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State of New Hampshire

DEPARTMENT OF SAFETY
JAMES H. HAYES BLDG. 33 HAZEN DR.
CONCORD, N.H. 03305
(603) 271-2791

EDDIE EDWARDS
ASSISTANT COMMISSIONER

STEVEN R. LAVOIE
ASSISTANT COMMISSIONER

ROBERT L. QUINN
COMMISSIONER

June 7, 2023

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His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Safety, Division of Administration, Road Toll Bureau to enter into a no-cost Memorandum of Understanding with the Internal Revenue Service (VC #669039), for dyed fuel sampling and results sharing effective upon Governor and Council approval until cancelled upon 30 days written notice by either party, or immediately by signed agreement of the parties.

EXPLANATION

This no cost Memorandum of Understanding (MOU) with the Internal Revenue Service (IRS) replaces the existing MOU for Dyed Fuel Sampling & Results Sharing from 2008. The Department of Safety relies on the IRS Excise Forensic Lab (EFL) to conduct testing of fuel samples to confirm the presence of non-taxed dyed fuel which is only authorized for off-road usage. The Department periodically conducts roadside fuel sampling an enforcement and compliance tool to detect potential fuel tax evasion related to the RSA 260:52-d. This agreement ensures continued coordination with the IRS to conduct dyed fuel analysis for use in supporting violations and any related court proceedings.

Respectfully Submitted,

Robert L. Quinn
Commissioner of Safety

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE INTERNAL REVENUE SERVICE
AND
STATE OF NEW HAMPSHIRE, DEPARTMENT OF SAFETY
FOR
TAXABLE FUEL SAMPLING AND RESULTS SHARING**

I. INTRODUCTION

This Memorandum of Understanding (MOU) between the Internal Revenue Service (IRS) and the State of New Hampshire, Department of Safety (NH DOS) sets forth the agreement of the parties to join in a program of mutually beneficial taxable fuel sampling and results sharing. The results of such sampling will be shared as permitted and controlled by the basic disclosure and implementing agreements for the exchange of Federal Tax Information (FTI) by the IRS and state tax information by NH DOS.

IRS and NH DOS may be collectively referred to as the "parties," or individually as a "party."

II. AUTHORITY

IRS taxable fuel inspections are authorized by Section 4083(d) in Chapter 32 of the Internal Revenue Code (IRC). Associated fuel tax liabilities are established by Section 4041 in Chapter 31 of the IRC and Section 4081 in Chapter 32 of the IRC. State inspections are authorized under RSA 260:52-d, VI.

Sharing of FTI to include fuel sample lab test results by the IRS to NH DOS is authorized by this MOU, the Agreement on Coordination of Tax Administration (Basic Agreement) dated June 6, 2017, and the Implementing Agreement for the Agreement on Coordination of Tax Administration (Implementing Agreement) dated January 13, 2017, pursuant to IRC Section 6103(d).

III. PURPOSE

This agreement provides the framework under which the parties will conduct mutually beneficial taxable fuel sampling and share information resulting from such sampling.

IV. POINTS OF CONTACT FOR SHARING INFORMATION

The parties agree to provide the other party with the name, title, address, email address and telephone number of the following points of contact:

- A. IRS Group Manager responsible for liaison and day-to-day administration of this agreement.

- B. IRS Fuel Compliance Officer (FCO) or Fuel Compliance Agent (FCA) designated by the IRS Group Manager to receive fuel samples from NH DOS personnel.
- C. IRS office to whom the State will report all dyed fuel violations of state fuel tax law.
- D. Representative at the IRS Excise Forensics Laboratory (EFL).
- E. Designated NH DOS official responsible for day-to-day administration of this MOU.
- F. Designated NH DOS official responsible for receiving fuel sample lab test results and FTI on samples secured by IRS employees in the State.

See Exhibit A for the specific contact information.

V. LABORATORY TESTING

The IRS agrees to use the EFL to test samples obtained by IRS personnel. The State also agrees to use the EFL to test samples obtained by NH DOS personnel. Additional responsibilities are listed below.

