



Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
Quezon City

August 07, 2019

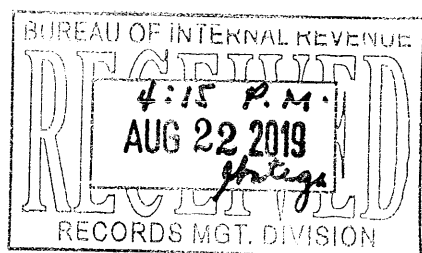
REVENUE MEMORANDUM CIRCULAR No. 85-2019

SUBJECT: Circularizing the Full Text of Joint Circular No. 001-2019 of the Department of Finance (DOF), Bureau of Internal Revenue (BIR) and Bureau of Customs (BOC) Entitled “Prescribing the Implementing Guidelines of the Fuel Marking Program pursuant to Republic Act (R.A.) No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law”

TO: All Internal Revenue Officials, Employees and Others Concerned

For the information and guidance of all internal revenue officials, employees and others concerned, attached is the full text of Joint Circular No. 001-2019 jointly issued by the DOF, BIR and BOC, implementing the mandatory marking of refined, manufactured, or imported gasoline, diesel and kerosene in the Philippines pursuant to the provisions of Section 1800 of the Customs Modernization and Tariff Act (CMTA) and Section 244 of the National Internal Revenue Code (NIRC) of 1996, as amended, in relation to Sections 148-A, 157, 171, 172 and 265-A of the TRAIN Law.

All revenue officials and employees are hereby enjoined to be guided accordingly and give this Circular as wide a publicity as possible.



CAESAR R. DULAY
Commissioner of Internal Revenue

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Republic of the Philippines
DEPARTMENT OF FINANCE
Bureau of Internal Revenue
Bureau of Customs

JOINT CIRCULAR NO. 001.2019

5 July 2019

SUBJECT: PRESCRIBING THE IMPLEMENTING GUIDELINES OF THE FUEL MARKING PROGRAM PURSUANT TO REPUBLIC ACT (RA) NO. 10963, OTHERWISE KNOWN AS THE *TAX REFORM FOR ACCELERATION AND INCLUSION* (TRAIN) LAW.

SECTION 1. Scope. – Pursuant to the provisions of Section 244 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 1800 of the Customs Modernization and Tariff Act (CMTA), in relation to Sections 148-A, 151, 157, 171, 172 and 265-A of the TRAIN Law, this Joint Circular is hereby promulgated to implement the mandatory marking of refined, manufactured, or imported gasoline, diesel and kerosene in the Philippines, including those withdrawn from Free Zones for introduction into the Philippine territory, after the taxes and duties thereon have been paid. Random field testing and confirmatory on the fuel required to be marked shall be conducted to check compliance with the mandatory marking requirement. The mandatory marking and testing of petroleum products shall be collectively referred to as the Fuel Marking “*Fuel Marking Program*”.

SECTION 2. Definition of Terms. – For purposes of this Joint Circular the following words and phrases shall have the meaning indicated below:

- 2.1. Adulterated Fuel** – shall refer to the fuel whose quality has been weakened by adding inferior petroleum products or diluted by adding illegally smuggled fuels for purposes of evading duties and taxes and circumventing the provisions of RA No. 10963 and its implementing regulations;
- 2.2. Confirmatory Test** – shall refer to the accurate and precise analytical test of the tested unmarked, adulterated, or diluted fuel using a device, tool or equipment, which will validate and confirm the result of the field test, that is immediately conducted in an accredited testing facility that is certified to ISO 17025;¹
- 2.3. Counterfeit Fuel Marker** – a marker imitating the Official Fuel Marker or giving the appearance of the Official Fuel Marker for the purpose of circumventing the provisions of TRAIN Law and its regulations;

¹ Section 148-A, subsection (j) 2nd par. of the National Internal Revenue Code as amended by Republic Act No. 10963

