

for every driver employed or used by them; and (c) motor carriers to include a Skill Performance Evaluation (SPE) certificate issued to a driver with a limb disability; and (4) Information collected from carriers, drivers and interested parties used in Agency determinations for granting exemptions from the vision and diabetes requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency published a **Federal Register** notice allowing for a 60-day comment period on the ICR in October 2006 (71 FR 61822, Oct. 19, 2006). The Agency did not receive any comments in response to this notice.

DATES: Please send your comments by April 5, 2007. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: You may submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: DOT/FMCSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366-4001, maggi.gunnels@dot.gov, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Medical Qualification Requirements.

OMB Control Number: 2126-0006.

Type of Request: Revision of a currently-approved information collection.

Respondents: Medical Examiners, Medical Specialists, Physicians, Licensed Doctors of Medicine, Doctors of Osteopathy, Physician Assistants, Advanced Practice Nurses, Doctors of Chiropractic, motor carriers, and CMV drivers.

Estimated Number of Respondents: 7,000,000.

Estimated Time per Response: The following records are included in the IC pertaining to the Medical Qualifications Requirements: (1) *The Medical Examination Form and Certificate*—Twenty minutes for a medical examiner to complete, document, and file the medical examination report; One minute for the medical examiner to complete the medical examiner's certificate and furnish one copy to the person who was examined and one copy to the motor carrier who employs him or her; One minute for carriers to file the medical examiner's certificate in the DQ

file; (2) *Data Resolving Medical Conflicts*—One hour for the Safety Director of a motor carrier company to prepare paperwork for each case and an additional 8 hours to attend any hearings for resolution of medical conflict; (3) *The SPE Certificate*—Fifteen minutes for a driver to complete an application for an initial SPE certificate; Two minutes to complete an application for a renewal of a SPE certificate; One minute for carriers to copy and file the SPE certificate application in the DQ file; (4) *Vision Exemptions*—Sixty minutes for a driver to complete an application for a vision exemption with required supporting documents from carriers and interested parties; (5) *Diabetes Exemptions*—Sixty minutes for a driver to complete a diabetes exemption with required documentation; and (6) *The Doctor's Certificate for Motor Carriers of Migrant Workers*—One minute for a doctor of medicine or osteopathy to complete a doctor's certificate for drivers of motor carriers of migrant workers; and for carriers to place the certificate in the DQ file for every driver employed or used by them.

Expiration Date: March 31, 2007.

Frequency of Response: Biennially, and on occasion, more frequently for drivers who are not eligible to receive a 2-year certificate. There are 7,000,000 drivers subject to the FMCSA medical standards. A medical certificate usually is valid for 2 years after the date of examination. However, drivers with certain medical conditions must be certified more frequently than every two years, so halving the number of drivers underestimates the total number of certifications that are conducted annually. In addition, some employers require newly hired drivers to obtain a new medical certification even if the driver's current certificate is still valid. As a result of these exceptions to the biennial medical certification schedule, the Agency estimates that the actual number of medical certifications conducted annually is 20 percent greater than would be the case if all drivers were examined biennially. Biennial examinations would result in approximately 3,500,000 medical examinations per year, but the Agency estimates that approximately 4,200,000 examinations are conducted annually.

Estimated Total Annual Burden: 1,541,534 hours [1,540,000 hours for medical examination form and certificate (4,200,000 certificates × 22 minutes/60 minutes per hour + 11 hours for resolution of medical conflicts (3 cases × 1 hour each to prepare, plus 8 hours for one hearing) + 192 hours for SPE certificates (2,100 certificates × 1

minute/60 minutes for motor carriers + 1,700 renewals × 2 minutes/60 minutes + 400 new × 15 minutes/60 minutes) + 727 hours for vision exemptions (1572 total applicants × .27 or 27 % + 268 new vision exemptions + 35 hours for motor carriers motor carriers to retain a copy in the driver's DQ file) + 600 hours for diabetes exemptions (600 applications × 1 hour) + 3.5 rounded to 4 hours for doctors certificate for drivers of migrant workers (100 certificates × 2 minutes/60 minutes) = 1,541,534 hours].