- A. IRS is responsible for funding the tests of samples at the EFL.
- B. The IRS will ship samples received from NH DOS personnel to the EFL within one week of receipt.
- C. The parties will securely maintain all documentation and resulting FTI, and state tax information associated with the fuel analyses performed at their laboratories. Such records will include both tax violation and non-tax violation results.
- D. The samples analyzed by the IRS per ASTM-D-6258-98 (American Standard of Testing Material) will be routinely destroyed within 60 days of testing.
- E. State samples analyzed using a method other than ASTM-D-6258-98 will be retained. Such samples include but are not limited to: Blitz abnormal samples, investigative samples, and red dye matrix interference samples.
- F. The IRS and NH DOS will maintain hard-copy and electronic records of receipt, testing, and results for all samples for six years from receipt.

VI. INFORMATION SHARING - VIOLATIONS FOUND IN THE STATE

The IRS and NH DOS will report to the other party all fuel tax violations found within the State. Each party will independently decide whether or not to pursue enforcement action based on the information provided.

Both parties will share the information in Exhibit B. When shared by the IRS, it is FTI. When shared by the state, it is state tax information.

- A. If the sample will be tested by the EFL, NH DOS will provide the IRS with a fuel sample. NH DOS will deliver samples to the designated IRS FCO or FCA within one week of taking the sample. The IRS Group Manager listed in Exhibit A will designate an FCO or FCA to receive the fuel sample.
- B. If the State does not use the EFL to test the sample, NH DOS will provide the IRS the laboratory test results when it provides the state tax information listed in Exhibit B.
- C. The parties agree to share the information listed in Exhibit B within 30 days of the date the sample was obtained. The information will be supplied in accordance with the transmittal procedures in section X.
- D. The information will be sent to the point of contact listed in Exhibit A.
- E. State inspectors may assist the IRS FCOs or FCAs in follow-up inspections on propulsion tank taxable violations and abnormal fuel samples to determine source of the sample. Disclosure of FTI by the IRS to NH DOS that occurs during such follow up inspections is made pursuant to IRC Section 6103(d) and is confidential pursuant to IRC Section 6103(a).

VII. FIELD SUPPORT

The IRS and NH DOS are responsible for training their respective employees to obtain samples and control the samples in a manner that promotes a strong evidentiary standard. Additional responsibilities are listed below.

- A. Within 60 days of the implementation of this agreement, the IRS and NH DOS will provide a copy of their most recent training material to the other party. Subsequently, a revised copy will be provided if the material is updated.
- B. The IRS will deliver the initial training to state employees, if the State has not previously operated a fuel compliance program. The training will address fuel sampling and handling procedures. The IRS will also cover fuel shipping procedures if NH DOS will ship samples to the EFL. The training will be train-the-trainer training. After the initial training, state trainers will train state employees.
- C. The State will make all arrangements for the initial train-the-trainer class, including site and classroom space, vehicle(s) used for training, safety and sampling equipment used by students, and any miscellaneous training supplies and equipment.

- D. The IRS will provide one set each of text and training materials. Within the training text is a list of required fuel sampling equipment, including safety items, and a list of possible vendors. The IRS cannot specify the use of or recommend any specific vendor.

VIII. COURT APPEARANCE

- A. The parties shall make inspectors available for court appearances, if requested by the other party.

IX. FUNDING

- A. The IRS is responsible for all expenses related to the enforcement of federal fuel tax laws. NH DOS is responsible for all expenses related to the enforcement of state fuel tax laws. The IRS will furnish NH DOS with blank bottle labels and chain-of-custody documents.
- B. The IRS will bear the cost and liability for shipping the state samples collected under this agreement that are delivered by a NH DOS fuel inspector to an IRS FCO or FCA for packing and shipping.
- C. The State may opt to send samples directly to the EFL. If so, the State will bear the cost and liability for such packing and shipping.
- D. If the IRS conducts training (see Section VII. Field Support), the IRS will provide one instructor at no expense to the State. NH DOS is responsible for all other training expenses.
- E. Travel and per diem expenses for NH DOS inspectors testifying in IRS court cases are the responsibility of the IRS office or function requiring the NH DOS inspector's presence. Travel and per diem expenses for IRS inspectors testifying in state court cases are the responsibility of the State office or function requiring the IRS inspector's presence.
- F. IRS funds are provided by Congress on a fiscal year basis and are available for one-year periods starting each October 1 and ending September 30.