- 2.4. Diluted Fuel** – shall refer to fuel that does not meet the required level of Official Fuel Marker. Provided that for purposes of prosecution, assessment or seizure, fuel containing less than 95% of the marker level shall be deemed diluted;²
- 2.5. Free Zones** – shall refer to special economic zones registered with the Philippine Economic Zone Authority (PEZA) under Republic Act No. 7916, as amended, duly chartered or legislated special economic zones and freeports such as Clark Freeport Zone; Poro Point Freeport Zone; John Hay Special Economic Zone and Subic Bay Freeport Zone under Republic Act No. 7227, as amended by Republic Act No. 9400; the Aurora Special Economic Zone under Republic Act No. 9490, as amended; the Cagayan Special Economic Zone and Freeport under Republic Act No. 7922; the Zamboanga City Special Economic Zone under Republic Act No. 7903; the Freeport Area of Bataan under Republic Act No. 9728; and such other freeports as established or may be created by law³;
- 2.6. Fuel Marking** - shall refer to the addition or administration of Official Fuel Marker to petroleum products that are refined, manufactured, or imported into the Philippines, such as but not limited to, unleaded premium gasoline, kerosene, and diesel, after the taxes and duties thereon have been paid;
- 2.7. Fuel Marking Fees** – shall refer to the fee to be paid by the refiner, manufacturer or importer of petroleum products for the marking services of the Fuel Marking Provider. The same shall be computed based on the agreed contract price multiplied by the actual liter of fuel marked by the Fuel Marking Provider.⁴
- 2.8. Fuel Marking Provider** – refers to the firm engaged by the government that is responsible for providing, monitoring and administering the Official Fuel Marker, provide equipment and devices, conduct Field and Confirmatory Tests, and perform such other acts incidental or necessary to the proper implementation of the provisions of the law and its implementing rules and regulations.⁵
- 2.9. Fuel Marking Trust Account** – refers to the trust liability account established for the purpose of implementing the Fuel Marking Program and maintained by the BTr pursuant to section 148-A, subsection (h) of the NIRC, as amended and DOF-DBM-COA Joint Circular No. 001.2018 dated October 02, 2018⁶;
- 2.10. Fuel Trafficking** – shall refer to the sale, trade, delivery, distribution or transportation of unmarked, diluted or adulterated fuel or the use of Counterfeit Fuel Marker in the fuel, or any related acts including smuggling, designed to circumvent the provisions of RA No. 10963 and its implementing regulations.⁷

² cf Terms of Reference: Establishment and Operations of a Fuel Marking and Field Testing System, Task 1.3, 7th bullet

³ Republic Act (RA) No. 10863, Section 102 (w)

⁴ Section 3.3., Permanent Committee Joint Circular No. 001-2018

⁵ cf Section 148-A, subsection (f) of the National Internal Revenue Code as amended by Republic Act No. 10963

⁶ DOF-DBM-COA Joint Circular No. 001.2018 dated October 02, 2018

⁷ cf Section 265-A, subsection (a) of the National Internal Revenue Code as amended by Republic Act No. 10963

2.11.Importer – shall refer to a natural or juridical person engaged in the import of any goods into the Philippines. For the purpose of this Joint Circular, this shall also refer to the person, entity, or consignee-on-record who imports the petroleum products into the country.

2.12.Marked Fuel – shall refer to fuel that meets the minimum level of the Official Fuel Marker required by law and this Joint Circular. Any fuel that does not contain the Official Fuel Marker shall be considered as Unmarked Fuel.

2.13.Official Fuel Marker – shall refer to the chemicals and corresponding quantitative ratio identified by the Secretary of Finance as the Official Fuel Marker. The Official Fuel Marker must be distinct and, to the greatest degree possible, impossible to imitate or replicate; Provided, That the Official Fuel Marker must be unique to the Philippines and that its chemical composition and quantitative ratio must persist for at least three (3) years from their application or administration to the unmarked fuel.⁸

2.14.Random Field Test – shall refer to periodic random inspections and tests performed to establish qualitative and quantitative result of Fuel Trafficking, which are conducted on fuels found in warehouses, storage tanks, gas stations and other retail outlets, and in such other properties or equipment, including mechanisms of transportation, of persons engaged in the sale, delivery, trading, transportation, distribution, or importation of fuel for domestic market⁹;

2.15.Sale, Distribution or Trading – shall refer to any act of conveyance/transfer of any fuel, fuel products and/or components, whether for money or any consideration;

2.16.Testing Facility – shall refer to the testing laboratory operated by the Fuel Marking Provider that is certified to ISO 17025¹⁰. This may include the field testing unit. Confirmatory Fuel Test Certificates issued by fuel testing facilities shall be valid for any legal purpose from the date of issue, and shall constitute admissible and conclusive evidence before any court.¹¹

SECTION 3. Implementing Agencies for the Fuel Marking Program. –The BIR and BOC are the accountable government agencies in the implementation of the fuel marking program.

3.1 Collection of Marking Fees. The BIR and BOC shall collect the Fuel Marking Fees at the same time as the internal revenue taxes on manufactured, refined or imported petroleum products are collected.

Pursuant to Section 148 of the NIRC, as amended, the BIR shall collect the Fuel Marking Fees for locally refined or manufactured petroleum. Pursuant to

⁸ cf Section 148-A, subsection (a) of the National Internal Revenue Code as amended by RA 10963

⁹ Section 148-A, subsection (j) of the National Internal Revenue Code as amended by RA 10963

¹⁰ cf Section 148-A, subsection (f) of the National Internal Revenue Code as amended by RA 10963

¹¹ Section 171, last par. of the National Internal Revenue Code as amended by RA 10963

Section 12 of the NIRC, as amended, the BOC shall collect the Fuel Marking Fees for imported petroleum products.

3.2 Authority to Conduct Field Testing. In line with BIR and BOC's mandate, the Field Testing in refineries and its attached depots, gasoline stations and other retail outlets shall be supervised by the BIR. Field Testing in all other areas such as vessels, depots, warehouses, tank trucks or similar fuel-transporting vehicle shall be supervised by the BOC. When necessity or convenience requires, the BIR and BOC Officer may be authorized to conduct testing in areas other than that identified above.

A joint special task force may further be established by the BIR and BOC for the purpose of the Field Testing.

In all times, the appropriate protocol must be observed by the BIR and BOC, with the accompanying representatives of the Fuel Marking Provider, in its entry to the premises including the presentation of the Mission Order and/or necessary identification.

3.3 Deputization and Police Authority. When there is reasonable cause or verified information received that a vessel, tank trucks or similar fuel-transporting vehicle is carrying any unmarked, adulterated, or diluted petroleum products, the BOC or BIR Officer nearest the vicinity may stop and search the same in line with their authority to search for taxable products under Section 171 of the NIRC and Section 222 of the CMTA.

The BIR or BOC Officer nearest the vicinity of a fuel manufacturing or refining facility, gasoline stations and other retail outlets, depots, warehouses, buildings or place may enter and search the same where there is probable cause or verified information that adulterated or diluted fuel are produced or stored therein, pursuant to under Section 171 of the NIRC and Section 219 of the CMTA.

In all instance, the Fuel Marking Provider must immediately conduct the testing of the petroleum product suspected to be unmarked, adulterated, or diluted. Proper documentation of the process must at all times be observed.

Pursuant to Sections 15 and 171 of the NIRC and Section 214 of the CMTA, BIR and BOC Officials and personnel may effect the search and seizure of the petroleum products found to be unmarked, adulterated, or diluted. All members of the Field Inspection Units (FIU) are deemed automatically deputized to perform necessary function to effect the search, seizure and arrest related thereto.

SECTION 4. Responsibilities of Parties under the Program. The parties under the program should have the following responsibilities:

4.1. Bureau of Internal Revenue (BIR). The Bureau of Internal Revenue shall ensure that all locally manufactured or refined gasoline, diesel and kerosene

products are properly marked with the Official Fuel Marker before the same are removed from the place of manufacture or refinery into the owner's tax-paid storage facilities/depots for distribution into the domestic market.