Background

Title 49 U.S.C. 31136 requires the Secretary of Transportation (Secretary) to prescribe regulations to ensure that the physical qualifications of commercial motor vehicle (CMV) operators are adequate to enable them to operate CMVs safely. In addition, 49 U.S.C. 31502 authorizes the Secretary to prescribe requirements for qualifications of employees of a motor carrier when needed to promote safety of operation. Information about an individual's physical condition must be collected in order for the FMCSA, States and motor carriers to verify that the individual meets the physical qualification standards for CMV drivers set forth in 49 CFR 391.41; and for the FMCSA to determine whether the individual is physically able to operate a CMV safely. This information collection is comprised of the components listed in the summary above.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: February 26, 2007.

Rose A. McMurray,
Assistant Administrator, Chief Safety Officer.
[FR Doc. E7-3803 Filed 3-5-07; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2006-25004]

Identification of Vehicles: Oregon Department of Transportation Tax Credentials Petition for Determination

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; Denial of petition for determination.

SUMMARY: FMCSA denies a petition from the Oregon Department of Transportation (ODOT) for a determination that the State may continue to require interstate motor carriers to display weight-mile tax credentials (WMTCs) in commercial motor vehicles (CMVs) in Oregon. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) prohibits States from requiring motor carriers to display in, or on, CMVs any form of identification other than forms required by the Secretary of Transportation. However, SAFETEA-LU also provides that a State may continue to require display of credentials that the Secretary determines are appropriate. ODOT requested that FMCSA determine that its WMTCs are appropriate under SAFETEA-LU. FMCSA denies ODOT's request because it could find no evidence to support a determination that the display of the WMTCs is appropriate. Therefore, the State of Oregon may no longer require interstate motor carriers to display WMTCs.

DATES: This decision is effective March 6, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC-PSD, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Telephone: 202-366-4009. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4306 of SAFETEA-LU prohibits States from requiring motor carriers to display in or on commercial motor vehicles any form of identification other than forms required by the Secretary of Transportation [49 U.S.C. 14506(a)]. However, § 14506(b)(3) provides, in part, that "a State may continue to require display of credentials that are required * * * under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate."

ODOT requested that FMCSA determine that the State's WMTCs are appropriate in the context of 49 U.S.C. 14506(a). Oregon has been requiring motor carriers to obtain weight-mile tax credentials since 1947.

Oregon Revised Statutes (ORS) 825.454 authorizes ODOT to require the use of identification devices, such as

cab cards, stamps or carrier identification numbers, to identify, and be carried in or placed upon, each motor vehicle authorized to be operated in Oregon. ODOT may require annual application for identification devices and it may charge a fee not to exceed \$8 for each device issued on an annual basis. ORS 825.450 requires ODOT to issue a permanent credential and ORS 825.470 authorizes issuance of temporary credentials. Until 2001, ODOT required out-of-state carriers to display a special Oregon license plate on each truck registered to operate in the State. State legislation passed in 2001 eliminated the need for out-of-state based vehicles to display the Oregon license plate and substituted the simpler requirement to carry a permanent or temporary paper credential.

ODOT states the current WMTCs identify a motor carrier's Oregon account, facilitate reporting and payment of the tax, and assist in tracking vehicle-miles traveled over Oregon highways. ODOT also believes truck drivers want to have the credential at hand when fueling in Oregon, because fuel providers use it to verify that a vehicle is exempt from Oregon fuel tax. ODOT advises that approximately 15,000 out-of-state based carriers operate 283,000 trucks that carry a permanent Oregon tax credential. It also advises that approximately 10,000 trucks with a 10-day temporary credential operate within the State at any given time. A copy of ODOT's petition for determination is available for review in the docket for this notice.

Public Comments

On June 13, 2006, FMCSA published a notice in the **Federal Register** requesting public comment on the ODOT request to be allowed to continue requiring motor carriers to display weight-mile tax credentials. ["Identification of Vehicles: Oregon Department of Transportation Tax Credentials; Petition for Determination;" Docket No. FMCSA-2006-25004, June 13, 2006, 71 FR 34188]. In formulating its position, FMCSA considered all of the comments received in response to the Agency's **Federal Register** notice.

