

Issued on: August 10, 2000.

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Federal Highway Deputy Administrator.

[FR Doc. 00-20940 Filed 8-16-00; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA-2000-7635]

Highway Motor Fuel Reporting Reassessment; Public Workshop

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; public workshop; request for comments.

SUMMARY: The FHWA presents this statement of proposed policy regarding the methodology to be used by the FHWA for estimating Highway Trust Fund (HTF) receipts attributable to the States. This motor fuel attribution process is used in determining the distribution of Federal-aid highway funds in three large highway programs and the minimum guarantee. The purpose of this policy announcement is to provide information on the FHWA's proposed changes to reporting of motor fuel data from the States to the FHWA, and to gather comments on potential changes to the reporting procedures. Also, a one-day workshop will be held to assist individuals who wish to know more about the procedures and to discuss this subject matter.

DATES: Comments on the proposed policy must be received on or before October 30, 2000. The public workshop will be held on October 5, 2000, from 8:30 a.m. to 5 p.m., e.t., Washington, DC 20590-0001.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

The workshop location is the Capitol Hill Holiday Inn, 550 C Street SW.,

Washington, DC. For details on registration and hotel accommodation information, and to make reservations to attend this meeting, please contact Ms. Gina Burge of Harrington-Hughes and Associates, Inc. at (202) 347-3511 by September 21, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Howard, Office of Highway Policy Information, (202) 366-0170; or Ms. Gloria Hardiman-Tobin, Office of the Chief Counsel, HCC-32 (202) 366-1397, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the Office of the **Federal Register's** home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's web page at <http://www.access.gpo.gov/nara>.

The "Guide to Reporting Highway Statistics," is available for review at the URL: <http://www.fhwa.dot.gov/ohim/ghwystat.htm>. Additional information on the Internal Revenue Service (IRS) projects Excise Files Information Retrieval System (ExFirs) and Excise Summary Terminal Activity Reporting System (ExSTARS) may be found at the URL: <http://www.taxadmin.org/fta/mf>.

Background

Under the Transportation Equity Act for the 21st Century (TEA 21)(Public Law 105-178, 112 Stat. 107(1998)), motor fuel data are used in the apportionment of Federal Surface Transportation Program (STP) funds, National Highway System (NHS) funds, Interstate Maintenance (IM) funds, and the minimum guarantee program funds. About \$11.3 billion annually are

apportioned based on State-reported motor fuel data. The following shows these factors for fiscal year (FY) 2000:

- Highway Trust Fund payments to the highway account are used as a 35 percent factor for distributing about \$5.4 billion in FY 2000 STP funds.
- Diesel fuel used on highways is used as a 30 percent factor for distributing about \$4.6 billion in FY 2000 NHS funds.
- Commercial vehicle contributions to the highway account are used as a 33.3 percent factor for distributing about \$3.8 billion in FY 2000 IM funds.
- The minimum guarantee, under which each State is guaranteed that its share of apportionments and funding for highway priority projects will be at least 90.5 percent of its share of contributions to the highway account of the Highway Trust Fund, is estimated to be about \$6.7 billion in FY 2000.

The current process for attributing motor fuel data was formulated in 1985. In the policy statement published on June 21, 1985, under FHWA Docket No. 85-13, at 50 FR 25812, FHWA established highway use of motor fuel as its attribution basis, and defined a new method to attribute the non-fuel truck taxes (the tire, truck and trailer retail excise, and heavy vehicle use taxes), using special fuels as the attribution factor. Prior to this change, truck vehicle registrations had been used as the attribution factor for these taxes. These changes were in response to the Surface Transportation Assistance Act of 1982 (Public Law 97-424, 96 Stat. 2097) which created a Federal-aid program funding category that relied on attribution, and in which truck taxes were raised significantly. Since June 1985, no policy changes have been made to the attribution process.

