

## **Form 2290, Heavy Highway Vehicle Use Tax Schedule 1 Guidance for State Motor Vehicle Licensing Offices**

The purpose of this memorandum is to provide guidance to the state Motor Vehicle Licensing Offices on acceptable proof of payment regarding Form 2290, Schedule 1. Please review this material and share it with your employees.

### **History of the Heavy Vehicle Use Tax**

The Heavy Vehicle Use Tax (HVUT) was imposed by section 143 of the Surface Transportation Assistance Act of 1982, Public Law 97–424, and is codified as 23 U.S.C. 141. This legislation provides for State certification of enforcement of laws respecting maximum vehicle size and weight. The amendment added a provision to section 141 that provides that a State’s annual apportionment of Interstate Maintenance funds may be reduced by up to 25 percent in any fiscal year during which heavy vehicles subject to the HVUT may be lawfully registered in the State without having presented proof-of-payment of the tax.

On July 14, 1986, the Federal Highway Administration (FHWA) published in the Federal Register (51 FR 25363) a final rule implementing the requirements of this statute in 23 CFR Part 669—Enforcement of Heavy Vehicle Use Tax. The notice set forth procedures to be followed by each State for certifying that it is obtaining evidence of proof-of-payment of the HVUT before such vehicles are lawfully registered in the State. An annual certification of compliance is required. Procedures are specified for reducing a State’s apportionment of highway funds in accordance with 23 U.S.C. 141 in the event a State fails to meet the requirements of the regulation. FHWA recently revised its procedures in a Federal Register Notice dated Monday, July 26, 2010 (attached). The two principal changes were a change in the time period for the annual certification, and a simplification of the procedure FHWA will follow if a State appears to be in non-compliance for obtaining evidence of proof-of-payment.

### **Proof of Payment Regulations**

Since 1986, the IRS has updated its procedures for implementing the HVUT proof of payment. The current regulations, found in 26 CFR 41.6001–2., entitled Proof-of Payment for State Registration Purposes, sets forth the circumstances under which a State must require proof-of payment of the tax imposed by 26 U.S.C. 4481(a), and the required manner in which such proof-of-payment is to be received by the State as a condition of issuing a registration for a highway motor vehicle.

A State must either comply with the provision of this section, or comply with other, alternative rules regarding the satisfaction of proof-of-payment requirement as may be prescribed by the Commissioner of the Internal Revenue Service in order to avoid a reduction of Federal-aid highway funds apportioned under 23 U.S.C. 104(b)(4).

The Proof of Payment Regulations are attached.

### **Samples of IRS Received Stamps**

Concerns have been raised by some motor vehicle licensing offices as to the validity of IRS received stamps due to the variances in their appearance.

*Exhibits 1 through 5* attached to this guidance are IRS received stamps used by the Cincinnati Service Processing Center.

*Exhibit 6* of the attachment is the IRS received stamp used at an IRS Taxpayer Assistance Center (TAC) in Florida. This is representative of all the TAC stamps used in Florida.

*Exhibit 7* is an IRS received Schedule 1 of Form 2290 when the form is electronically filed.

### **Acceptable Substitute for Receipted Schedule 1**

A State shall accept as proof of payment a photocopy of the Form 2290 (with the Schedule 1 attached) which was filed with the Internal Revenue Service for the vehicle being registered with **sufficient documentation of payment of tax due** at the time the Form 2290 was filed.

This documentation can include but is not limited to, a photocopy of both sides of a cancelled check, a bank statement indicating the amount of tax paid and electronic acknowledgement indicating a payment of tax, and an Internal Revenue Service printout of the taxpayer's account showing the amount of tax paid. This substitute proof of payment may be used to register a vehicle when, for example, the receipted Schedule 1 has been lost, or when at the time required for registration of a vehicle, a receipted Schedule 1 has not been received by a taxpayer who has filed a Form 2290 with respect to such vehicle.

## **Tax Suspended Vehicles**

Questions have arisen as to the difference in the definition and tax treatment of tax suspended vehicles and vehicles not considered highway vehicles, which are not subject to tax. A tax suspended vehicle is a highway motor vehicle that has a taxable gross weight of at least 55,000 pounds or greater for which the registrant reasonable expects to be used 5,000 miles (7,500 miles for agricultural vehicles) or less on a public highway during the tax period.

The registrant is still required to file Form 2290 and provide the DMV with a receipted Schedule 1 of Form 2290.

## **Vehicles not Considered Highway Vehicles**

A vehicle that is not a highway vehicle and not subject to the tax is not required to file Form 2290 and thus is not required to provide the state motor vehicle licensing office with a Schedule 1.

Examples of vehicles that are not highway vehicles are mobile machinery vehicles. A mobile machinery vehicle is defined as:

Any vehicle which consists of a chassis —

1. to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,
2. which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and,
3. which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

Exhibit 8 attached to this guidance is a picture of a mobile crane that is not a highway vehicle and therefore not subject to tax. There may be other vehicles that meet the definition of mobile machinery, but this is the most common example.

### **Questions about Vehicle Meeting Mobile Machinery Requirements**

If a state motor vehicle licensing office is uncertain as to whether a vehicle meets the requirement of mobile machinery, they should process the registration and inform the registrant the information will be forwarded to the IRS for review and possible examination to determine if the vehicle meets the exception. The DMV should forward the registration and all documents that were processed with the registration to the following address:

Mr. Joseph Mazzuca  
Excise Tax Policy Analyst  
Internal Revenue Service  
2001 Butterfield Road  
Downers Grove, IL. 60515

The state motor vehicle licensing office should use the attached letter shown in Exhibit 9 to transmit the information and to serve as documentation to the Federal Highway Administration if the file is examined for proof of payment requirements.

The IRS will evaluate the information to determine whether the vehicle qualifies as a non-highway vehicle.

### **Questionable Form 2290 Schedule 1**

If for any reason the state motor vehicle licensing office has concerns as to the validity of a receipted or acceptable substitute for a receipted Schedule 1, they should process the registration and inform the registrant the information will be forwarded to the IRS to verify that the Form 2290 has been filed and the proper amount of tax has been paid. The DMV should forward a copy of the Schedule 1, the registration and all documents that were processed with the registration to the following address:

Mr. Joseph Mazzuca  
Excise Tax Policy Analyst  
Internal Revenue Service  
2001 Butterfield Road  
Downers Grove, IL. 60515

The letter attached as Exhibit 10 should be used to transmit the information and to serve as documentation to the Federal Highway Administration if the file is examined for proof of payment requirements.

The IRS will evaluate the information to determine whether the Form 2290 has been filed and the proper amount of tax has been paid.

**If you have any questions regarding this guidance, please contact Mr. Joseph Mazzuca, IRS Excise Tax Policy Analyst, @ 630-493-5008 or by e-mail at [joseph.a.mazzuca@irs.gov](mailto:joseph.a.mazzuca@irs.gov)**

requirements of §§ 385.213 and 385.214 of this chapter.

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**PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT**

■ 66. The authority citation for Part 157 continues to read as follows:

*Authority:* 15 U.S.C. 717–717w.

**§ 157.6 [Amended]**

■ 67. In § 157.6, paragraph (a)(5) is removed and paragraph (a)(6) is redesignated as paragraph (a)(5), and in paragraph (b) introductory text, the phrase “shall be accompanied by the fee prescribed in part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and” is removed.

**PART 385—RULES OF PRACTICE AND PROCEDURE**

■ 68. The authority citation for Part 385 continues to read as follows:

*Authority:* 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

**§ 385.1901 [Amended]**

■ 69. In § 385.1901, in the address given in paragraph (c)(2), the phrase “Suite 8000, 825 North Capitol Street, NE.” is removed and the phrase “888 First Street, NE.” is added in its place.

■ 70. Section 385.2004 is revised to read as follows:

**§ 385.2004 Originals and copies of filings (Rule 2004).**

The requirements for making filings under this chapter are posted on the Commission’s Web site at <http://www.ferc.gov>. The requirements cover documents and forms submitted on paper, on electronic media, or via the Commission’s electronic filing systems.

**§ 385.2012 [Amended]**

■ 71. In § 385.2012, the phrase “825 North Capitol Street, NE.” is removed and the phrase “888 First Street, NE.” is added in its place.

**PART 388—INFORMATION AND REQUESTS**

■ 72. The authority citation for Part 388 continues to read as follows:

*Authority:* 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

■ 73. In § 388.112, paragraph (b) is revised to read as follows:

**§ 388.112 Requests for special treatment of documents submitted to the Commission.**

\* \* \* \* \*

(b) Procedures. A person claiming that information warrants special treatment as CEII or privileged must file a statement requesting CEII or privileged treatment for some or all of the information in a document, and the justification for special treatment of the information, in accordance with filing procedures posted on the Commission’s Web site at <http://www.ferc.gov>.

\* \* \* \* \*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 669**

[FHWA Docket No. FHWA–2009–0098]

**RIN 2125–AF32**

**Certification of Enforcement of the Heavy Vehicle Use Tax**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule sets forth updated FHWA procedures for enforcement of the State registration of vehicles subject to the Heavy Vehicle Use Tax (HVUT). This rule will bring FHWA’s HVUT regulations up-to-date to be consistent with many changes that have impacted the regulation over the last 2 decades.

**DATES:** *Effective Date:* October 25, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Ralph Erickson, Highway Funding and Motor Fuels Team Leader, Office of Policy, HPPI–10, (202) 366–9235, or Raymond W. Cuprill, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. *e.t.*, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access and Filing**

You may retrieve comments online through the Federal Docket Management System at: <http://www.regulations.gov>. Regulations.gov 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 from the Office of the Federal Register’s home page at: <http://www.gpoaccess.gov/fr/index.html> and the Government Printing Office’s Web page at: <http://www.gpoaccess.gov>.

**Background**

In the Surface Transportation Assistance Act of 1982, Congress established the HVUT. The purpose of the tax is to impose a road use charge that has some relation to the costs caused by the vehicle (heavier vehicles cause more road damage than light vehicles, and therefore should pay a higher highway funding contribution). The FHWA Cost Allocation studies<sup>1</sup> demonstrated that damage to the roadway, resulting from a doubling of the weight of a vehicle, caused an exponential increase in the amount of damage to the roadway than would have been caused by a lower weight. To compensate for this additional damage (costs occasioned), Congress established the HVUT as a way to recover from those vehicles the additional costs they impose. The HVUT imposes a tax on vehicles with a gross vehicle weight of 55,000 pounds and over using a sliding scale up to \$550 per year payable to the Internal Revenue Service (IRS). When the HVUT has been paid, the vehicle is eligible to be registered by the State. Provisions allow for temporary and partial-year vehicle registrations.

The FHWA’s responsibility in the administration of the HVUT is to ensure that the States are obtaining proof-of-payment of the HVUT before registering these vehicles to operate on the roadways. The agency published regulations at 23 CFR Part 669 implementing the requirements of this program as established by Federal law at 23 U.S.C. 141(c). In accordance with this Federal law, a State’s annual apportionment of Interstate Maintenance funds under 23 U.S.C. 104(b)(4) may be reduced by up to 25 percent in any fiscal year during which heavy vehicles subject to HVUT may be lawfully registered in the State without having presented proof-of-payment of the tax. Part 669 established a certification program to ascertain State compliance with these requirements,

<sup>1</sup> Final Report on the Federal Highway Cost Allocation Study: Report of the Secretary of Transportation to the United States Congress Pursuant to Section 506, Public Law 95–599, Surface Transportation Assistance Act of 1978: U.S. Department of Transportation, Washington, DC, May 1982 and 1997 Federal Highway Cost Allocation Study: U.S. Department of Transportation, Washington, DC, August 1997. Federal Highway Cost Allocation Study: U.S. Department of Transportation, Washington, DC, August 1997.

procedures for evaluating State compliance, and procedures for any required reduction of funds. This rule modifies existing FHWA procedures for enforcement of the State registration of vehicles subject to the HVUT. The regulation is consistent with several changes in applicable law and technology, and with regulations recently promulgated by the IRS.

#### History

The HVUT tax was imposed by section 143 of the Surface Transportation Assistance Act of 1982, Public Law 97-424, and is codified as 23 U.S.C. 141, which provides for State certification of enforcement of laws respecting maximum vehicle size and weight. The amendment added a provision to section 141 that provides that a State's annual apportionment of Interstate Maintenance funds may be reduced by up to 25 percent in any fiscal year during which heavy vehicles subject to the HVUT may be lawfully registered in the State without having presented proof-of-payment of the tax.

On July 14, 1986, the FHWA published in the **Federal Register** (51 FR 25363) a final rule implementing the requirements of this statute in 23 CFR Part 669—Enforcement of Heavy Vehicle Use Tax. The notice set forth procedures to be followed by each State for certifying that it is obtaining evidence of proof-of-payment of the Federal heavy vehicle use tax in accordance with 23 U.S.C. 141 for vehicles subject to the use tax imposed by section 4481 of the Internal Revenue Code of 1954, as amended, before such vehicles are lawfully registered in the State. An annual certification of compliance is required. Procedures are specified for reducing a State's apportionment of highway funds in accordance with 23 U.S.C. 141 in the event a State fails to meet the requirements of the regulation.

Over the decades since 1986, the IRS has updated its procedures for implementing the HVUT proof-of-payment. The current regulations, found in 26 CFR 41.6001-2,<sup>2</sup> entitled proof-of-payment for State registration purposes, sets forth circumstances under which a State must require proof-of payment of the tax imposed by 26 U.S.C. 4481(a), and the required manner in which such proof-of-payment is to be received by the State as a condition of issuing a

registration for a highway motor vehicle. A State must either comply with the provision of this section, or comply with other, alternative rules regarding the satisfaction of proof-of-payment requirement as may be prescribed by the Internal Revenue Service (IRS) Commissioner in order to avoid a reduction of Federal-aid highway funds apportioned under 23 U.S.C. 23 104(b)(4). This FHWA final rule provides compatibility with the revised IRS rules.

#### Discussion of Comments

A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on November 30, 2009, at 74 FR 62518. The comment period closed on March 1, 2010. The Docket received comments from five different organizations: (1) The Office of Congressman Don Young, (2) the New York Department of Motor Vehicles, (3) the State of Pennsylvania, (4) the Minnesota Office of the Commissioner of the Department of Public Safety, and (5) the International Registration Plan, jointly representing several unidentified States which concurred with their comments.

#### General Comments

The first commenting organization, the Office of Congressman Don Young; Alaska, indicated that constituents in Alaska are frustrated by an Alaskan requirement that individuals register their vehicle in person in order to show written documentation of HVUT payment. In Alaska, this evidence of documentation is required to complete Alaska DMV Form 846, the Heavy Vehicle Use Tax Declaration. Other vehicles can be registered online while vehicles subject to HVUT cannot. Alaska urges that changes be made in FHWA regulations to allow individuals to register vehicles subject to HVUT online.