Eleven comments were submitted to the docket. The comments were almost evenly divided between supporters and opponents of Oregon's request for exception. Six commenters supported ODOT's request; this includes a comment filed by ODOT. Five commenters opposed the request and urged FMCSA to deny it.

The commenters' discussions, both for and against granting the exemption

request, centered on the following issues:

- Intended versus unintended consequences of denying ODOT's request;
- Denying ODOT's request could result in complications for motor carriers;
- Denying ODOT's request could result in complications for Oregon;
- Benefits associated with the weight-mile tax credential;
- Ease of obtaining the credential;
- and
- Consideration of grandfather privileges.

Intended Versus Unintended Consequences of Denying ODOT's Request

The ODOT suggests, in its July 6, 2006, filing to the docket, that Congress may have unintentionally included Oregon's weight-tax credential when enacting the provisions of 49 U.S.C. 14506. However, ODOT admits there is no specific discussion of its weight-tax credential in the Congressional record. ODOT suggests that the only evidence of legislative intent may be found in a March 8, 2006, bipartisan letter, filed in the docket on June 13, 2006, from Oregon's Congressional delegation to the Secretary of Transportation expressing concern about the preemption and support for the State's request. ODOT goes on to suggest that its weight-tax credentialing program may have been confused with the International Fuel Tax Agreement and International Registration Plan. This argument is supported by the Oregon Concrete & Aggregate Producers Association, Inc., the American Automobile Association (AAA) of Oregon/Idaho, and AAA of Washington, DC.

The Owner-Operator Independent Drivers Association, Inc. (OOIDA) states that ODOT provides no compelling information in its argument which would suggest Congressional intent. The OOIDA suggests that ODOT's weight-mile tax credential is precisely the type of document Congress had in mind when it was considering section 4306. The OOIDA states, "There is nothing in SAFETEA-LU that singles out Oregon for either attention or a special exemption."

In comments to the docket, the American Trucking Associations cite legislation that it suggests shows Congress's intent to lessen the paperwork requirements on interstate motor carriers by individual States.

FMCSA Response: No information was presented to support ODOT's assertion that Congress

“unintentionally” included Oregon’s weight-tax credential when it adopted the provisions of 49 U.S.C. 14506(b). To the contrary, ODOT’s weight-mile tax credential is likely the type of paper credential intended to be prohibited. Absent clear evidence of Congressional intent, the Agency must follow the plain language of the statute.

Denying ODOT’s Request Could Result in Complications for Motor Carriers

The ODOT suggests in its comments that many interstate motor carriers use the credential to obtain the benefit of not having to pay a fuel-tax when purchasing diesel fuel in the State. The ODOT suggests that not having the credential to present to suppliers at the time of purchase will result in an unnecessary administrative burden when reclaiming the fuel tax. Other commenters did not address this issue.

The OOIDA states in its comments that over the past two decades, Congress and the Department of Transportation have simplified multiple-licensing, registration, and reporting requirements that States imposed on interstate commerce. Also, OOIDA states that it and other industry associations have concluded that there is no net benefit to requiring display of the ODOT weight-mile tax credential.

The United Parcel Service (UPS) states that Federal and State regulatory agencies, in conjunction with the motor carrier industry, have worked to reduce vehicle paperwork requirements to only those which are truly safety-related (hazardous materials, emergency, vehicle inspection, etc.). Furthermore, UPS argues that Oregon already verifies electronically the compliance of motor carriers with its financial responsibility requirements and is well positioned to expand that system to weight-distance tax compliance.

The Oregon Concrete & Aggregate Producers Association, Inc. advises that it and its members do not find that being required to maintain the weight-mile tax credential is burdensome. The AAA organizations also suggest the weight-mile tax credential requirement is not burdensome, primarily because of the ease of obtaining the credential electronically.

FMCSA Response: No motor carriers commented directly upon ODOT’s claim that display of the weight-mile tax credential has benefits for carriers, such as providing them documentation for fuel-tax relief. FMCSA recognizes that the elimination of paperwork is a goal included in most Federal programs, and believes that such paper-based credentials should be authorized only when absolutely necessary.

Denying ODOT’s Request Could Result in Complications for Oregon

The ODOT states that if not granted the exception, enforcing the weight-mile tax will be more challenging and opportunities for tax evasion will increase. It suggests that evasion by motor carriers in purchasing the weight-mile tax credential will result in a loss of funding for the State.

Opponents of the exception all suggest that ODOT can develop technological means that would allow for immediate verification by enforcement officials as to whether or not a motor carrier has complied with Oregon’s weight-mile tax laws.

FMCSA Response: ODOT acknowledged that by accessing State data systems, police officers may be able to verify payment of the weight-mile tax without having the paper credential on the vehicle. The fact that enforcement could be “more challenging” does not outweigh the burden that the additional paperwork places on carriers engaged in interstate commerce.

Benefits Associated With the Weight-Mile Tax Credential

The ODOT and all of the commenters that support the weight-mile tax credential suggest that one of its benefits is to ensure that motor carriers meet their cost responsibility for road use in Oregon.

The ODOT also contends that the weight-mile tax credential has a safety-related benefit, resulting in Oregon’s Motor Carrier Management Information System non-match rate¹ being one of the lowest in the country.

The OOIDA and UPS both contend that ODOT could and should rely solely on the U.S. DOT number, as required by 49 CFR 390.21, to accurately identify motor carriers operating in its State, and that the weight-mile tax credential does not significantly add any value to this process. The OOIDA argues that Oregon wants to maintain the “easy revenue” derived from fining drivers who misplace the paper credentials.

FMCSA Response: The value of the Oregon weight-mile tax credential as an enforcement tool was previously addressed. Although the existence of a weight-mile tax credential on the vehicle might assist an officer in determining the correct identification of the motor carrier, there are many other factors having a greater value, such as

¹ “Non-match rate” refers to the matching of driver-vehicle inspections conducted by State officials with the appropriate motor carrier record in the FMCSA Motor Carrier Management Information System. A valid “match” enables use of the State data in determining safety status of an interstate motor carrier.

vehicle markings, shipping documents, and lease agreements. Considering the use of owner-operators and leased vehicles, the weight-mile tax credential would not necessarily be a determinative factor in identifying the responsible motor carrier.

Ease of Obtaining the Credential

The ODOT and the commenters who support the weight-mile tax credential advise that it can be obtained electronically without elaborate administrative processes. However, ODOT states that only those motor carriers registered to use its Trucking Online Internet-based service can obtain the weight-mile tax credential online.

No commenter that opposes the credential contradicted the assertion of the ease of electronic filing. Several, however, including OOIDA, ATA, and UPS, contend that the overall process of applying for and obtaining the paper credential is an administrative burden and serves no purpose other than to generate revenue for the State. Each contends that motor carriers that fail to produce the weight-mile tax credential at time of inspection are issued citations even though the carrier may be registered with the State.

FMCSA Response: Although it may be relatively easy for a motor carrier to obtain the Oregon weight-mile tax credentials, ensuring that the paper documents are distributed to and carried on each vehicle, and that the driver has ready access to the document, could add considerably to the paperwork burden of the carrier and driver, especially if similar documents were to be required by other States.

Consideration of Grandfather Privileges

ODOT contends that it should be granted grandfather privileges for requiring the weight-mile tax credential because it has been requiring the road user taxes since 1947. However, it offers no evidence that Congress intended to grant such privileges regarding section 4306, as pointed out by OOIDA in its comments.

FMCSA Response: Section 4306 does not provide any authority for, or indication of Congressional intent supporting, the grandfathering of existing credentials that would otherwise be prohibited.

FMCSA Decision

The FMCSA has decided to deny ODOT’s request that the Agency determine that the State’s WMTCs are appropriate in the context of 49 U.S.C. 14506(a). The Agency considered all comments submitted to the docket, including the ODOT’s assertion that

preemption of the WMTCS is an "unintended consequence" of Section 4306. The Agency found no evidence to support that position. In fact, one could just as easily conclude that the WMTCS are exactly the type of display Section 4306 was enacted to prohibit. Furthermore, there is no indication in the legislative history of SAFETEA-LU that Congress intended to "grandfather" existing display requirements, other than those specifically listed in 49 U.S.C. 14506(b). In consideration of the above, the State of Oregon may no longer require interstate motor carriers to display weight-mile tax credentials on CMVs.

Issued on: February 26, 2007.

John H. Hill,
Administrator.

[FR Doc. E7-3806 Filed 3-5-07; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2005-21323]

Withdrawal of Regulatory Guidance Concerning the Use of Surge Brakes on Commercial Motor Vehicles

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; withdrawal of regulatory guidance.

SUMMARY: FMCSA withdraws all prior regulatory guidance, previously in the **Federal Register**, as well as memoranda and letters issued by the Agency, indicating that surge brakes do not meet certain provisions of the Federal Motor Carrier Safety Regulations (FMCSRs). Elsewhere in today's issue of the **Federal Register**, FMCSA amends the FMCSRs to allow the use of automatic hydraulic inertia brake systems (surge brakes) on trailers when the ratios of gross vehicle weight ratings for the towing-vehicle and trailer are within certain limits.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Federal Motor Carrier Safety Administration, Office of Policy and Program Development, Vehicle and Roadside Operations Division, Washington, DC 20590, phone (202) 366-0676, fax (202) 366-8842, e-mail luke.loy@dot.gov.

SUPPLEMENTARY INFORMATION: On November 17, 1993, the Federal Highway Administration (FHWA) ¹

published "Regulatory Guidance for the Federal Motor Carrier Safety Regulations," at 58 FR 60734. The publication included interpretations of 49 CFR 393.48, a rule that requires brakes to be operable at all times, and 49 CFR 393.49, the requirement that the braking system on CMVs be designed such that one brake application valve controls all the brakes on the vehicle. The Agency interpreted the regulations to prohibit the use of surge brakes on Commercial Motor Vehicles (CMVs) operated in interstate commerce. The regulatory guidance was republished on April 4, 1997, at 62 FR 16370.

The FMCSA subsequently issued an Enforcement Policy memorandum on September 14, 2004, directing Federal enforcement staff, and requesting State and local enforcement officials, temporarily to allow surge brakes on CMVs operated in interstate commerce, under certain conditions, pending completion of a notice-and-comment rulemaking proceeding through which a determination would be made whether surge brakes should be allowed on a permanent basis. A copy of that Enforcement Policy memorandum is in the docket cited at the beginning of this notice.

A final rule issued by FMCSA, published elsewhere in today's issue of the **Federal Register**, amends the FMCSRs to allow the use of surge brakes. The final rule defines the term "surge brake", identifies the requirements for a surge brake system, and allows the use of automatic hydraulic inertia brake systems (surge brakes) on trailers when the ratios of gross vehicle weight ratings for the towing-vehicle and trailer are within certain limits. Therefore, in consideration of the final rule on surge brakes, the Agency withdraws all prior interpretations and regulatory guidance, issued previously in the **Federal Register**, as well as FMCSA memoranda and letters, stating that surge brakes do not meet the requirements of 49 CFR 393.48 and 393.49.

Issued on: February 26, 2007.

John H. Hill,
Administrator.

[FR Doc. E7-3813 Filed 3-5-07; 8:45 am]

BILLING CODE 4910-EX-P

(December 9, 1999)] established the FMCSA in the Department of Transportation. On January 4, 2000, the Office of the Secretary published a final rule delegating to the FMCSA Administrator the motor carrier safety functions required by MCSIA, which included certain motor carrier safety functions previously delegated to the FHWA (65 FR 200).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2006-26555]

The New Car Assessment Program; Suggested Approaches for Enhancements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Correction of Public Hearing Time.

Correction

In notice document Volume 72 Number 16 beginning on page 3473 on the issue date of January 25, 2007, make the following correction to the meeting time posted:

1. On page 3473, under Public Hearing, the beginning time is corrected to read as 8:30 a.m.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: February 27, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7-3814 Filed 3-5-07; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2007-27376]

Notice of Receipt of Petition for Decision That Nonconforming 2004 Volkswagen Passat Sedan and Wagon Model Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2004 Volkswagen Passat sedan and wagon model passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2004 Volkswagen Passat sedan and wagon model passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and

¹ The Motor Carrier Safety Improvement Act of 1999 [Public Law 106-159, 113 Stat. 1748]