the Federal Register on June 13, 2006.

B. The Interest of the Owner-Operator Independent Drivers Associations, Inc.

OOIDA is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small business truckers. The more than 142,000 members of OOIDA are small-business men and women located in all 50 states and Canada who collectively own and operate more than 210,000 individual heavy-duty trucks. Many of OOIDA's members are also small business motor carriers who have DOT authority to operate in interstate commerce. The mailing address of the Association is:

Owner-Operator Independent Drivers Association, Inc.
P.O. Box 1000
1 NW OOIDA Drive
Grain Valley, Missouri 64029
www.oida.com

The Association actively promotes the views of small business truckers and professional drivers through its interaction with state and federal government agencies, legislatures, the courts, other trade associations, and private businesses to advance an equitable and safe environment for commercial drivers. OOIDA is active in all aspects of highway safety and transportation policy, and represents the positions of small business truckers in numerous committees and various forums on the local, state, national, and international levels. Many of OOIDA's members drive their commercial motor vehicles through Oregon, are subject to that state's weight-distance tax, and would be affected by the requested determination.

II. COMMENTS OF THE ASSOCIATION

A. Summary

OOIDA asks that FMCSA deny the State of Oregon's petition for a determination that it may continue to require the display of weight-mile tax credentials. Oregon presents no compelling policy argument to supercede the intent of Congress to reduce the burden on interstate commerce by prohibiting individual states from requiring trucks to display all but certain widely used forms of identification. OOIDA believes that the Oregon weight-mile tax credential is precisely the type of credential Congress had in mind when it passed this ban, and in fact, the Oregon credential is considered by truckers to be one of the most burdensome examples of such a state requirement. If FMCSA were to exempt one of the most burdensome state

identification requirements from the ban, then it would be making it easy for other states with similar requirements to make the case for their exemption from the statute. The definition of “appropriate display” that FMCSA would have to adopt in order to exempt Oregon’s credential requirement would have to be so broad that it would allow for all other such state credentials to be exempted, thereby rendering the statute meaningless.

B. Statutory and Regulatory Trends Toward Efficiency and Simplification of Rules

Oregon bases its petition on 49 U.S.C. §14506(b)(3) that allows a state may continue to require a display of credentials that are required “under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate.” Neither the statute nor the legislative history provides much direct guidance on what the Secretary should deem “appropriate.” But the lack of an explicit definition does not mean that the term “appropriate” has *any* possible meaning. Under one of the canons of statutory interpretation, that the meaning of an ambiguous phrase or word in a statute can be determined from its legislative and statutory context, we can reasonably find that an “appropriate” display in this case means something akin to motor vehicle license plates and the other credentials listed in the exceptions under § 14506 (b). An “appropriate display” would also further, or at least not work against, the purpose of the statute and the general goals of SAFETEA-LU: to reduce unique state requirements on motor carriers that place a burden on interstate commerce. Under this general understanding of what may be appropriate, OOIDA does not believe that the Oregon credential qualifies.

Over the past two decades, Congress and the Department of Transportation has been reviewing the process by which commercial motor vehicles and drivers in interstate commerce

are licensed or registered and how information about them is collected and reported. The trend has been to simplify requirements truckers face in order to facilitate the flow of goods between the states and to reduce burdensome economic regulations that drive up transportation costs. For decades the states had been implementing individual requirements for the operation of commercial vehicles within their borders. These multiple licensing, registration and reporting requirements caused an undue burden on interstate commerce.

The requirement of SAFETEA-LU to prohibit states from requiring carriers to display additional identification was just one of several provisions in SAFETEA-LU and other recent changes aimed at reducing such burdens on the trucking industry. They include the elimination of the SSRS program, multiple license plate requirements, and fuel-tax sticker requirements. Congress has also mandated a Unified Carrier Registration System. Oregon's credential program is a vestige of the outdated piecemeal state tax registration system. Its perceived need to maintain a physical credential is the result of the state's unwillingness to modernize, and its fear of losing revenue generated by credential fees and hefty fines for not possessing the credential. It is a burden that was appropriately eliminated by SAFETEA-LU.

The other types of displays exempted from the ban under 49 U.S.C. §14506(b) include license plates and those related to the International Registration Plan, the International Fuel Tax Agreement, hazmat rules, and federal vehicle inspection standards. Other "appropriate displays" should be those that serve similar functions common to all the states. The weight-mile credential that Oregon claims is unique does not fall into the type of universal credential adopted by all states and permitted by the statute.

C. Oregon's Claims in Support of its Petition

The Oregon Department of Transportation gives several reasons to support its petition. None of these reasons support a finding that the credential program is appropriate. Borrowing the headings from ODOT's comments, the following comments respond to each in turn.

1. The preemption of Oregon's weight-mile tax credential is an unintended consequence.

There is nothing in SAFETEA-LU that singles out Oregon for either attention or a special exemption. A letter from the Oregon congressional delegation, six months after passage of the legislation, is neither legislative history nor any indication of legislative intent. Although Oregon feels overlooked by the law, there is nothing on the record to support the presumption that Oregon's credential was anything other than just the kind of "unique" state requirement and burden on interstate commerce intended to be abolished by the law.