This comment is outside the scope of this rulemaking. FHWA's role in administering the HVUT is to validate that the States are exercising their responsibility to assist in the administration of this tax as mandated by Congress and administered by the IRS. The FHWA does support the development of procedures by which the HVUT tax can be more effectively and efficiently enforced.

#### Sections 669.1, 669.2, 669.9, and 669.13

Two commenting organizations, the State of Pennsylvania (Pennsylvania) and the International Registration Plan, Inc. (IRP), expressed their support of the proposed changes related to sections 669.1, 669.2, 669.9, and 669.13. Both

organizations indicated that these proposed changes provide updated references to other laws, regulations, and related documents.

#### Section 669.7 Certification Requirement

Two commenting organizations, IRP and Pennsylvania, expressed their support of the proposed changes to section 669.7 as it would provide FHWA with time needed to review certifications and determine if States met their responsibilities. Both commenting organizations stated that the change would not place an undue burden on States. The IRP also offered that this change would help match other certifications currently submitted by States to FHWA.

#### Section 669.11 Certification Submittal

One commenting organization, the State of New York—Department of Motor Vehicles (New York), indicated that they have no objection to the proposed change in the certification deadline from July 1 to January 1.

Another commenting organization, Minnesota—Department of Public Safety, Office of the Commissioner (Minnesota), requested clarification on how FHWA will phase in the new regulation. Specifically, the commenter indicated that if this final rule is adopted before July 1, 2010, it is unclear how or whether States' eligibility for fiscal year 2011 apportionment would be determined, since they will not be certifying compliance until January 1, 2011 (ostensibly for the period from October 1, 2009, to September 30, 2010). Additionally, if FHWA does not adopt the proposed rules until after October 1, a question would arise as to whether States would have to certify compliance for the 4-month gap created by the change in certification periods (*i.e.*, for the period from June 1 to September 30, 2009).

Since this final rule will become effective after July 1, 2010, States will comply with the existing rule for the certification due on July 1, 2010. This final rule will be applicable starting with the certification due on January 1, 2011, and that first certification would only cover the 4-month period of June 1 through September 30, 2010. The annual certification due on January 1, 2012, would cover a full 12-month period of October 1, 2010 through September 30, 2011. Subsequent annual certifications would likewise cover the 12-month period ending the previous September 30.

<sup>2</sup> 26 CFR part 41 subpart A, entitled *Introduction*, subpart B entitled *Tax on Use of Certain Highway Motor Vehicles*, and Subpart C, entitled *Administrative Provisions of Special Application to Tax on use of Certain Highway Motor Vehicles*, sections 41.0-1, 41.4481-41.4483-7, and 41.600101-41.6156-1.

### Section 669.21 Procedure for Evaluating State Compliance

Two commenting organizations, Pennsylvania and IRP, expressed support for the proposal that all agencies responsible for issuing registrations for HVUT class vehicles be required to provide proof-of-payment responsibilities, including any private agencies which some States utilize to perform registration processes. However, three commenting organizations, New York, Minnesota, and IRP, expressed some concerns.

Specifically, the three commenting organizations stated their objection to the proposed change to require, rather than allow, electronic storage of IRS Schedule 1 (Form 2290)—proof-of-payment. One commenting organization stated that additional Federal funding would be needed to implement the use of electronic images for proof-of-payment. This same commenter expressed concern that the proposed rules do not specify how States must certify proof-of-payment when the IRS Schedule 1 (Form 2290) has been filed electronically. The commenter expressed that FHWA should address the issue in its rules and not wait for the IRS to develop its long-promised electronic verification process. The commenter observed that if the electronic verification system (mandated by Congress in 2004) were available, there arguably would be no need for the States to retain receipted Forms 2290 at all.

When proof-of-payment has been filed electronically with the IRS, the vehicle owner must retain a copy of the proof-of-payment for State vehicle registration purposes. Since July of 2009, the IRS has employed an electronic filing and payment process, which returns a receipted proof-of-payment to the taxpayer. This procedure is required for firms owning more than 25 trucks, but optional for smaller trucking operations. In either case, a paper copy of the proof-of-payment is provided to the taxpayer which may be presented at the time of vehicle registration. The State must preserve a copy of this proof-of-payment by paper copy or scanning procedures.

In the future, the State may develop an electronic process for vehicle registration, including registration of vehicles subject to HVUT, and presumably they would be inspecting an electronic proof-of-payment from the IRS. This situation offers a prime example of a case where a State might want to exercise the option to capture the proof-of-payment records in a software application format as authorized in this final rule, and FHWA

would be periodically inspecting an electronic file of proof-of-payment images.