X. TRANSMITTAL PROCEDURES

- A. The IRS Group Manager will share the information detailed in Exhibit B with the state contact listed in Exhibit A.
- B. All information exchanged will include a Document Transmittal, (Form 3210 or equivalent) or other means of verifying receipt with a count of documents by type and a brief description of the information being provided.

- C. The Document Transmittal and documents will be inserted in an envelope marked "TO BE OPENED BY ADDRESSEE ONLY" and inscribed with the name of the official designated to receive the information. The package will be hand delivered to the designated official or mailed via the United States Postal Service, Federal Express, United Parcel Service, or a Federally accredited expedited mail delivery service, in a second envelope inscribed with the address of the designated official.
- D. Any electronic communication or transmittal containing sensitive information, such as Personally Identifiable Information (PII) or business identifiers, must be encrypted for security purposes.

XI. DISCLOSURE, SAFEUARDS, AND RECORD KEEPING REQUIREMENTS

- A. Results of Federal fuel tax violations covered by this agreement will be provided to the NH DOS contact person by a designated IRS contact person, pursuant to IRC Section 6103(d).
- B. General - All records, documents, and information maintained, collected, or received by the IRS (or the EFL) with respect to the tax liability or possible tax liability of any person, and disclosed to NH DOS under this MOU is federal tax return or return information (FTI) subject to the confidentiality requirements of IRC Section 6103. This includes, but is not limited to, the fuel sample lab test results and any FTI disclosed by the IRS to NH DOS.
- C. The IRS business unit(s) responsible for monitoring this MOU is also responsible for the recordkeeping requirement of IRC Section 6103(p)(3)(A) and will account for all disclosures of FTI via narrative record of accounting to the appropriate location.
- D. The NH DOS will maintain all FTI sourced from the IRS in accordance with IRC Section 6103(p)(4) and comply with the safeguards requirements set forth in Publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies*, which is the IRS published guidance for security guidelines and other safeguards for protecting returns and return information pursuant to 26 CFR 301.6103(p)(4)-1. IRS safeguarding requirements require:
 - 1. The NH DOS will establish a central point of control for all requests for and receipt of federal tax returns and return information and maintain a log to account for all subsequent disseminations and products made with/from that information, and movement of the information until destroyed, in accordance with Publication 1075.
 - 2. The NH DOS will establish procedures for secure storage of federal tax returns and return information consistently maintaining two barriers of protection to prevent unauthorized access to the information, including when in transit, in accordance with Publication 1075.

3. The NH DOS will consistently label federal tax returns and return information obtained under this agreement to make it clearly identifiable and to restrict access by unauthorized individuals. Any duplication or transcription of federal tax returns and return information creates new records which must also be properly accounted for and safeguarded. Federal tax returns and return information should not be commingled with other NH DOS records unless the entire file is safeguarded in the same manner as required for federal tax returns and return information and the FTI within is clearly labeled in accordance with Publication 1075.
4. The NH DOS will restrict access to federal tax returns and return information solely to officers and employees of the NH DOS whose duties require access for the purposes of carrying out this agreement. Prior to access, the NH DOS must evaluate which employees require such access. Authorized individuals may only access federal tax returns and return information to the extent necessary to perform services related to this agreement, in accordance with Publication 1075.
5. Prior to initial access to FTI and annually thereafter, the NH DOS will ensure that employees and officers that will have access to federal tax returns and return information receive awareness training regarding the confidentiality restrictions applicable to the federal tax returns and return information and certify acknowledgement in writing that they are informed of the criminal penalties and civil liability provided by IRC Sections 7213, 7213A, and 7431 for any willful disclosure or inspection of federal tax returns and return information that is not authorized by the IRC, in accordance with Publication 1075.
6. The NH DOS will submit an annual Safeguard Security Report (SSR) to the Office of Safeguards by the submission deadline specified in Publication 1075 to provide an update on safeguarding activities during the reporting period and provide Head of NH DOS certification that the SSR addresses all Outstanding Actions identified by the Office of Safeguards from the NH DOS's prior year's SSR; accurately and completely reflects the NH DOS's current environment for the receipt, storage, processing and transmission of FTI; accurately reflects the security controls in place to protect the FTI in accordance with Publication 1075 and of the NH DOS's commitment to assist the Office of Safeguards in the joint effort of protecting the confidentiality of FTI; report all data incidents involving FTI to the Office of Safeguards and TIGTA timely and cooperate with TIGTA and Office of Safeguards investigators, providing data and access as needed to determine the facts and circumstances of the incident; support the Office of Safeguards on-site review to assess NH DOS compliance with Publication 1075 requirements by means of manual and automated compliance and vulnerability assessment testing, including coordination with information technology (IT) divisions to secure pre-approval, if needed, for automated system scanning and to support timely mitigation of identified risk to FTI in the NH DOS's Corrective Action Plan (CAP) for as long as

the NH DOS maintains federal tax returns and return information. Required reports will be transmitted in electronic format and on the template provided by Office of Safeguards using an IRS-approved encryption method in accordance with Publication 1075.

7. The NH DOS will ensure that federal tax returns and return information is properly destroyed or returned to the IRS when no longer needed based on established NH DOS record retention schedules in accordance with Publication 1075.
 8. The NH DOS will conduct periodic internal inspections of facilities where federal tax returns and return information is maintained to ensure IRS safeguarding requirements are met and will permit the IRS access to such facilities as needed to review the extent to which the NH DOS is complying with the IRC Section 6103(p)(4) requirements of this section.
 9. IRC Section 6103(p)(9) requires the NH DOS to conduct on-site assessments of each contractor's compliance with safeguarding requirements. NH DOS must submit findings of the most recent review as part of the annual SSR submission. The NH DOS must certify to the IRS that each contractor is in compliance with safeguarding standards in accordance with Pub 1075. The NH DOS must ensure that contracts with contractors and subcontractors performing work involving return information contain specific language requiring compliance with IRC Section 6103(p)(4) and Publication 1075 standards. Contract language must enforce the NH DOS's right to access contractor and subcontractor facilities in order to comply with IRC Section 6103(p)(9) to ensure IRS safeguarding requirements are met.
- E. Generally, this agreement covers secure electronic transmission of Federal tax returns and return information to the NH DOS provided the NH DOS's computer systems are compliant with National Institute of Standards and Technology (NIST) Special Publication 800-53 standards and guidance for security of data at the moderate impact level. The NH DOS's SSR must fully describe the computer system and security controls implemented for the receipt, processing, storage, and transmission of electronic federal tax returns and return information. Required security controls for systems that receive, process, store and transmit electronic federal tax returns and return information are specified in Publication 1075.
- F. Any creation or receipt of Federal tax returns and return information in paper format must also be fully disclosed in the NH DOS's SSR. Required security controls associated with the receipt, processing, and storage of any Federal tax returns and return information received in paper format are specified in Publication 1075.

- G. The NH DOS must report suspected unauthorized inspection or disclosure of federal tax returns and return information within 24 hours of discovery to the appropriate Agent-in-Charge, Treasury Inspector General for Tax Administration (TIGTA), and to the IRS Office of Safeguards in accordance with Publication 1075.