- 4.2. Bureau of Customs (BOC).** The Bureau of Customs shall ensure that all imported gasoline, diesel and kerosene brought into ports/sub ports of entry for petroleum are properly marked with the Official Fuel Marker before the same are released from Customs custody or is removed from tax-paid storage facilities/depots for distribution into the domestic market.
- 4.3. Importer/Consignee/Manufacturer.** The person, entity or taxpayer who owns or imports the product or to whom it is consigned, or whoever brings the same into the Philippines, or manufactures and/or refines the same shall cause and accommodate the marking thereof with the Official Fuel Marker.
- 4.4. Fuel Marking Provider (FMP).** The FMP shall have the following responsibilities:
 - a. The FMP shall produce the duly approved official marker and provide the same for marking on gasoline, diesel and kerosene.
 - b. The FMP shall provide the marker in the form of Ready-to-Use-Marker (RUM) and comply with marking Standard Operating Procedures (SOPs) to ensure that the RUM is properly dispensed and that all marker is strictly accounted for.
 - c. FMP shall be responsible for the custody, security and the quality assurance of the RUM, from the RUM warehouses, to the distribution to marking sites and finalizing with either manual dosing or injection. However, inventory of the marker shall be subject to periodic stocktaking/audit by the BIR and/or BOC.
 - d. The FMP shall only conduct Fuel Marking on identified locations in accordance with Standard Operating Procedures (SOPs). They shall ensure that clear guidelines and documented SOPs are in place to ensure the integrity of the fuel marking process.
 - e. The FMP shall, with the BIR and BOC, conduct a nationwide testing on petroleum product samples taken from refineries, gasoline stations and other retail outlets as well as vessels, depots, warehouses, tank trucks or similar fuel-transporting vehicle.
 - f. FMP shall ensure that the testing facilities are certified to ISO 17025 and that the confirmatory fuel test certificates issued by fuel testing facilities are valid for any legal purpose and shall constitute admissible and conclusive evidence before any court.

- g. The FMP shall ensure that Fuel Marking and Field Testing System established meets the requirement of the Fuel Marking Program and that the related risks thereto are identified, quantified and addressed.
- h. The FMP shall conduct trainings for BOC and BIR officials and personnel on the fuel marking and testing process.
- i. The FMP shall maintain a fuel marking reporting and information system to collect data on real-time basis relative to marker distribution, fuel marking and results of inspection and testing.
- j. The FMP shall, after completing the marking of the petroleum product, issue the corresponding Certificate of Marking following the format as may be prescribed by the BOC and the BIR.
- k. The Fuel Marking Provider may not dispose of or otherwise make use of documents provided by BOC and BIR without the prior written approval of said agencies. The collection, recording, storage maintenance, processing, sharing of data and information, and maintenance of data information must be secured and kept in accordance with the principles and policy of Republic Act 10173, also known as The Data Privacy Act.

SECTION 5. Marking of Petroleum Products. Only petroleum products for domestic consumption with proof of payment of taxes will be subject of marking.

- 5.1. Manner of Introducing the Official Marker.** – Depending on the set-up of the designated marking location and the terminal infrastructure, the marker shall be introduced to the fuels in the following manner:
- a. Manual dosing;
 - b. Automated flow injection system

The FMP shall consider, in determining the correct marking doses for the petroleum products, the biofuel requirements under Republic Act No. 9367, otherwise known as the “Biofuel Act of 2006.”

- 5.2. Authorized Marking Specialist.** Only authorized trained specialists by the FMP can mark the petroleum products. In no instance shall the marker be in the possession of any unauthorized person including depot and refinery personnel.
- 5.3. Parties to the Marking Process.** – The marking process shall be undertaken in the presence of oil company/depot representatives, to witness and attest to the veracity of the marking process, together with BOC and/or BIR Officers, if warranted. In the case of refineries, the injection processes is deemed undertaken in the presence of the refinery operation technicians.
- 5.4. Request for Marking.** The oil company /depot representative shall make the necessary request for marking at least two (2) calendar days prior to the manual marking. Notice shall likewise be made to BIR and/or BOC. In case of

Automated Injection, the request for marking must be done at least eight (8) hours prior to the operations requirement.

- 5.5. Issuances of Certificate of Marking.** Upon completion of the marking, a Certificate of Marking shall be issued, in duplicate, by the Fuel Marking Provider to the oil company, depot representative or transporter, as applicable, and the BIR and/or BOC representatives witnessing the marking.
- 5.6. Fuel Marking Reporting and Information System.** The Fuel Marking Provider shall maintain a Fuel Marking Reporting and Information System (FMIS) to allow for secure data collection of the actual fuel marked. These data shall be the basis in providing the BIR and BOC with accurate and timely reports on the marking services rendered.
- 5.7. Fuel Marking Fees.** The rules prescribing the procedures and guidelines for the collection and disbursement of Fuel Marking Fees are laid down in Joint Circular No. 001-2018 jointly issued by the DOF, DBM and COA.
- 5.8. Utilities and Space to be provided for the Storage of the Fuel Marker. –** The refinery/manufacturer/importer and depot/terminal operator shall provide a dedicated area or space with access to utilities and existing infrastructure (i.e., electric power, instrumentation compressed air, data transmission infrastructure) within its premises to be used exclusively for the Fuel Marking Program. To ensure efficiency and proper monitoring, the marking operations shall be performed within the premises of refinery/manufacturer/importer and depot/terminal operator.

For safety and efficiency, the agreed tie-in points on existing pipelines of the refineries and importers must be prepared in advance in coordination with the FMP.

- 5.9. Prohibition on Commingling of Marked and Unmarked Fuel –** Notwithstanding the provisions of Sec. 157 of the NIRC of 1997, as amended, Marked Fuel products shall not be stored and commingled with Unmarked Fuel products.

Pursuant to Sec. 155 of the NIRC, as amended, the manufacturer/importer shall adopt a suitable accounting or metering system with ability to accurately determine the volume of entered and withdrawn refined, manufactured or imported petroleum products.

- 5.10. Prohibition to Export Marked Petroleum Products. –** Locally refined or manufactured and imported petroleum products which have been fully marked with the Official Fuel Marker in accordance with the provisions of these Regulations shall be deemed for domestic distribution, use or consumption within the Philippine territory. No marked fuel, in whole or in part shall be allowed to be removed or transferred for exportation.

SECTION 6. Field Testing. – The Fuel Marking Provider will develop and implement a Comprehensive Field Testing Program to ensure full coverage of the network of retail sites and all fuel storage facilities and warehouses in the country.

- 6.1. Assignment of BIR and BOC Officer(s) to the “Field Inspection Unit” (FIU).** Selected BIR and BOC Officer(s) shall be assigned as members of Field Inspection Teams who shall witness the sampling and actual testing of fuel samples by the FMP Technician and in the presence of the authorized representative of the owner of the fuel to be tested. For purposes of implementing these regulations, an employee assigned or working at the place where the field test is conducted shall be deemed an authorized representative of the owner.
- 6.2. Schedule of Field Testing.** The Field-testing plan will be drawn up daily and provided to authorized BIR and BOC Officer(s) and the FMP Technician(s). It shall contain the selection of sites (fuel retail stations) to visit, any intelligence report on the site and previous test results.
- 6.3. Conduct of Field Testing.** Testing shall be conducted by a composite team of the FMP Technician and/or a BIR or BOC Officer(s). For this purpose, a Mission Order shall be issued to the concerned BIR or BOC Officers authorizing the taking of sample to determine compliance with the required level of marking. The Mobile Fuel Analyzer shall be used to conduct the testing. No Field Test shall be conducted without the presence of an authorized BIR or the BOC Officer.
- 6.4. Absence of or Dilution of Marked Fuel; Presumptions.** In the event that petroleum products do not contain the official marker or below the required level of marker are found in the domestic market or in the possession of anyone, or under any situation where said petroleum products are subject to duties and taxes, it shall be presumed that the same were withdrawn or imported with the intention to evade the payment of the taxes and duties due thereon.
- 6.5. Use of Fraudulent Marker.** The use of fraudulent marker on the petroleum products shall be considered *prima facie* evidence that the same have been withdrawn or imported without the payment of taxes and duties due thereon.
- 6.6. Confirmatory Tests.** A confirmatory test shall immediately be undertaken by the Fuel Marking Provider in its testing laboratory on the petroleum product found to be unmarked, or containing diluted marker or marker below the acceptable percentage, or suspected to contain fraudulent marker. Confirmatory Fuel Test Certificates issued by the Fuel Marking Provider’s Laboratory Facilities shall be valid for any legal purpose from the date of issue and constitute admissible and conclusive evidence before any court.
- 6.7. Treatment of Unmarked Fuel, Diluted Marked Fuel or Containing Fraudulent Marker.** In case petroleum product is found without the official marker or does not contain the required level of marker, the appropriate excise

taxes shall be assessed and collected, inclusive of the appropriate penalties, without prejudice to the confiscation and forfeiture of such unmarked or diluted fuel and the filing of the appropriate criminal case.

Pending assessment and payment of the excise tax due thereon including penalty, the Field Inspection Team shall impound the non-compliant fuel on site in accordance with the procedures to be issued.

6.8. Field Testing Monitoring. The Fuel Marking Provider shall provide monthly reports or as frequent as necessary, detailing the activities undertaken during the Field Testing. These reports shall be submitted electronically to DOF, BIR and BOC while hard copies thereof shall be made available if required.

SECTION 7. Offenses Relating to the Fuel Marking Program. All offenses relating to fuel marking shall, in addition to the penalties imposed under Title X of the NIRC, as amended, Section 1401 of the CMTA and other relevant laws, be punishable under Section 265-A of the NIRC, as amended.

SECTION 8. Training and Technology Transfer to BOC and BIR. The Fuel Marking Provider shall provide the necessary training to BOC and BIR personnel to allow effective transfer of technology that provide an end-to-end solution to fuel tax fraud.

SECTION 9. Reporting. The BIR and the BOC shall render a report on the details and results of the conduct of activities under the Program in such format and frequency as may be required by the DOF Technical Working Group (TWG) on Fuel Marking headed by the Undersecretary for Revenue Operations of the DOF and co-headed by the Commissioners of BIR and BOC.

A DOF Senior Official shall be designated to coordinate with the BIR, BOC, and the Fuel Marking Provider in its day-to-day operations and shall report to the DOF Technical Working Group (TWG).

SECTION 10. Transitory Provisions. The following transitory provisions shall be strictly observed:

10.1. Upon the effectivity of this Joint Circular and consistent with Section 155 of the NIRC, as amended, stocktaking shall be conducted on all tax paid gasoline, diesel and kerosene stored in all depots/terminals. Thereafter, no petroleum product intended for domestic market, in whole or in part, shall be imported or removed from their place of storage without payment of tax and marked pursuant to this Joint Circular.

10.2. Six (6) months after the roll-out of the Program, all petroleum products found in the domestic market including those stored in storage tanks, depots and terminal facilities shall be tested for compliance with the Fuel Marking Program.

SECTION 11. Separability Clause. – If for any reason, any provision/s of these Joint Circular is/are declared unconstitutional or invalid, such parts thereof not affected shall remain in full force and effect.

SECTION 12. Repealing Clause. – All orders, circulars, memoranda, and other issuances, or parts thereof, which are inconsistent with this Joint Circular, are hereby repealed or modified accordingly.

SECTION 13. Effectivity. – This Joint Circular shall take effect immediately after its publication in a newspaper of general circulation.

(Signed)
CARLOS G. DOMINGUEZ
Secretary of Finance

Recommending Approval:

(Signed)
CAESAR R. DULAY
Commissioner of Internal Revenue

(Signed)
REY LEONARDO B. GUERRERO
Commissioner of Customs