The changes to section 669.21 adopted in this final rule do not specify the method by which the State must maintain the proof. The FHWA is not requiring States to utilize a scanning procedure. The FHWA's responsibility is to administer an established procedure to ensure that States check for IRS Schedule 1 (Form 2290) before registering certain vehicles. To do this, FHWA needs the States to retain some record that they have inspected IRS Schedule 1 (Form 2290). In FHWA's view, the current method to ensure that proof-of-payment is valid is insufficient, because it does not include provisions for local or private recordkeeping, and provides for unverifiable options such as making an entry in an automated file or on registration documents retained by the State. To properly administer FHWA's responsibilities, FHWA staff must review either a paper copy or a scanned image of the proof-of-payment. The FHWA staff must be able to view these items to check for signs of fraudulent proof-of-payment such as multiple copies of copies of originals, obviously invalid IRS receipt stamps, Employee Identification Number (EIN) "applied for" when they can be easily obtained from the IRS, and other suspicious markings or missing information.

Three commenting organizations, Minnesota, Pennsylvania, and IRP questioned the factual basis for FHWA's unfunded mandates analysis regarding the document retention requirement of IRS Schedule 1 (Form 2290). One commenting organization, Pennsylvania, also questioned how this action would not have significant economic impact. All commenting organizations expressed these concerns based on a misunderstanding that the proposed rule requires the scanning of IRS Form 2290 into a computerized record. Additionally, a commenter indicated that no timeline for implementation by States is provided in the rule, and that a reasonable timeline should be established to allow for compliance. Since FHWA is not requiring States to utilize a scanning procedure, these concerns are not being addressed in this final rule.

Another commenting organization, Minnesota, also stated that the proposed "one-year" retention schedule of IRS Schedule 1 (Form 2290) is misleading. Under the proposed rule, Minnesota suggested that it would not certify its compliance as to a vehicle registered in October 2010 until January 1, 2012, and it would not receive the certification of

apportionment until October 1, 2012. In effect, then, Minnesota would have to retain receipted Forms 2290 for up to 2 years. That is not the case. It appears that the commenter has mistakenly combined the annual certification process and the requirements concerning periodic inspection of records by FHWA, which are two separate processes. It is under the inspection requirements that the State is required to collect and maintain proof-of-payment records for 1 year.

One commenting organization, IRP, expressed concern that evaluation of States' compliance has been inconsistent. The commenter requested that FHWA ensure that evaluations of States are consistent, and all are evaluated on the same standards going forward.

This comment is outside the scope of this rulemaking. However, it should be noted that FHWA has recently provided an extensive on-line course detailing how HVUT reviews should be conducted by FHWA staff in the field offices. This course can be found on our Web site: <http://www.fhwa.dot.gov/policyinformation/hvut/module1/index.htm>.

### Section 669.15 Procedure for the Reduction of Funds

Two commenting organizations, Pennsylvania and IRP, stated their support for the proposed revisions to 23 CFR 669.15.

One commenting organization, Minnesota, expressed concern regarding the proposed deletion of certain procedures from section 669.15. Specifically, Minnesota noted three changes of concern: (1) Under the current rule, FHWA must notify a State's governor by certified mail, while the proposed rule is silent as to how and to whom such notice must be given; (2) Under the current rule, States may respond to a proposed determination of nonconformity by submitting evidence either in writing or, at their request, at a conference with FHWA, while in the latter instance, a transcript of the conference must be prepared. The commenter believes that States should continue to have the option of requesting a hearing; (3) Under the current rule, a State may present mitigating evidence to shed light on why a State is unable to comply fully or that it will soon be in full compliance, while the proposed rule limits the evidence that FHWA will consider to "documentation showing why [the State] is in conformity."

The FHWA revised procedures at 23 CFR 669.15, being adopted in today's final rule, parallel other procedures

established by the FHWA and the National Highway Traffic Safety Administration for programs that involve funding sanctions.<sup>3</sup> The adoption of similar procedures makes these programs: (1) Easier to administer, (2) more familiar to the States, and (3) provides States with sufficient notification of a preliminary non-compliance determination, the right to request a review of FHWA's preliminary non-compliance determination, and an opportunity to demonstrate State compliance. Under the new procedures, States do not lose the right to protest or to show compliance. The preliminary notice of nonconformity would be issued with the advance notice of apportionments required under 23 U.S.C. 104(e), together with notice of the funds expected to be withheld from apportionment. A State would have 30 days to submit documentation to FHWA showing why it is in conformity. Any State submission would be reviewed by the FHWA, including the FHWA Administrator. As part of this process, a State would maintain the ability to request an informal conference with the FHWA Administrator, have a transcript of the conference made, or present any mitigating evidence. The FHWA would then issue a final determination to the State and if found in nonconformity, the State would receive notice of the funds being withheld from apportionment as part of the certification of apportionments, which normally occurs on October 1 of each year.

### Section 669.17 Compliance Finding

One commenting organization, Minnesota, noted that in the NPRM, FHWA proposed to amend 23 CFR 669.17, the rule pertaining to compliance findings, but no such amendment appeared in the proposed regulatory text. The FHWA proposed removing 23 CFR 669.17 because it referred to the issuance of a compliance finding by the FHWA Administrator and due to the revised procedures this section was no longer necessary. This section is removed by this final rule.