When a data incident results in the NH DOS taking adverse or disciplinary action against an employee based on an unauthorized inspection or disclosure of return information in violation of the NH DOS's procedures, the NH DOS must notify each impacted taxpayer in writing. The notification letter must include the date of the unauthorized inspection or disclosure and the rights of the taxpayer under IRC Section 7431. The NH DOS must report to IRS Safeguards when taxpayer notification letters are issued, in accordance with Publication 1075.

- H. IRS will conduct periodic safeguard reviews of the NH DOS to assess whether security and confidentiality of federal tax returns and return information is maintained consistent with the safeguarding protocols described in Publication 1075, the NH DOS's SSR and in accordance with the terms of this agreement. Periodic safeguard reviews will involve the inspection of NH DOS facilities where FTI is maintained; the testing of technical controls for computer systems storing, processing, or transmitting FTI; review of NH DOS recordkeeping and policies; and interviews of NH DOS employees to verify the use of FTI and to assess the adequacy of procedures established to protect FTI.
- I. The NH DOS recognizes and treats all Safeguards documents and related communications as IRS official records; that they are property of the IRS; that IRS records are subject to disclosure restrictions under federal law and IRS rules and regulations and may not be released publicly under state Sunshine or Information Sharing/Open Records provisions and that any requestor seeking access to IRS records should be referred to the federal Freedom of Information Act (FOIA) statute. If the NH DOS determines that it is appropriate to share Safeguards documents and related communications with another governmental function/branch for the purposes of operational accountability or to further facilitate protection of FTI that the recipient governmental function/branch must be made aware, in unambiguous terms, that Safeguards documents and related communications are property of the IRS; that they constitute IRS official records; that any request for the release of IRS records is subject to disclosure restrictions under federal law and IRS rules and regulations and that any requestor seeking access to IRS records should be referred to the federal Freedom of Information Act (FOIA) statute. Federal agencies in receipt of FOIA requests for Safeguards documents must forward them to IRS for reply.

XII. LIABILITY

- A. The parties to this MOU shall be liable for the acts and omissions of its own employees or agents.

- B. The IRS shall not be liable for any injury or damage to NH DOS's personnel or property unless such injury or damage is compensable under the Federal Torts Claim Act, 28 U.S.C. Section 1346(b) or pursuant to other federal statutory authority. Similarly, NH DOS shall not be liable for any injury or damage to IRS personnel or property unless such injury or damage is compensable under applicable state law.

XIII. THIRD PARTY RIGHTS

This MOU does not confer any rights or benefits to any third party.

XIV. PRIVACY

The IRS and the NH DOS will assure the integrity and accuracy of personal and financial data. The IRS and the NH DOS will perform their duties in a manner that recognizes and enhances individuals' rights of privacy and will make certain that their activities are consistent with law, regulations, and good administrative practices.

XV. PERIOD OF PERFORMANCE

- A. Subject to the availability of IRS fiscal year funds (see Section IX. Funding, above), this MOU shall be in effect from the date of execution until terminated in writing by either Party.
- B. The provisions of Section XII. Liability will continue until all potential liabilities have lapsed.

XVI. AMENDMENT OF MOU

This MOU may be amended by modification or deletion of any provision provided that such amendment is in writing and is signed by all the parties to the MOU.

XVII. TERMINATION OF MOU

This MOU may be cancelled upon 30 days written notice by either party, or immediately by signed agreement of the parties.

XVIII. SUPERSESION

This Taxable Fuel Sampling and Results Sharing MOU supersedes, at the time of execution, any and all other Taxable Fuel Sampling and Results Sharing MOUs between the parties that predate this one.

XIX. LIMITATIONS

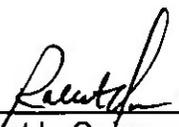
The terms of this MOU are not intended to alter, amend, or rescind any current agreement or provision of federal law now in effect. Any provisions of this MOU that conflict with Federal law are null and void.

XX. EVALUATION OF AGREEMENT

The IRS and NH DOS will review this MOU every three years to determine whether the provisions of this agreement require amendment or revision and to confirm the parties are complying with the provisions of the MOU. The method of review (conference call, meeting, email) will be jointly determined by the IRS Governmental Liaison, the Office of Safeguards, SB/SE Excise Tax Policy, and the NH DOS Liaison.

APPROVALS:

NEW HAMPSHIRE DEPARTMENT OF SAFETY

Signature:  5/3/23
Robert L. Quinn Date
Commissioner

INTERNAL REVENUE SERVICE

Signature: Elmer D. Smith III  05/25/23
Date: 2023.05.25 15:11:20 -0500 Date
Director Headquarters Examination, SB/SE

Exhibit A - Points of Contact

- IRS Group Manager for day-to-day administration of this agreement.
 - Angela Johnson, Supervisory Fuel Compliance Officer
400 N. 8th St. DP 38
Richmond, VA 23219
Phone: (804) 916-8298
Mobile: (804) 837-6837
Angela.C.Johnson@irs.gov

- IRS FCO or FCA designated to receive fuel samples from NH DOS personnel.
 - Richard Andersen, Fuel Compliance Officer
128 Lakeside Ave
Burlington, VT 05401
Phone: (802) 355-3940
Richard.J.Andersen@irs.gov

- IRS office to whom NH DOS will report all dyed fuel violations of state fuel tax law.
 - Workload Selection & Delivery sbse.excise.wsd@irs.gov (encrypted)
 - By United States Postal Service and all delivery services:

Internal Revenue Service
Excise WSD – Stop 70G
7940 Kentucky Drive
Florence, KY 41042

 - E-fax: (844) 201-8379

- Contact information at the IRS EFL.
 - IRS Excise Forensics Laboratory
2400 Stevens Drive
Richland, WA 99354
Attn: Tessa Oxford
Phone: (509) 371-6647

- NH DOS official for day-to-day administration of this MOU.
 - Scott R. Bryer, Bureau Chief, Road Toll Bureau
Department of Safety, Road Toll Bureau
33 Hazen Drive
Concord, NH 03305
Phone: (603) 223-8081
Scott.R.Bryer@dos.nh.gov

 - Kurt Straube, Road Toll Audit Supervisor
Department of Safety, Road Toll Bureau
33 Hazen Drive
Concord, NH 03305
Phone: (603) 223-8060
Kurt.H.Straube@dos.nh.gov

- NH DOS official responsible for receiving FTI including fuel sample lab test results on samples secured by IRS employees in the State.
 - Scott R. Bryer, Bureau Chief, Road Toll Bureau
Department of Safety, Road Toll Bureau
33 Hazen Drive
Concord, NH 03305
Phone: (603) 223-8081
Scott.R.Bryer@dos.nh.gov
 - Kurt Straube, Road Toll Audit Supervisor
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Kurt.H.Straube@dos.nh.gov

Exhibit B - Information Needed for Inspection File

Inspectors must provide the following basic information items for each inspection.

DYED FUEL INSPECTION

- 1) Inspector's name and telephone number
- 2) Driver information
 - Name
 - Position (employee, owner-operator)
 - Address
 - Telephone number at home and work
 - From the state driver's license: name of state, driver license number, address (if different)
- 3) Location of the inspection, e.g., "Weigh station, I-95 northbound, Dumfries, VA"
- 4) Date and time of inspection
- 5) Vehicle information
 - Make – (e.g. Kenworth, Mack).
 - Model – (e.g. dump, moving van)
 - Year
 - VIN
 - License number
- 6) Company information, if driver is employee
 - Name
 - Address
 - Telephone number
 - Contact person
- 7) Fuel tank sampled, capacity, and amount of fuel in each tank, e.g., "driver-side saddle tank, 100-gal capacity, 35 gallons in tank."
- 8) Driver interview and statement
 - How did dyed fuel get into vehicle propulsion tank?
 - Where was vehicle last fueled?
 - What is the company's fueling policy? Who fueled the truck?
 - Did driver know there was dyed fuel in the vehicle propulsion tank?
 - Any other information driver gives in his/her statement.
- 9) The fuel sample lab test results.