Recognizing the increasing importance of accurate, timely reporting of motor fuel and related attribution data in determining State funding shares, the FHWA, with expert support from the American Association of State Highway and Transportation officials (AASHTO) and the Federation of Tax Administrators (FTA), initiated a review of the motor fuel data reporting system. As part of the review, the FHWA is evaluating the attribution process to determine the continued quality of the attribution methodology, and to identify where improvement can be made. Experts on motor fuel taxation and reporting from several State departments of revenue and transportation and the FHWA field offices met with the FHWA, the AASHTO, and the FTA, and provided technical expertise and feedback to the review. Two meetings were held in

December 1998 and September 1999. While not announced, minutes of these two meetings are available from Mr. Tom Howard, Office of Highway Policy Information, FHWA, at (202) 366-0170.

Three public workshops were held in association with the reassessment process on December 7, 1999, in Atlanta, GA; January 27, 2000, in Philadelphia, PA; and February 24, 2000, in Denver, CO. (65 FR 2222, January 13, 2000). Minutes of these meetings are available from Mr. Tom Howard, Office of Highway Policy Information, at (202) 366-0170.

The attribution process was one of the subjects of review in a General Accounting Office (GAO) study dated June 29, 2000, "Highway Funding; Problems with Highway Trust Fund Information Can Affect State Highway Funds" (Report No. RCED/AIMD-00-148 (15pp.) Plus 7 appendices (47 pp.)). This report is available from the URL: <http://www.gao.gov> and click on "GAO Reports."

Overview

In general, the FHWA found that the existing motor fuel reporting and basic attribution process is serving adequately, but it needs to be better documented to maintain its credibility, and updated to continue to meet the attribution requirements of accuracy and equity. These requirements are even more important because of the increased amount of money dependent on this data.

The existing methodology that relies on motor fuel use as the basis for attributing Highway Trust Fund receipts continues to be consistent with the basic principals of highway user fees. However, the process can be improved in three areas: (1) Reporting, (such as losses, special fuels, alternative fuels, and International Fuels Tax Agreement (IFTA)), (2) treatment of motor fuel data in attribution, (such as public use of diesel, and special fuels), and (3) process management (process oversight and documentation).

The FHWA is developing an "action plan" to address the issues and concerns raised by the reassessment process. At this point in time, action items include the following:

- Fully document FHWA's data preparation and attribution process, providing explanation and rationale of the data flow and analyses throughout the attribution steps;
- Ensure that State's motor fuel data is subject to detailed independent verification;
- Write instructions to implement the proposed changes listed in this **Federal Register** notice (after comments have

been received and evaluated), and rewrite FHWA reporting instructions to clarify selected items;

- Identify States with high risk of reporting shortcomings, and perform in-depth reviews with these States;
- Develop "smart-forms" (with appropriate data editing capabilities) for State motor fuel data submission to simplify reporting, and internal processing through the FHWA evaluation process, to minimize errors and data handling;
- Document results of FHWA's annual analysis to Divisions and States for comment and revision, if necessary;
- Develop training for data providers;
- Review statistical models and other procedures used by the FHWA to estimate missing information and fund research to update these procedures.
- Conduct an independent review of the FHWA's motor fuel data preparation and attribution process.

Availability of the detailed action plan will be announced in the final **Federal Register** policy statement.

Purpose

The primary purpose of this notice is to provide the opportunity for public comment on proposed policy modifications to the existing process. The proposed modifications are significant in that they will improve equity and simplify reporting, but are not expected to have large impacts on a State's share of the TEA-21 funds in the attribution process.

Discussion of Proposed Changes

Issue: Reporting of Public Use of Diesel Fuel

Background

Current FHWA instructions to the States in the "Guide to Reporting Highway Statistics" (Guide), call for the inclusion of private and commercial on-highway diesel gallons, and the exclusion of public diesel gallons. In the past, public diesel was not generally taxed by States, and it was typical for States to tax non-public diesel at the retail pump. With taxes collected at the retail pump, it was most likely that the fuel would be used on the highway by private and commercial vehicles. Under these circumstances, it was reasonable to request States to report non-public (i.e., private and commercial) diesel. However, with the efforts to combat tax evasion initiated in the past 15 years, diesel fuel is now generally taxed higher up the fuel distribution chain, making it more difficult to differentiate public and private uses. These changes in the tax collection process impact the existing

attribution and formula fund distribution process.