Two commenting organizations, Pennsylvania and IRP, indicated their support of the proposed changes to 23 CFR 669.17, as the changes would bring a more consistent and formalized process to the apportionment and notification of non-compliance.

<sup>3</sup> Drug Offender Driver's License Suspension Program, 23 CFR 192.10; Minimum Drinking Age Program, 23 CFR 1208.6; Zero Tolerance Laws, 23 CFR 1210.10; 0.08 BAC Per Se Laws Program, 23 CFR 1225.12; Open Container Program, 23 CFR 1270.8; Repeat Intoxicated Driver Laws, 23 CFR 1275.8.

### Rulemaking Analyses and Notices

#### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this action would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The textual corrections, updates to refer to numerical section changes in law, and change in timing of the certification compliance components of this rule create no changes to the economic cost of the regulation. A few commenting organizations apparently believed that the proposed changes require electronic scanning and retention of IRS Form 2290 for 1 year. As addressed above, FHWA is not requiring such a system, so there is no cost associated with developing new procedures, unless a State must implement procedures to maintain proof payment for counties or other registering agencies. Additionally, the change in administrative procedures to remove the FHWA Administrator from the fund reduction action provides governmental efficiency.

These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612) FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities.

#### Unfunded Mandates Reform Act of 1995

This rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$141.3 million or more in any 1 year (2 U.S.C. 1532). One change in the regulation that impacts cost is the record keeping provision. Since the States and other vehicles

registration entities already keep vehicle registration files, no significant additional cost should be incurred by the States. A few commenting organizations mistakenly believed that the proposed changes required electronic scanning and retention of IRS Form 2290 for 1 year. As addressed above, FHWA is not requiring such a system.

#### Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action would not have sufficient federalism implications to warrant preparation of a federalism assessment. The FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

#### Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

#### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this rule does contain collection of information requirements for the purposes of the PRA. The FHWA believes that the information collected under this action is contained in the existing information collection under OMB Control Number 2125-0541 granted by OMB on February 1, 2008.

#### National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this action would not have any effect on the quality of the environment.

#### Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory



Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### List of Subjects in 23 CFR Part 669

Grants programs-transportation, Highways and roads, Taxes, Motor vehicles.

Issued on: July 14, 2010.

**Victor M. Mendez,**  
Administrator.

■ In consideration of the foregoing, the FHWA amends part 669 of Title 23, Code of Federal Regulations, as follows:

#### PART 669—ENFORCEMENT OF HEAVY VEHICLE USE TAX

■ 1. The authority citation for part 669 is revised to read as follows:

**Authority:** 23 U.S.C. 141(c) and 315; 49 CFR 1.48(b).

■ 2. Revise § 669.7 to read as follows:

##### § 669.7 Certification requirement.

The Governor of each State, or his or her designee, shall certify to the FHWA before January 1 of each year that it is obtaining proof-of-payment of the heavy vehicle use tax as a condition of registration in accordance with 23 U.S.C. 141(c). The certification shall cover the 12-month period ending September 30, except for the certification due on January 1, 2011, which shall cover the 4-month period from June 1, 2010 to September 30, 2010.

##### § 669.9 [Amended]

■ 3. In § 669.9, amend paragraphs (b), and (c) by removing the words “23 U.S.C. 141(d)” and adding in its place the words “23 U.S.C. 141(c)” in each place it appears.

##### § 669.11 [Amended]

■ 4. Amend § 669.11 by removing the word “July” and adding in its place the word “January”.

■ 5. Revise § 669.13 to read as follows:

##### § 669.13 Effect of failure to certify or to adequately obtain proof-of-payment.

If a State fails to certify as required by this regulation or if the Secretary of Transportation determines that a State is not adequately obtaining proof-of-payment of the heavy vehicle use tax as a condition of registration notwithstanding the State's certification, Federal-aid highway funds apportioned to the State under 23 U.S.C. 104(b)(4) for the next fiscal year shall be reduced in an amount up to 25 percent as determined by the Secretary.

■ 6. Revise § 669.15 to read as follows:

##### § 669.15 Procedure for the reduction of funds.

(a) Each fiscal year, each State determined to be in nonconformity with the requirements of this part will be advised of the funds expected to be withheld from apportionment in accordance with § 669.13 and 23 U.S.C. 141(c), as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than 90 days prior to final apportionment.

(b) A State that received a notice in accordance with paragraph (a) of this section may within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in conformity with this Part. Documentation shall be submitted to the Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(c) Each fiscal year, each State determined to be in nonconformity with the requirements of this part and 23 U.S.C. 141(c), based on FHWA's final determination, will receive notice of the funds being withheld from apportionment pursuant to section 669.3 and 23 U.S.C. 141(c), as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

■ 7. Amend § 669.19 as follows:

■ a. Amend paragraphs (a) and (b) by removing the words “23 U.S.C. 104(b)(5)” and adding in its place the words “23 U.S.C. 104(b)(4)” in each place it appears; and

■ b. Amend paragraph (c) by removing the word “Secretary's”.

