

The Wisconsin Department of Transportation adopts an order to repeal TRANS 152.05(3)(b), (c) and (8); renumber TRANS 152.14(7); amend TRANS 152.02(16) and (27), 152.05(3)(a), (7) and (12), 152.08(9), and 152.15; repeal and recreate TRANS 152.05(2)(d); and create TRANS 152.02(7m), 152.025, 152.07(2m), 152.101, 152.11(3), 152.14(7), and TRANS 152 Subch. IV, relating to Wisconsin interstate fuel tax and international registration program

ORDER ADOPTING RULE

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 227.10, 341.405(1) and 341.45(5), Stats.

STATUTES INTERPRETED: ss. 341.405 and 341.45, Stats.

Plain Language Analysis. This rule making amends ch. Trans 152, relating to Wisconsin Interstate Fuel Tax and International Registration Plan programs. The rule making clarifies Department policies regarding application requirements, business location, collections, and overdue billings. The rule making also reflects a statutory change in 1999 Wis. Act 145 that transfers appeals of certain determinations of the Department of Transportation from the Division of Hearings and Appeals to the Tax Appeals Commission.

The rule making clarifies terms of application requirements, including “established place of business,” “reporting period,” and “license.” The rule codifies Department policy that an IRP, IFTA, or SSRS applicant’s established place of business is in Wisconsin, and the documentation required to support the application. The rule also clarifies that the licensee is responsible to account for IFTA decals, and the penalty for failure to account.

The rule clarifies the Department’s policy, including penalties and fees, when customers do not submit IFTA or IRP payments, or both, to the Department by the due date.

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: Federal law mandates that all states participate in the International Registration Plan (IRP) and International Fuel Tax Agreement (IFTA). These inter-jurisdiction compacts govern a jurisdiction's administration of interstate vehicle registration and motor fuel tax, and policies established in IRP and IFTA reflect agreement among jurisdictions.

In effect, jurisdictions regulate themselves by way of these compacts, with the imprimatur of federal law. With respect to issues addressed in the IRP and IFTA compacts, federal regulations do not additionally cover those issues.

This rule making codifies Wisconsin policies administering IRP and IFTA. The policies are consistent with the inter-jurisdiction compact requirements, and no other existing or proposed federal regulations relate.

Comparison with Rules in Adjacent States (Michigan, Minnesota, Illinois, Iowa): All adjacent states have adopted the IRP and IFTA provisions into their state statutes and into their administrative regulatory code. Thus, all adjacent states' rules are consistent with IRP and IFTA, and consequently Wisconsin is also consistent.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: To minimize the regulatory burden on interstate motor carriers, who must follow multiple jurisdictions' laws, states agreed to use the base-state approach. Most Wisconsin-based interstate motor carriers participate in all three base-state agreements: IRP, IFTA, and Single-State Insurance Registration System (SSRS).

Similarly, to minimize regulatory burden on Wisconsin-based motor carriers, Wisconsin DOT has established administrative policies that are the same or as similar as possible, in all three programs.

The rule clarifies that, while IRP and IFTA application and registration procedures are separate, DOT applies the same policy in both programs, and carriers are treated the same in both programs. The term "established place of business" is defined, and proof of established place of business in Wisconsin is required. In addition, a subchapter on collections is added, which applies to both IRP and IFTA holders. The rule defines the overdue billing policy including possible revocation or refusal of any DOT credentials; and the rule clarifies that DOT may refer delinquent collections to the Department of Revenue. The rule also is updated to conform to statute establishing appeals for registration and fuel tax assessments to the Tax Appeals Commission.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: The Department anticipates that this rule making will have no direct adverse effect on small businesses. This rule making establishes no additional compliance, bookkeeping, or reporting requirements for small businesses.

Fiscal Effect and Anticipated Costs Incurred by Private Sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state revenues or liabilities. No added costs will be incurred by the private sector, to comply with this rule. The rule making codifies DOT policies that motor carrier companies are currently complying with, and the rule establishes no additional compliance, bookkeeping, or reporting requirements.

Copies of Rule. Copies of the rule may be obtained upon request, without cost, by writing to Tim Galbraith, Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Services, Room 151, P. O. Box 7955, Madison, WI 53707-7955, or by calling (608) 261-2573. You may also contact Mr. Galbraith at timothy.galbraith@dot.state.wi.us. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the rule will be provided to individuals at their request.