Current Situation

The TEA-21 language specifies that the NHS program fund distribution is partly based on diesel gallons by State, which includes public, private, and commercial uses. It also specifies that the IM program is partly based on commercial vehicle contributions, which does not include motor fuel used in public vehicles. Most States cannot separately identify public use of diesel motor fuel, and therefore are reporting public diesel as part of private and commercial diesel. The reasons this situation exists are the lack of a tax mechanism in many States that separately identifies the publicly used fuel (no State legislation for exemption or refunds), and the complexity of State reporting from many jurisdictions (such as counties or school districts reporting to the State). Only about seven States currently separate all public diesel from other uses.

Improvements

The FHWA proposes to require the reporting of all on-highway diesel fuel (therefore including public diesel, as well as private and commercial diesel) for all States. This will resolve current inequities and remove inconsistencies in the current procedures related to the public diesel data issue. This solution serves the purposes of equity, minimal State reporting burden, and congressional intent.

Implementation

The FHWA proposes to begin including on-highway public diesel with on-highway private and commercial diesel for data year 2002, which will impact Federal funds attribution in FY 2005.

Issue: Accounting for Motor Fuel Losses

Background

Motor fuel inventory losses for tax accounting purposes include occurrences such as storage tank leakage, destruction by fire or other means, spillage, meter faults, and measurement differences due to temperature and evaporation (often called shrinkage, but could be a gain in volume).

Federal (IRS) regulations do not recognize losses of highway motor fuel. Under these regulations, fuel lost or destroyed through spillage, fire or other casualty, cannot be treated as fuel used in an off-highway business use, and a refund from highway taxes cannot be claimed. At the State level, about ten States allow a flat percentage loss for

gasoline, and some States allow for actual losses for tax accounting inventory.

Current Situation

For those States that allow a flat percentage for gasoline losses, the FHWA caps the loss at one percent of gross gasoline reported. The reasoning behind capping losses at one percent is the concept that the gallons above the one percent threshold are actually consumed on the highway. While a State may choose to allow a tax break to wholesalers and distributors, the gallons represented by this paper transaction are not actually lost, they are just not taxed by the State. Diesel losses are not considered in the FHWA Guide instructions on the assumption that shrinkage and evaporation of diesel fuel is not significant.

Improvements

The FHWA proposes to modify its process and to accept only actual losses as reported by the States. The FHWA proposes to eliminate the one-percent loss allowance cap, and to discontinue the reporting of any State percentage loss allowances. The FHWA also proposes to treat diesel losses the same as gasoline losses, *i.e.*, allowing the reporting of actual diesel losses.

Implementation

The FHWA will revise the Guide, worksheets, and tables to eliminate the reporting and analysis of percentage losses beginning with data year 2002. The FHWA will continue to request the reporting of actual losses for gasoline, and will begin accepting and incorporating actual diesel losses reported by States.

Issue: Oversight of State-Reported Data

Background

For decades, State-reported motor fuel data collected through State tax authorities has been reported to the FHWA for statistical record keeping purposes. Within the last two decades, however, the Congress has increasingly used this data for purposes related to distributing highway funds to the States. With this trend, the quality of the data being reported has been increasingly questioned. The FHWA is considering whether additional oversight actions might be needed to assure the quality of this data.

Current Situation

Currently, the FHWA Division Offices conduct motor fuel reviews on a three-year cycle. These reviews address key reporting issues, help the FHWA evaluate the quality of the data being

submitted by the States and identify problem areas. The GAO has concluded that the FHWA needs to ensure that State data is independently verified.

Several options are available to address this recommendation, including:

- Certification of the State data by a high-level State official;
- Certification by State official with periodic, independent, in-depth reviews;
- Periodic multi-State/FHWA peer reviews; or
- In-depth reviews by FHWA staff on a periodic basis.

Implementation

The FHWA is soliciting comments on the best way to ensure State data validity. FHWA use of the IRS ExFIRS data base, being developed to combat tax evasion (by IRS with FHWA funding), will likely provide additional verification functions when it is available. ExSTARS, the tracking system of ExFIRS, is projected to be available by October 2000. The FHWA will also pursue further investigation of using ExFIRS for additional verification of State data when ExFIRS becomes available.

Issue: Special Fuel Versus Diesel Fuel as an Attribution Issue

Background

Historically, the FHWA has allowed States to report gallons of diesel fuel together with small amounts of other special fuels, and has called the combined total "special fuels." These other special fuels include, in order of prevalence (most to least prevalent) liquefied petroleum gases (LPG), compressed natural gas (CNG), and liquefied natural gases (LNG), 85 percent alcohol mixtures, and any other alternative fuels. Kerosene, another alternative fuel historically not used as a motor fuel, is now occasionally mixed with diesel fuel in cold weather to improve running characteristics; this is generally treated as a diesel fuel and is not reported separately.

Current Situation

The TEA-21 directs that the NHS component be apportioned as follows: "30 percent in the ratio that total diesel fuel used on highways in each State bears to the total diesel fuel used on highways in all States." Note that this language does not include LPG and the other fuels. However, because the amounts of other special fuels are estimated to be very small (less than 2 percent), and about one-half of the States do not—or cannot—separately

identify them, existing FHWA procedures combine all "special fuels" with diesel fuel. Hence, current attribution procedures currently include LPG and other special fuels.

Improvements

Two options to address special fuels as an attribution factor exist:

- Use only diesel fuel as the NHS attribution factor; or
- Maintain the combined category special fuels as the NHS attribution factor.

One problem with excluding special fuels is how to deal with States which may have reportable gallons of the these fuels, but cannot document them separately (*e.g.*, two fuels may have the same tax rate, and the State revenue department reduces reporting burden on the taxpayer by not requiring separate reporting of the fuels). The FHWA does not have a procedure for identifying and removing special fuel gallons from gross reported diesel gallons for States that report aggregated data. Taking the special fuel gallons out of the data of States who report it separately would be inconsistent treatment when compared with those States who report aggregated special fuel gallons. Given these circumstances, the FHWA is proposing not to require separation of diesel and special fuels.

Implementation

The FHWA proposes to retain its current reporting requirement and not require States to split diesel and special fuels. For those States that can readily provide information on a variety of alternative fuels, the FHWA will request that they report that information so that the FHWA can monitor the use of special fuels.

Issue: Reporting of Alternative Fuels

Background

"Alternative fuels"—such as 85 percent ethanol (E85), 85 percent methanol (M85), LPG, LNG, and CNG—are currently a very small portion of motor fuel used for highways but may be a growing segment of the motor fuel industry. Over the long term, alternative fuel growth could significantly skew motor fuel data as it is currently reported.

In the attribution of motor fuel data, gallons have been the traditional unit of measure of motor fuels, but some alternative fuels are compressed gases which must be measured in other units. The energy content of the alternative fuels, and their variance from traditional motor fuel energy content, also causes concern for motor fuel attribution.

Several States do not tax alternative fuels on a per gallon basis. These States typically charge annual alternative-fueled vehicle registration fees, often depending on vehicle weight or distance of travel, and provide for the issuance of decals to these vehicles. While this fee is a highway-related tax, it is not reportable as on-highway motor fuel use. Receipts associated with these decals are reported to the FHWA as State revenue, but no gallons of highway use are reported to the FHWA, or shown in the FHWA consumption and attribution tables.

Current Situation

At the Federal level, these fuels pay applicable motor fuel taxes if the fuels are consumed in on-highway vehicles. At the State level, these fuels usually pay applicable motor fuel taxes if consumed in on-highway vehicles, although some States substitute registration fees as discussed above.

The FHWA instructions in the Guide request the States to report gallons of E85 and M85 with State-reported gallons of gasoline. Likewise, CNG and compressed natural gas are to be reported as LPG. The reported amounts of these fuels are therefore used in the attribution process and reported in FHWA statistical tables.

Improvements

The FHWA is proposing to on revise the method of reporting alternative fuels. The FHWA proposes to instruct States to use standard conversion rates for equating the energy content of alternative fuels to diesel (to ensure all States will use consistent conversion factors), and to report these energy equivalent gallons to the FHWA by each alternative fuel type.