2. The preemption results in complications for motor carriers.

The basic presumption that the preemption results in complications for motor carriers is directly rebutted by these comments and those of the American Trucking Associations and other motor carrier's comments submitted to this docket. Industry trade associations and motor carriers have weighed their own experience with the Oregon tax credential and have come to the same conclusion that there is no net benefit to having it. Oregon already allows truckers not in possession of a credential, who pay the fuel tax at the pump, to file for a credit of the tax paid against the weight-distance tax owed. Most truckers know that the pump price of fuel in Oregon does not include taxes, and yet it is only priced a few cents below the pump-prices found in adjacent states that include significant fuel taxes. Therefore many interstate truckers purchase

fuel in adjoining states because it is cheaper after taxes. Purchasing untaxed fuel with a tax credential in Oregon is not a benefit to truckers.

3. The preemption results in complications for Oregon.

The credential is not necessary to check whether a motor carrier is registered. Oregon ports-of-entry already utilize computers at their scale locations to check U.S. DOT numbers to verify whether a trucking company possesses an Oregon account. If the truck is not registered in Oregon it will be directed to the parking area and the driver will have to purchase a permit to travel in Oregon. All law enforcement officials in Oregon have electronic access to driver license and vehicle registration databases, and there is no reason that they could not also be given access to ODOT databases to ascertain whether a truck is registered in Oregon.

There is no reason that Oregon needs a credential to enforce its weight-mile tax. Since Oregon is an IFTA member, the reporting and payment of taxes owed to Oregon can be accomplished in the same manner utilized by virtually every other state, including the other states that use a weight-mile tax: New York, Kentucky, and New Mexico. OOIDA sees no basis for the assertion that having to abolish the credential threatens Oregon's ability to impose and collect its tax.

The Oregon credential does nothing to help track the miles a vehicle travels in the state. It is not a transponder. Oregon does not explain how the possession or lack of a credential affects truck owners who wish to deceive Oregon in the reporting of miles. Other states' fuel tax systems are based on the mileage of a truck within the state, and they do not need or use a physical credential to monitor vehicle mileage or a trucker's compliance with the tax.

As the Federal Register notice states, FMCSA does not have authority to pass judgement

over the Oregon tax system. FMCSA specifically did not request comments about it. Therefore, the merits or disadvantages of the structure of Oregon's tax system, as described by ODOT in their comments, should have no bearing on FMCSA's decision on this matter.

4. There are benefits associated with the weight-mile tax credential.

The need ODOT describes to use the credential to identify motor carriers is clearly unnecessary given the federal requirement to mark each truck with the U.S. DOT number. To say that safety inspectors wasted their time inspecting trucks that could not be matched to DOT numbers may identify a possible problem related to record keeping. But whatever the effects of that problem, it is overshadowed by the safety benefits of doing inspections, which are not dependant on Oregon credentials, and likely not considered a waste of time by FMCSA.

OOIDA would like to also note that on the chart provided by ODOT reporting the non-match percent of inspections matched to U.S. DOT numbers, Kentucky, a state that imposes a weight-mile tax *without* a credential requirement, has a better non-match percent than Oregon. This chart does not indicate that Oregon's non-match percent is due to use of a credential.

Oregon points out that its enforcement scheme does a better job enforcing the tax with interstate carriers because enforcement is focused around the location of its scales. It has less success in enforcing the tax with intrastate carriers off interstate routes. But this seems to be a function of its enforcement location rather than who has a credential or not. This has an effect on safety by encouraging drivers to avoid the high enforcement areas. OOIDA members report that the credential requirement has the negative effect of encouraging trucks to travel the less-safe Washington Highway 14 through the Columbia River Gorge instead of using Interstate 84 when they are traveling the 136 miles between Umatilla and Portland.

5. It's relatively easy to obtain the Oregon weight-mile tax credential.

ODOT acknowledges the fact that the credentialing requirement is not known to many new motor carriers, and that this causes such carriers delay when they cross the border, learn of this requirement, and are required to attend to it immediately. This is the paradigm of a burden on interstate commerce. Drivers who misplace or do not have the credential face a fine of \$427. OOIDA believes that one of Oregon's motivations in retaining the credential is that it is a source of revenue fees and penalties outside of the weight-mile tax. This reason does not qualify their credential as an "appropriate display" under the law.

6. Oregon qualified for grandfather privileges.

The statute provided for no grandfather privileges. As Oregon DOT states, Congress knows how to provide for grandfather clauses in its legislation when it wants to. It did not provide one in this legislation, and no reasonable reading of the statute could interpret one. Again ODOT asks the agency to consider the merits of its weight-mile tax to justify the credential - a subject area that the FMCSA specifically stated it has no jurisdiction to consider and did not want comments on.

III. CONCLUSION

OOIDA strongly urges the FMCSA to deny ODOT's petition and to uphold Congressional intent to eliminate this unnecessary burden on interstate commerce.

Respectfully submitted,



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