TEXT OF RULE

SECTION 1. Trans 152.02(7m) is created to read:

Trans 152.02(7m) “Established place of business” means a physical structure owned, leased or rented by the fleet registrant. The physical structure shall be designated by a street number or road location, be open during normal business hours, and have located within it all of the following:

(a) A telephone or telephones publicly listed in the name of the fleet registrant.

(b) A person or persons conducting the fleet registrant’s business.

(c) The operational records of the fleet, unless the records can be made available in accordance with the provisions of section 1602 of the international registration plan.

SECTION 2. Trans 152.02(16) is amended to read:

Trans 152.02(16) "License" means ~~a Wisconsin interstate fuel tax license, an international fuel tax agreement license or a vehicle registration through the IRP.~~

SECTION 3. Trans 152.02(27) is amended to read:

Trans 152.02(27) "Reporting period" means, under IFTA, a period of time consistent with the calendar quarterly period of January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Under IRP, "reporting period" means the July 1 through June 30 immediately preceding the commencement of the registration year.

SECTION 4. Trans 152.025 is created to read:

Trans 152.025 Applications for motor carrier credentials. (1) An application for motor carrier interjurisdictional credentials within this chapter shall require the applicant's established place of business in Wisconsin for IRP and IFTA.

(2) An owner operator who cannot meet the requirements in sub. (1) may satisfy the requirement for registration in Wisconsin if the owner operator can verify a Wisconsin connection. He or she shall provide all of the following:

(a) A phone bill with a Wisconsin phone number and Wisconsin geographical address.

(b) A valid Wisconsin drivers license.

(c) A copy of his or her most recent Wisconsin income tax return.

SECTION 5. Trans 152.05(2)(d) is repealed and recreated to read:

Trans 152.05(2)(d) Geographical address of the registrant's established place of business in Wisconsin or the alternative Wisconsin location under s. Trans 152.025(1) or (2).

SECTION 6. Trans 152.05(3)(a) and (7) are amended to read:

(3) ACCOUNT IDENTIFICATION. ~~(a)~~ The department shall assign an account number to its licensees according to an account numbering system which shall contain an alphabetic designation of the state of Wisconsin and the federal employer identification number of the licensee issued by the internal revenue service. ~~A licensee with an assigned number shall submit a federal identification number to the department within 180 days after the license is issued or the license shall be canceled.~~

(7) LICENSE DISPLAY. A licensee shall display a copy of the license in any every qualified motor vehicle that the licensee operates ~~in this state~~ under the IFTA license.

SECTION 7. Trans 152.05(3)(b), (c) and (8) are repealed.

SECTION 8. Trans 152.05(12) is amended to read:

Trans 152.05(12) REPLACEMENT LICENSE OR DECAL. If a license or ~~a fuel~~ an IFTA decal is lost prior to expiration, the department may issue a replacement license for \$3.00 or ~~fuel~~ IFTA decal for \$2.00 after the holder sends in a signed statement stating that the prior decal is lost.

SECTION 9. Trans 152.07(2m) is created to read:

Trans 152.07(2m) DECAL ACCOUNTABILITY. The licensee is responsible to account for all decals issued to licensee. That includes which vehicle decals were

placed on and the sequential decal identification number that the vehicle received. Failure to account for all decals issued, for a period of 4 years may result in a 4-mpg jeopardy assessment based on Wisconsin average vehicle use.

SECTION 10. Trans 152.08(9) is amended to read:

Trans 152.08(9)(title) ~~SUSPENSION~~ REVOCATION. If any licensee fails to report when required to do so or fails to pay in full the taxes due, the department shall mail a notice of intent to ~~suspend~~ revoke the license to the address of record of the licensee advising of the immediate ~~suspension~~ revocation of ~~fuel tax~~ IFTA licensing privileges if the delinquent amount is not paid within 10 days. If the person's tax delinquency has not been satisfied within 10 days, the person's license ~~may~~ shall be ~~suspended~~ revoked.

SECTION 11. Trans 152.101 is created to read:

Trans 152.101 IRP registration application. A person shall file an application for licensing in the name of the licensee with the department on forms specified by the department. The application shall contain the following:

(1) The federal employer identification number. For owner operators, a valid Wisconsin drivers license number.