The FHWA also proposes to develop a mechanism for the reporting of motor fuel gallons that pay registration fees in lieu of per unit motor fuel taxes. The FHWA proposes working with the States to develop a common method of estimating gallons consumed in States that have a registration fee in lieu of per gallon taxes on alternative fuels.

Implementation

After evaluating the comments, the FHWA will work with States to develop a procedure, provide the opportunity for public comment, and develop appropriate procedures. The FHWA will also revise the Guide to provide instructions for the above improvements. Revised reporting is proposed to begin in calendar year 2002.

Issue: Accounting for International Fuel Tax Agreement Procedures

Background

The IFTA is a motor fuel accounting process that became mandatory for all States (and Canadian Provinces) on September 31, 1996. Under IFTA, motor carriers report the distances their trucks travel in all States (and Provinces) in which they operate, and pay the motor fuel taxes due in each State in one transaction to their base State (typically the State where the carrier's business headquarters is located). On a quarterly basis, the States adjust the motor carrier tax revenues among themselves to allocate motor fuel taxes to the State in which the travel actually took place.

The FHWA requires State reporting of IFTA gallons on a net basis—that is, adding in credits for gallons (and revenues received) from other States, and subtracting out credits for gallons (and debiting out receipts) sent to other States. To ensure proper crediting in FHWA tables and attribution procedures, State's must correctly report IFTA motor fuel gallons and receipts.

Current Situation

The IFTA organizational agreements have procedures to insure that base State reporting responsibilities are properly carried out and that procedures (such as peer reviews) and sanctions are available to remedy deficient conditions.

Improvements

To increase the understanding of States on the importance of reporting adjusted IFTA data to the FHWA, the FHWA proposes to review and document State practices in the reporting of IFTA data to the FHWA. This document will describe how States collect IFTA revenue, how States separate out revenues not related to the gallons of motor fuel and direct motor fuel gallon taxes, how they calculate net gallons and revenues, the time required to process IFTA data and report to the FHWA, and will suggest alternatives for IFTA calculations if full data are not available. An abbreviated version of this report will be incorporated as an appendix to Chapter Two of the Guide.

Implementation

The FHWA is soliciting comments on IFTA reporting issues, such as, timing of data submissions and processing, difficulties in data handling and processing, difficulties in incorporating revised data, the FHWA's proposed improvements (above), and any other issues related to developing accurate IFTA data. The FHWA proposes to

incorporate these comments into its evaluation of the relation between the IFTA and the FHWA's motor fuel reporting procedures and to develop additional guidance on IFTA reporting.

(Authority: 23 U.S.C. 315; sections 1103 and 1104, Pub. L. 105-178, 112 Stat. 107 (1998); and 49 CFR 1.48).

Issued on: August 10, 2000.

Walter L. Sutton, Jr.,

Federal Highway Deputy Administrator.

[FR Doc. 00-20941 Filed 8-16-00; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-99-6021; Notice 2]

Explorer Van Company, Grant of Application for Decision of Inconsequential Noncompliance

Explorer Van Company (Explorer), a division of the Bodor Corporation, is a corporation organized under the laws of the State of Indiana and is located in Warsaw, Indiana. Explorer has determined that it manufactured conversion vans that are in noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 120, Tire selection and rims for motor vehicles other than passenger cars, and 49 CFR Part 567, Certification, and has filed a report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Explorer has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliances are inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on September 14, 1999, in the **Federal Register** (64 FR 49836). NHTSA received no comments on this application during the 30-day comment period.

First, from February 1, 1998 to May 31, 1998, Explorer manufactured approximately 2,416 conversion vans that do not meet certain requirements of FMVSS No. 120. The certification label affixed to these Explorer units pursuant to Part 567 failed to comply with S5.3 of FMVSS No. 120 because of the omission of metric measurements, and the failure of Explorer to separately provide the metric measurements on another label, an alternative allowed by FMVSS No. 120.

Second, from January 1998 to August 1998, Explorer manufactured