■ 8. Revise § 669.21 to read as follows:

##### § 669.21 Procedure for evaluating State compliance.

The FHWA shall periodically review the State's procedures for complying with 23 U.S.C. 141(c), including an inspection of supporting documentation and records. In those States where a branch office of the State, a local jurisdiction, or a private entity is providing services to register motor vehicles including vehicles subject to HVUT, the State shall be responsible for ensuring that these entities comply with the requirements of this part concerning the collection and retention of evidence of payment of the HVUT as a condition of registration for vehicles subject to such tax and develop adequate procedures to maintain such compliance. The State or other responsible entity shall retain a copy of the receipted IRS Schedule 1 (Form 2290), or an acceptable substitute prescribed by 26 CFR Part 41 sec.

41.6001–2 for a period of 1 year for purposes of evaluating State compliance with 23 U.S.C. 141(c) by the FHWA. The State may develop a software system to maintain copies or images of this proof-of-payment.

[FR Doc. 2010–18180 Filed 7–23–10; 8:45 am]

BILLING CODE 4910–22–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA–R01–RCRA–0561; FRL–9179–5]

#### Rhode Island: Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** The State of Rhode Island has applied to EPA for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action.

**DATES:** This final authorization will become effective on September 24, 2010 unless EPA receives adverse written comment by August 25, 2010. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take immediate effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–RCRA–0561, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [biscaia.robin@epa.gov](mailto:biscaia.robin@epa.gov).

- *Fax:* (617) 918–0642, to the attention of Robin Biscaia.

- *Mail:* Robin Biscaia, RCRA Waste Management Section, Office of Site Remediation and Restoration (OSRR 07–01), EPA New England—Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

- *Hand Delivery or Courier:* Deliver your comments to Robin Biscaia, RCRA Waste Management Section, Office of Site Remediation and Restoration (OSRR 07–01), EPA New England—Region 1, 5 Post Office Square, 7th floor, Boston, MA 02109–3912. Such deliveries are only accepted during the Office's normal hours of operation, and

## **Proof of Payment Regulations**

26 CFR 41.6001-2, Proof of payment for State registration purposes, provides, in pertinent part, as follows.

(a) In general. This section sets forth the circumstances under which a State must require proof of payment of HVUT imposed and the required manner in which such proof of payment is to be received by the State as a condition of issuing a registration for a highway motor vehicle.

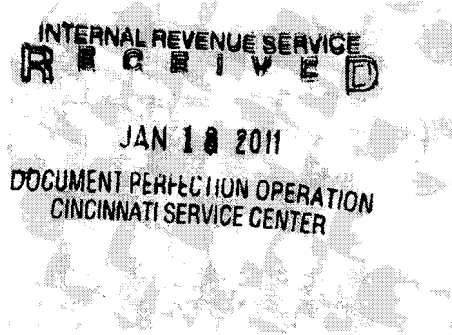
(b)(1) Such proof of payment must be received by the State before the State issues a registration for such vehicle unless the State is using a suspension registration system. (See 26 CFR 41.6001-2(b)(3)). The term "proof of payment", when used in this section, shall be considered to refer in appropriate cases to proof of suspension of the HVUT. Any proof of payment presented to a State must relate to tax paid or suspension of tax paid for the taxable period which includes the date that the State receives the application for registration. A "base state" must be presented proof of payment when issuing an "apportioned plate" under the International Registration Plan (IRP) (or similar agreement) for a highway motor vehicle, but no proof of payment of the HVUT is required to be presented to the other states for which the vehicle is proportionally registered and which are listed on the IRP cab card issued by the base state.

Further, a State is not required to receive proof of payment in order to issue special temporary travel permits which allow a vehicle to, (i) operate in a State in which the vehicle is not registered (including proportional or prorate registration), (ii) operate at more than the State's maximum statutory weight limit, or (iii) operate at more than the weight that the vehicle is registered in a State. Further, a State may register a highway motor vehicle without proof of payment if the person registering the vehicle presents the original or a photocopy of a bill of sale (or other document evidencing transfer) indicating that the vehicle was purchased by the owner either as a new or used vehicle during the preceding 60 days before the date that the State receives the application for registration of such vehicle.

(c)(1) Proof of payment shall consist of a receipted Schedule 1 (Form 2290) that is returned by the Internal Revenue Service to a taxpayer who files a Form 2290 and pays the amount of tax due with such return. A photocopy of such receipted Schedule 1 shall also serve as proof of payment. Such Schedule 1 shall serve as proof of suspension of such tax for the number of vehicles entered in that part of the Schedule 1 designated for vehicles for which tax has been suspended. The vehicle identification number of the vehicle being registered must appear on the Schedule 1 (or an attached page) in order for the Schedule 1 to be a valid proof of payment for such vehicle.

Exhibit One

Stamp from the Cincinnati Internal Revenue Service Center, Submission Processing, Code & Edit. They currently use only black ink but 2 years ago used red. The majority of Schedules 1 will have this stamp.



**RECEIVED**

**JAN 15 2011**

**INTERNAL REVENUE SERVICE  
CINCINNATI COMPLIANCE SERVICES CENTER  
CENTRALIZED EXCISE OPERATIONS**

**INTERNAL REVENUE SERVICE  
RECEIVED**

**JAN 15 2011**

**EXCISE UNIT 32  
CINCINNATI SERVICE CENTER**

**RECEIVED**

**JAN 15 2011**

**INTERNAL REVENUE SERVICE  
CINCINNATI COMPLIANCE SERVICES CENTER  
CENTRALIZED EXCISE OPERATIONS**

**INTERNAL REVENUE SERVICE  
RECEIVED**

**JAN 15 2011**

**EXCISE T101  
CINCINNATI SERVICE CENTER**

INTERNAL REVENUE SERVICE  
W & I - FIELD ASSISTANCE  
GAINESVILLE, FL 32601

JAN 20 2011

RECEIVED  
32816

INTERNAL REVENUE SERVICE  
W & I - FIELD ASSISTANCE  
GAINESVILLE, FL 32601

JAN 20 2011

RECEIVED  
WITH REMITTANCE  
32816

In general, Taxpayer Assistance Center (TAC) stamps will look like this.

Each TAC stamp will have their specific location (city, state zip code) identified on the third line from the top. The five-digit number at the bottom of each stamp identifies the specific employee that stamped the Schedule 1, so it will also vary.

The ink color of each stamp is generally a medium blue on the top and bottom sections. The blue color can vary greatly – from a pale, turquoise blue to a deep, almost navy blue. This is dependant on how recently the employee refreshed the ink in their stamp. The center section containing the date will be red.



# Exhibit Seven



## Form 2290 Schedule 1 Watermark Sample

SCHEDULE 1 (Form 2290) <small>(Rev. July 2007) Department of the Treasury Internal Revenue Service</small>		Schedule of Heavy Highway Vehicles For the period July 1, 2007, through June 30, 2008 <small>This copy will be stamped and returned to you for use as proof of payment when registering vehicle(s) with a state.</small>		OMB No. 1545-0143	
Type or Print	Name as shown on Form 2290 <b>String String</b>		Employer identification number <b>11:2000001</b>		
	Address (number, street, and room or suite no.) <b>String String</b>				
	City, state, and ZIP code (for Canadian or Mexican address, see page 4 of the instructions.) <b>String, AL 20872</b>				
	<b>String, AL 20872</b>				
<b>Caution.</b> You must list all vehicles. Attach a separate list if needed.					
<b>Part I Vehicles on Which You Are Reporting Tax.</b> See page 6 of the instructions.					
	Vehicle Identification Number	Category		Vehicle Identification Number	Category
1	AAAAAAAAAAAAAAAAAAAA	S	7		
2			8		
3			9		
4			10		
5			11		
6			12		
<b>Part II Vehicles for Which Tax Is Suspended—5,000 Miles or Less (7,500 Miles or Less for Agricultural Vehicles).</b> See page 6 of the instructions.					
	Vehicle Identification Number	Category		Vehicle Identification Number	Category
1	AAAAAAAAAAAAAAAAAAB	W	2		W
<b>Part III Summary of Reported Vehicles</b>					
<b>a</b> Enter the number of taxable vehicles from Form 2290, page 2, column 3, <b>Totals</b> . . . . .				<b>a</b>	<b>1</b>
<b>b</b> Enter the total number of taxable vehicles on which the tax is suspended from Form 2290, page 2, column 3 (category W) . . . . .				<b>b</b>	<b>2</b>
<small>For Privacy Act and Paperwork Reduction Act Notice, see page 8 of the instructions.</small>					
<small>Schedule 1 (Form 2290) (Rev. 7-2007)</small>					

*"The stamped electronic 2290 schedule 1 would be available to be printed from the Help Desk only up until the time the PDF file is purged from the MeF Oracle database which is set for 1 year."*

**Exhibit 8-MME Example**



## EXHIBIT NINE

Date

Mr Joseph Mazzuca  
Excise Tax Policy Analyst  
Internal Revenue Service  
2001 Butterfield Road  
Downers Grove, IL. 60515

Regarding: Review of Registration Documents for Non-Highway Vehicle(s)

Dear Mr Mazzuca:

Enclosed you will find registration documents for a vehicle(s) that was registered as a non-highway vehicle for your review.

(The DMV can add information here as they deem necessary, if any)

If you have any questions, please contact (insert name and phone number)

Sincerely,

Name  
Title  
DMV Office Name  
Address  
Phone Number

## EXHIBIT TEN

Date

Mr Joseph Mazzuca  
Excise Tax Policy Analyst  
Internal Revenue Service  
2001 Butterfield Road  
Downers Grove, IL. 60515

Regarding: Review of Questionable Form 2290 Schedule 1

Dear Mr Mazzuca:

Enclosed you will find a copy of Form 2290 Schedule 1 along with the registration documents for a vehicle(s) that was registered by our office. We would appreciate your review as we have concerns as to the validity of the Schedule 1.

(The DMV can add information here as they deem necessary, if any)

If you have any questions, please contact (insert name and phone number)

Sincerely,

Name  
Title  
DMV Office Name  
Address  
Phone Number