(2) Valid IFTA license. Owner operators without their own IFTA license shall provide a copy of a current lease showing name of lessor, individual or legal name of the lessee, the date of the lease, the period of the lease, and a statement that the lessee is

responsible for the filing of the fuel tax. If the lease terminates prior to the IRP renewal, the new lease shall be provided to the department within 30 days of new lease.

(3) USDOT number of the motor carrier responsible for the safety of the registered vehicle.

(4) Owner's, partner's or corporate name.

(5) Legal business name if different than sub. (2).

(6) Geographical address used for the established place of business.

(7) A telephone bill with a Wisconsin phone number and Wisconsin geographical address in the business name billed to the established place of business address.

(8) Registration with the Wisconsin department of financial institutions as a business in good standing in Wisconsin.

(9) An original signature of the licensee and if there is an authorized representative or attorney in fact, the original signature of the authorized representative or attorney in fact, or in an electronic format as prescribed by the department.

(10) Proof of vehicle ownership in the form of a photocopy of the vehicle title.

NOTE: A license application form MV2854 may be ordered from the Wisconsin Department of Transportation, Motor Carrier Services Section, P.O. Box 7955, Madison, Wisconsin 53707-7955.

SECTION 12. Trans 152.11(3) is created to read:

Trans 152.11(3) TITLE. A copy of the Wisconsin title to the vehicle being registered shall accompany the application and be maintained in the carrier's file.

SECTION 13. Trans 152.14(7) is renumbered Trans 152.14(8) and amended to read:

Trans 152.14(8) FURTHER APPEAL. Any person who has filed a petition for determination with the department and who is aggrieved by the redetermination of the department may, within 30 days after the redetermination but not thereafter, file a petition for review of the action of the department with the ~~division of hearings and~~ tax appeals commission.

SECTION 14. Trans 152.14(7) is created to read:

Trans 152.14(7) FULL DISCLOSURE. No person against whom an assessment of taxes or fees has been made shall be allowed in any action either as a plaintiff or a defendant or in any other proceeding to question such assessment unless such person has complied with s. Trans 152.14(1) to (3) and unless such person makes full disclosure under oath at the hearing before the tax appeals commission of all relevant matters. The department of transportation may waive the requirement of full disclosure under oath.

SECTION 15. Trans 152.15 is amended to read:

Trans 152.15 Revocation. If an assessed tax or fee has not been paid when due and the person has not filed a written appeal within 30 days of the notification of action or audit finding, that tax or fee becomes delinquent. A notice of delinquency and revocation shall be sent to the last known address of the licensee or registrant advising of the immediate revocation of fuel tax licensing ~~or~~ IRP registration privileges, for hire operating authority and single-state insurance registration. A license may also be revoked if the licensee fails to comply ~~substantially~~ with the provisions of this chapter or

the provision of the IFTA or IRP. An appealable notice of revocation shall be mailed to the licensee's or registrant's mailing address of record. If the appeal is not filed within 30 days, the revocation shall be final and conclusive. A license or registrant's licensing privileges shall remain revoked until the reason for the revocation has been removed. In addition, the department may revoke, suspend or refuse any registration, certificate or permit issued under the authority of the department upon revocation of a person's fuel tax or IRP licensing privileges.

SECTION 16. Trans 152 Subch. IV is created to read:

Subchapter IV -- Collections

Trans 152.17 Actions to collect tax, fees and penalties. (1) DEPARTMENT COLLECTION. The department shall make initial efforts to collect delinquent fuel tax and registration fees. The department may:

(a) Assess the person responsible for paying the fuel use taxes and registration fees. The department may subpoena any records necessary to determine the person responsible for paying the fuel use taxes and registration fees. Any officer, employee, fiduciary or agent who is responsible for paying taxes, fees, interest, penalties or other charges under this chapter incurred by another person but not paid is personally liable for those taxes, fees, interest, penalties or other charges. The officer, employee, fiduciary or agent may appeal that determination under the procedures of subch. III.

(b) Suspend or refuse to issue any permit, license or registration to any person who is responsible for paying the fee, taxes, interest or penalty under this chapter.

(2) THIRD PARTY COLLECTION. The department may refer for collection any delinquent fuel taxes and registration fees to the department of revenue. The department of revenue may collect any delinquent fuel taxes and registration fees as it collects motor vehicle fuel and alternative fuel general aviation taxes under s. 78.70, Stats.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this ____ day of October, 2004.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation