



American Association of
Motor Vehicle Administrators

construction
INSPECTION
VIOLATION **Red**
REVENUE
infrastructure
AGRICULTURE



Dyed Diesel Fuel Fraud Detection and Enforcement Best Practices



March 2022

FUEL TAX FRAUD WORKING GROUP
LAW ENFORCEMENT STANDING COMMITTEE

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Executive Summary

Dyed diesel (red or colored fuel) is intended to be used in agricultural, construction, and other non-licensed off-road vehicles or equipment. Dyed diesel is not subject to federal or jurisdiction fuel tax (excise taxes may apply) so is taxed at a considerably reduced rate compared with regular fuel. These vehicles are not intended to be used on the highway and therefore have been allowed to utilize dyed diesel. While visually distinct by observing the dye color, the only positive way to detect the presence of dyed diesel is by a roadside or laboratory test.

Fuel tax is generally deposited into state, federal, and provincial highway accounts to build, repair, and maintain roadway infrastructure. The reported U.S. national average of total state and federal fuel tax on diesel fuel equals USD 62.25 cents per gallon. When dyed diesel is fraudulently used in vehicles for highway use, it results in lost revenue for jurisdictions while at the same time the vehicle fraudulently using dyed diesel contributes to the degradation of the highway. Dyed fuel inspection data from the Federal Highway Administration (FHWA) in 2008 indicated dyed fuel violation rates in the United States were between 1% and 2%.¹ The Internal Revenue Service estimates the annual loss of fuel tax revenue from illegal use of dyed diesel is several hundred million dollars.²

The significant savings in fuel taxes by those who fraudulently use dyed diesel, coupled with the minimal risk of detection, makes this a target for illegal activity. Active enforcement of fuel tax laws is an important

“Fuel tax fraud enforcement is an important deterrent in preventing the loss of valuable revenue that is meant to keep our nation’s roadways safe through improvements and maintenance of our roadways. When state and federal fuel tax is lost, our nation’s roadways suffer.”

—Chief John R. Batiste, Washington State Patrol

element in a multilayered approach to improve compliance and to detect violators.

AAMVA established a Fuel Tax Fraud Enforcement Working Group of jurisdiction members with expertise in the field who researched, developed, and compiled pertinent information from a variety of resources. The result is this best practices document which is intended to equip jurisdictions with information related to program development, education, compliance, enforcement, and administration. Jurisdictions looking to develop or enhance a dyed diesel enforcement program will find value in utilizing this document for optimal program efficiency and effectiveness.

It is recognized that jurisdictions may partially implement these best practices based on their governing laws or regulations. Jurisdictions are encouraged to fully utilize this document within the boundaries of their authority and to share with AAMVA any new studies that advance guidance on this important topic.

1 Balducci, P., Fathelrahman, E., Rufolo, A., Weimar, M., & Whitmore, S. (2008). *Identifying and Quantifying Rates of State Motor Fuel Tax Evasion*. Washington, DC: Transportation Research Board, National Cooperative Highway Research Program

2 *Attention Truckers, No Dyed Fuel in Highway Vehicles* (January 2012). Internal Revenue Service Publication 4941. Retrieved from: <https://www.irs.gov/pub/irs-pdf/p4941.pdf>

Chapter 1 Introduction

Dyed diesel signifies the reduction or elimination of tax that is imposed to generate revenue for roadway development and improvement. Each jurisdiction establishes a fuel tax rate with a portion of this tax reduced or eliminated if the fuel is dyed. Dyed diesel is generally allowed to be used in off-road equipment and vehicles that do not directly impact or degrade



the roadway such as construction and farm equipment. Fuel sampling determines if the fuel has been dyed, which is intended to deter anyone who may use it for unlawful purposes.

Proactive enforcement is important to deter and detect violations of dyed diesel laws.

Active enforcement combined with a public education component promotes compliance of dyed diesel laws and increases fuel tax revenue. This allows those benefiting from the reduction in tax to continue to receive the benefit while deterring those who may consider violating these laws.

This document provides the components for developing or enhancing a dyed diesel enforcement program.

Chapter 3 addresses the first steps in building a case to create or enhance a program, including a business case that supports the need to provide the financial support and resources to support an effective program.

Legal and enforcement authority considerations are an important factor with any enforcement program.

Chapter 4 provides information on areas to consider with suggestions for proper actions to take. Potential civil and criminal actions against violators may be considered depending on the laws within each jurisdiction.

Chapter 5 addresses staffing, training, and equipment and provides an overview of the inspection process. To maximize enforcement impact, agencies are encouraged to collaborate with local; state, provincial, or territorial; and federal agencies to find areas of mutual interest and possible partnerships. Examples of agreements and collaborative efforts are discussed in Chapter 5 as well. Chapter 5 also includes information on emerging technologies under consideration or development for unique dyed diesel enforcement efforts.

Chapter 6 provides examples and methods to educate the public on enforcement efforts and to encourage compliance with dyed diesel usage. This proactive education provides a much broader coverage of efforts being taken while enhancing the understanding of the importance and impact of non-compliance. The inclusion of prosecutors and courts in these educational efforts will assist in encouraging collaboration and likely result in more successful prosecutions.

The Appendices provide a variety of resources to increase knowledge and awareness of issues surrounding dyed diesel enforcement while also providing success stories and sample statutes. Whether the goal is to develop or enhance an existing fuel tax fraud program, the information contained in this document provides the information needed to accomplish either objective.

Chapter 2 Definitions and Acronyms

For the purposes of this document, the following definitions and acronyms apply.

2.1 Definitions

American Association of Motor Vehicle Administrators (AAMVA)	A tax-exempt, nonprofit organization that develops model programs in motor vehicle administration, law enforcement, and highway safety. Founded in 1933, AAMVA represents the jurisdictional officials in the United States and Canada who administer and enforce motor vehicle laws. AAMVA's programs encourage uniformity and reciprocity among the jurisdictions.
cuvette	Clear container designed to hold liquid samples for testing.
dyed diesel (also known as dyed fuel or off-road fuel)	Diesel fuel that is dyed in accordance with 26 U.S.C. Sec. 4082 or United States Environmental Protection Agency or Internal Revenue Service regulations and that is considered destined for nontaxable off-highway use.
dyed fuel sample vacuum pump	Device used to extract fuel from the propulsion tank and move it to the sample bottle
dyed fuel sampling (also known as dip or screening)	Physically checking for the presence of dyed fuel in a supply or propulsion tank, not including lab analysis.
Federation of Tax Administrators (FTA)	Organized in 1937 to improve the quality of state tax administration by providing services to state tax authorities and administrators. FTA is directed and governed by a Board of Trustees who serve the principal tax collection agencies.
liquid fuel analyzer	Instrument used to determine if dye is present in fuel and in what amount.
Memorandum of Understanding with the Internal Revenue Service (IRS)	An agreement between the IRS and a jurisdiction wishing to participate in dyed diesel enforcement. This document gives instructional guidance to the jurisdiction of the rules, regulation, and procedures set forth by the IRS in making dyed diesel enforcement cases and properly submitting the fuel samples to the IRS.
motor vehicle agency (MVA or DMV)	Jurisdiction authority responsible for administering the title issuance process.

petcock (aka fuel valve)	A valve attached to the propulsion tank that directs fuel from supply tank to engine.
pipette (also known as a straw)	Clear plastic tool used for visually screening fuel in a propulsion or storage tank.
propulsion tank	A tank holding fuel that supplies the engine to move the vehicle on the roadway.

2.2 Acronyms

AAMVA	American Association of Motor Vehicle Administrators
CDL	commercial driver license
CMV	commercial motor vehicle
CVSA	Commercial Vehicle Safety Alliance
DMV	department of motor vehicles
FCA	IRS fuel compliance agents
FCO	IRS fuel compliance officer
FHWA	Federal Highway Administration
FIDGAP	Fuel Inspection Data Gathering Project
FTA	Federation of Tax Administrators
IoT	Internet of Things
IRS	Internal Revenue Service
IFTA	International Fuel Tax Agreement
JOC	IRS Joint Operation Center
LED	light-emitting diode
MOU	Memorandum of Understanding
MVA	motor vehicle agency
U.S. DOT	United States Department of Transportation

Chapter 3 Administration of Dyed Diesel Enforcement

3.1 Background

Fuel taxes are the primary source of revenue for the construction and maintenance of highways. For this reason, many legislatures have passed laws authorizing law enforcement or other regulatory agencies to operate dyed diesel enforcement programs that ensure all fuel users pay their fuel taxes.

3.2 Making a Case for a Dyed Diesel Enforcement Program

Program Support

The most effective dyed diesel enforcement programs have strong legislation and support from their administration. With support from agency administrators, an effective program can educate legislative bodies so they understand the amount of transportation infrastructure revenue lost through dyed diesel tax fraud.



This may lead to new legislation or enhancement of existing laws authorizing an enforcement program. Ongoing education of legislatures and their staff as administrations change is important to retain program continuity.

Some may criticize the existence of a dyed diesel enforcement program because of low activity or program “results” in the form of identifying many violators. A successful program effectively works as a deterrent and should keep violation levels low. By

“Fuel taxes are one of our nation’s greatest highway revenue resources. These revenues go into building and maintaining our state and national highway networks. As we all know, better roads are safer roads. When individuals purposely evade paying fuel taxes, they purposely put us all at risk. Having a robust fuel tax enforcement program is crucial to discouraging fuel tax evasion and protecting our investment in our highway systems.”—Eric J. Belford, Bureau Chief, Commercial Vehicle Operations, Montana Motor Carrier Services, Former Chair of the IFTA Law Enforcement Committee

comparison, impaired driving checkpoint efficacy is not judged by the number of impaired driving arrests made but by the lack of impaired drivers detected. The goal of any dyed diesel enforcement program is to incentivize users of diesel fuel to use taxed clear diesel with an accompanying penalty structure that deters fraud. If a jurisdiction is regularly conducting checks each month and not finding violations, it would suggest people are aware that testing and enforcement activities are commonplace.

Determining Agency Responsibilities

In some jurisdictions, it may be a law enforcement agency that has the authority to enforce fuel tax regulations, while other jurisdictions may divide fuel tax fraud into separate civil and criminal enforcement agencies, such as law enforcement and revenue agencies. Regardless of program structure, clear communication between responsible agencies, if multiple agencies are involved, is essential to an effective program.

In jurisdictions where a single agency handles all aspects of a dyed diesel evasion program, there is significant opportunity to align the work of both the investigation and enforcement staff. Within this structure, a single agency maintains discretion on which cases are referred for prosecution versus civil assessment, the parameters for these referrals, and the priority of their activities.

In jurisdictions with multiple agencies involved, a distinct separation of duties is recommended to minimize confusion among enforcers. While one agency may be explicitly focused on the enforcement and reporting of violations, another may have the sole discretion to determine the violation and possible penalties for a case. Good working relationships, often with memorandums of understanding (MOUs), help to assist leadership and program staff in identifying unified program goals as well as their specific roles and expectations across agency lines.

Estimated Revenues from Fuel Violations

Based on existing data, an estimate can be made of the total tax revenue loss to jurisdictions because of illegal or improper dyed diesel fuel use. In 2019, the Motor Fuel Use Table MF 21,¹ which includes estimates provided by the FHWA, reported total special (diesel) fuel for private and commercial highway use in the United States was approximately 44 billion gallons. The reported U.S. national average of total state and federal fuel tax on diesel fuel equals USD 62.25 cents per gallon. Dyed fuel inspection data from the FHWA in 2008 indicated dyed fuel violation rates in the United States were between 1% and 2% percent.² The Internal Revenue Service (IRS) estimates the annual loss of fuel tax revenue from the illegal use of dyed diesel is several hundred million dollars.³

1 *NHTSA 2019 Highway Statistics, Motor Fuel Use* (2019) U.S. Department of Transportation. Office of Policy Administration. Retrieved from: <https://www.fhwa.dot.gov/policyinformation/statistics/2019/mf21.cfm>

2 Balducci, P., Fathelrahman, E., Rufolo, A., Weimar, M., & Whitmore, S. (2008). *Identifying and Quantifying Rates of State Motor Fuel Tax Evasion*. Washington, DC: Transportation Research Board, National Cooperative Highway Research Program.

3 *Attention Truckers, No Dyed Fuel in Highway Vehicles* (January 2012). Internal Revenue Service Publication 4941. Retrieved from: <https://www.irs.gov/pub/irs-pdf/p4941.pdf>

Safety Considerations for Enforcement

Beyond the financial aspects of dyed diesel enforcement programs, there is also a safety component. In an analysis brief by the U.S. Department of Transportation (DOT),⁴ a correlation was found between crash probability and carriers with inspection violations for state or international fuel tax, international registration plan, and Unified Carrier Registration licensing requirements. While dyed diesel violations are not specifically identified in this report (but may be reportable under 392.2FT violations), carriers with at least one fuel tax violation had a 45.8% increase in their crash to power unit ratio for interstate vehicles 26,001 pounds or more. Increasing inspection frequency for dyed diesel and other fuel tax violations may also contribute to an overall reduction in commercial motor vehicle (CMV)-involved crashes.

Recommendation

- 3.2.1 Establish regular communication and collaboration between agencies enforcing dyed diesel laws.

3.3 Examples of Enforcement Efforts and Revenue Loss Due to Fraudulent Dyed Diesel Use

The following are summaries of a dyed diesel enforcement program and estimated loss attributed to fraudulent dyed diesel use.

Idaho

In July 2020, the State of Idaho initiated its dyed diesel enforcement program with an informational period to educate drivers prior to beginning enforcement activities. The enforcement, which began in part in March 2021, allows for the inspection of commercial vehicles at weigh stations or established patrol work sites. The program in Idaho excludes

4 *Safety Analysis of Interstate Carriers with UCR, IFTA or IRP Violations, 2017* (2020). U.S. Department of Transportation. Retrieved from: <https://rosap.nhtl.bts.gov/view/dot/50638>



enforcement on passenger vehicles and requires only a visual check of the fuel. In the first five months of enforcement, more than 1,600 CMVs, vehicles over 26,000 pounds were inspected with approximately a 1.5% violation rate. Penalties in Idaho for violations include escalating civil penalties for multiple violations and potential civil and criminal violations for the refusal of an inspection by a qualified vehicle.

Montana

Montana has a fuel tax enforcement program administered by the DOT. A Montana legislative audit conducted in 2011 estimated USD 630,000 in lost tax revenues from dyed diesel evasion.⁵

North Dakota

In 2012, North Dakota initiated its dyed diesel enforcement program. It was estimated that as much as USD 3 million of tax revenue may be lost annually from the illegal use of dyed diesel, almost 5% of the state's total special fuel tax revenue.⁶

3.4 Funding

Dedicated funding is the best way to ensure the stability for a dyed diesel enforcement program.

⁵ Montana Department of Transportation. (2011). *Controls Over Dyed Diesel Use in Montana: A Report to the Montana Legislature*.

⁶ Wetzel, D. (2011). *ND Officials Plan Crackdown on Illegal Diesel*. The Bismarck Tribune. Retrieved from: https://bismarcktribune.com/news/state-and-regional/nd-officials-plan-crackdown-on-illegal-diesel/article_a4f7d548-8745-11e0-aa3c-001cc4c002e0.html

An example of a dedicated funding source is the use of 0.25 of 1% of the state funding from U.S. DOT Surface Transportation Funds. Under statute (23 USC 143(b) (8), funding can be used for enforcement efforts provided it is approved by the state transportation department. Additional sources could be dedicated state funding from fuel taxes or other state funds.

Other potential funding sources include FHWA grants or utilizing a portion of civil fines collected from violators found using dyed diesel. If dyed diesel enforcement program funding is limited, dyed diesel enforcement responsibilities can be added to existing officer or revenue agent duties.

3.5 Determining Program Success

Before implementing a dyed diesel enforcement program, it is important to have baseline fuel tax revenue data from previous years by the jurisdiction. This data will help determine the success of the enforcement program.

Federation of Tax Administrators (FTA) Quarterly Report Process

The FTA Compliance Subcommittee collects dyed diesel statistics quarterly from all jurisdictions with a dyed diesel program. This report is compiled and distributed to all jurisdictions' revenue departments or transportation departments that have data sharing MOUs signed with the FTA. Each jurisdiction may share the report with others within their jurisdiction if requested.

The FTA Dyed Diesel Statistics Summary report collects and reports the following information from each jurisdiction:

1. **Samples** – the total number of visual inspection “dips” performed on licensed motor vehicles
2. **Violations** – the total number of billable red dyed violations found in licensed motor vehicles from the sampling process

3. **Assessments** – the total dollar amount of penalties billed to persons found using red dyed diesel in licensed motor vehicles

4. **Types of vehicles**

- a. Car
- b. Pickup
- c. Commercial vehicle
- d. Bus
- e. Other

5. **Type of industry**

- a. Agriculture
- b. Commercial
- c. Recreational
- d. Personal
- e. Other

Reporting by jurisdictions is voluntary, and not all jurisdictions that have dyed diesel programs report data to the FTA for this project. The following information from FTA is based on reporting jurisdictions for 2015 to 2020:

Year	Inspections	Violations	Fine Amounts (USD)
2020	46,732	206	171,382
2019	89,642	334	284,799
2018	98,591	291	286,663
2017	111,394	339	348,284
2016	133,612	374	544,525
2015	111,783	465	598,461
Total	591,754	2009	2,234,114
Average	98,626	335	372,352

For more information about FTA and reporting of violations, visit taxadmin.org

Recommendation

3.5.1 Designate staff responsible for communication and reporting to FTA. Contact other jurisdictions reporting to FTA to obtain best practices to enhance jurisdiction enforcement efforts.

3.6 Canada Dyed Fuel Enforcement Perspective

The following are examples of Canadian jurisdiction dyed fuel programs and compliance activities.

British Columbia

British Columbia allows dyed fuel (colored fuel) to be used on public roadways for a variety of purposes and for a variety of fuel types. These permissible uses are provided for by the Motor Fuel Tax Act. The British Columbia Ministry of Finance regulates and authorizes the coloring and selling of dyed fuel.

AUTHORIZED USES OF COLOURED FUEL

Motor Fuel Tax Act

Coloured fuel must only be used for authorized purposes and must not be used on a public road or highway unless it is in farm vehicles with 'A' or 'G' farm plates or a farm tractor. Coloured fuel may be used off-highway in road building machines, certain logging and mining equipment and industrial machines, unlicensed motor vehicles and may be used in boats, locomotives and stationary or portable engines.

You are required to complete a Coloured Fuel Certification (FIN 430) prior to purchasing coloured fuel from a cardlock or in amounts more than 45 litres. Failure to do so requires that additional tax be paid. This requirement does not apply to authorized persons purchasing coloured fuel for resale, farmers if other documentation is provided, or to sales of coloured fuel transferred directly into a supply tank of a boat in or on the water.

Unauthorized use of coloured fuel is an offence and you may be liable for fines and penalties.

For more information please call:
 Toll-free: **1 877 388-4440**
 To report unauthorized use or sale: **1 877 977-0858**

BRITISH COLUMBIA
 Rev. 2015/05/07

Purchasers of dyed fuel must complete a *Coloured Fuel Certification* to certify to the seller that the fuel will be used for the authorized use, and this certification must be on file with the seller. This documentation ensures the user is aware of the permitted uses of dyed fuel. Farmers using dyed fuel for permitted purposes will complete a *Certificate of Exemption*. The selling of dyed fuel without obtaining the required documentation may result in a penalty and possible suspension or cancellation of the authorization to sell dyed fuel.

Anyone using dyed fuel for unauthorized use must self-assess the difference between the dyed fuel and clear fuel tax rate that should have been paid. Penalties may be assessed for unauthorized purchases for the previous 4 years. For more information, visit: [Sales Taxes – Province of British Columbia \(gov.bc.ca\)](http://Sales Taxes – Province of British Columbia (gov.bc.ca))

Manitoba

In Manitoba, dyed diesel can be used for farm purposes while operating a motor vehicle registered as a farm truck under The Drivers and Vehicles Act. This is allowed while the vehicle is being used as permitted by section 180 of The Highway Traffic Amendment Act. For more information about The Drivers and Vehicles Act and The Highway Traffic Amendment Act, visit [The Drivers and Vehicles Act and The Highway Traffic Amendment Act \(gov.mb.ca\)](#)

Manitoba Finance has a Special Investigations Unit that employs fuel compliance officers (FCOs) who check for dyed fuel and International Fuel Tax Agreement (IFTA) violations.

Nova Scotia

Consumers and other activities may be eligible to purchase tax exempt fuel, which includes diesel fuel and other fuel types. Exempt entities and activities are described in the following document: [ans-taxcomm-provincial-fuel-tax-exemptions-overview.pdf \(novascotia.ca\)](#)

Fuel tax compliance efforts in Nova Scotia include the purchase of a permit to obtain marked “dyed” fuel. This permit may be cancelled or suspended for violating provisions of the Revenue Act. Compliance staff inspect users of dyed fuel and those claiming a refund after using clear fuel for purposes allowable as dyed fuel. Improper usage of dyed fuel may result in assessments, charges, and warning letters. For more information, visit [Fuel Tax Program – Government of Nova Scotia](#) and [fuel-tax-compliance-measures-en.pdf \(novascotia.ca\)](#)

Ontario

The use of dyed diesel fuel in a licensed motor vehicle is prohibited regardless of whether it is used

primarily for farming, construction, forestry, or mining. This is provided for in the Highway Traffic Act. Fuel colored by any other jurisdiction and used in Ontario by a licensed motor vehicle is prohibited by the Fuel Tax Act.

Provincial fuel tax inspectors are authorized to stop and detain a licensed motor vehicle for purposes of examining the fuel. These inspectors are also authorized to examine fuel in any place where business is carried on monitoring for compliance. Anyone refusing to allow an inspection may be fined up to CAD 1,000, and anyone found guilty of improperly using dyed diesel fuel may be fined CAD 440 for the first offense. The Ontario Ministry may also audit purchases of fuel to check for fuel tax compliance. For more information about the Ontario Fuel Tax program, visit [Ontario Fuel Tax Program](#).

Saskatchewan

The use of dyed diesel is prohibited except for farmers and primary producers of renewable resources, who hold a valid fuel tax exempt permit. This is provided for in the Saskatchewan Fuel Tax Act.

Provincial enforcement officers at various locations across the province conduct enforcement activities and work with other law enforcement agencies to detect and prosecute abuse. When a violation has been determined, the individual or company may be subject to an audit. All fuel found to be misused may be assessed with an additional 10% penalty.

Criminal misdemeanor penalties for dyed diesel violations for individuals can range from CAD 480 to a maximum of CAD 10,000. Criminal misdemeanor penalties for companies can range from CAD 480 to CAD 50,000. For more information about the Saskatchewan Fuel Tax Program, visit [Saskatchewan Fuel Tax Program](#).

Chapter 4 Legal Considerations

4.1 Background

Effective fuel tax and dyed diesel fraud and evasion programs have many legal considerations. Having a complete understanding of legal authorities, penalties, and handling of evidence will minimize fraud and evasion scheme cases being dismissed by courts. Proper authority for the program and inspections, along with sound collection of evidence, securing of samples, and a sufficient balance of civil and criminal penalties, enhances the likelihood of program integrity and success.

4.2 Program Authority

While dyed diesel statutory authority varies across jurisdictions, many in the United States mirror federal IRS authority. Some jurisdictions have specific authorities regarding stopping a vehicle to check the propulsion tank for the presence of dyed diesel, while others do not. For example, in some jurisdictions, a jurisdiction law enforcement agency or revenue agency may have the authority to stop and check a vehicle for the presence of dyed diesel and/or set up checkpoints to check for illegal use. Local law enforcement agencies might have to develop probable cause to determine if a vehicle is utilizing dyed diesel fuel on a public highway.

Additional considerations might include the jurisdiction's authority to

- Stop all diesel propelled vehicles.
- Check the propulsion tank of a diesel propelled vehicle on public or private property.
- Check a storage tank for the presence of dyed diesel fuel on private property.

NOTE: Constitutional considerations related to the Fourth Amendment will likely apply in all these instances.

Recommendation

4.2.1 All policies and procedures should be reviewed by jurisdiction legal counsel before implementation.

4.3 Authority to Stop a Diesel Vehicle or Commercial Vehicle

Some jurisdictions do not allow the stopping of a vehicle simply to inspect the fuel. Other granted authority, such as to conduct a vehicle size, weight, load, or safety inspection, must be exercised before the fuel can be inspected. Authority to stop a vehicle may also include observing a vehicle being filled with fuel from a dyed diesel pump or transfer tank located in the bed of a truck or red dye observed in the vehicle's fuel filter or leaking from the fuel tank or lines.

4.4 Authority to Inspect for the Presence of Dyed Diesel

Each jurisdiction operates under different laws and regulations. Before checking the propulsion tank or tanks for the presence of dyed diesel, it is important to know what authority the agent or officer needs to conduct fuel inspections.

Examples of granted authority levels include

- Limited versus fully commissioned officers
 - Limited commissioned officers may only have authority to check fuel in commercial vehicles.

- Fully commissioned officers may have authority to check fuel in both commercial and private vehicles.
- Commercial vehicle operators in some jurisdictions may have less expectation of privacy than non-commercial vehicle operators.
- Taxation-specific authority (to check IFTA, dyed diesel)
 - Limited authority to check compliance with tax laws
 - Regulatory and revenue compliance officers
- Motor vehicle or transportation agency
 - Civilian employees have authority to check for size, weight, and fuel tax compliance. However, if a violation is discovered, the violation information must be provided to an agency authorized to take enforcement action.

See Appendix B for specific details on jurisdiction laws and authority.

Consent to Inspect Propulsion Tanks

After a vehicle is stopped, the inspector needs to have authority to check the vehicle's propulsion tank. The inspector should inform the vehicle operator of their rights before the inspection begins. The vehicle



operator can refuse to allow the inspection and if they refuse; this notice will explain what action(s) may be taken. See sections 4.5.1 and 4.5.2 along with Appendix C for more information about inspection procedures and notice.

Recommendation

4.4.1 Jurisdictions should review applicable laws and rules to understand what authority exists to conduct dyed diesel inspections and to determine if all tanks that appear to be used to propel the vehicle may be inspected.

4.5 Civil Action

After a violation of fuel tax laws has been established, civil actions are initiated by the agency with the authority to do so such as a tax agency or motor vehicle agency (MVA). These civil proceedings are initiated after a completed inspection with a violation, a refusal to submit to an inspection (where applicable), or other fuel violations in jurisdictional law such as illegal mixing of fuel or marking requirements. These types of proceedings are normally accompanied by a fixed penalty, which may escalate up to and including criminal charges on subsequent violations by the same individual.

Notice and Refusal

Many jurisdictions have legislation requiring submission to an inspection of fuel upon request whether the fuel is in a propulsion tank or storage tank. This authority is similar to implied consent laws in which an operator of a motor vehicle agrees upon being licensed to submit to a preliminary breath test or similar test or face penalties for refusing. Generally, inspectors are required to present some form of written notice to the owner, operator, or agent in charge of the vehicle or premises to be inspected prior to conducting the inspection. The written notice generally outlines the statutory authority to conduct the inspection and the consequences for a violation and refusal. For

additional information and examples of jurisdiction specific dyed diesel notices, see Appendix C.

Penalty Structure

As a part of the management of highway use tax evasion programs, jurisdictions generally follow a penalty structure for civil violations, which consists of a set fee assessed per gallon or a graduated sliding fee scale. In addition, there may be a standard refusal penalty.

4.6 Criminal Enforcement

Before any violations can be enforced or prosecuted, a jurisdiction must have a statute making it unlawful (a criminal violation) to use dyed diesel under certain circumstances. The statute must also have a criminal penalty described.

Some jurisdictions allow a civil or criminal case to be made on visual identification of dyed diesel, while others may require a confirmation of the Solvent Red 164 Dye via a lab analysis.

“In Texas, years of enforcement efforts combined with criminal prosecution of those caught unlawfully using dyed diesel fuel to evade motor fuel taxes has significantly contributed to leveling the field of competition for the taxpayers legitimately paying high prices for using highway diesel and putting the tax cheats out of business.”—Deputy Chief Justin A. Scott, Texas Comptroller of Public Accounts, State Police – Criminal Investigation Division, (former Pacific Region Governor – Federation of Tax Administrators Fuel Tax Section)

Notice and Refusal

Notice of the consequences of a violation and the right of refusal should be provided to the operator at the time of inspection. This notice allows the operator to

make an informed decision about providing consent to the inspection and gives notice of penalties and consequences for violations or refusing an inspection. It also notifies the operator of the authority of the inspector to perform the enforcement action.

Jurisdictions having an MOU with the IRS are required to issue both the jurisdiction and IRS Notice of Inspection prior to enforcement actions and sampling of a propulsion tank. For additional information and examples of jurisdiction specific dyed diesel notices, see Appendix C.

Penalty Structure

Jurisdictions with a dyed diesel enforcement program should have specific penalties in statute associated with criminal violations. The penalty structure may be graduated for repeat offenses. The IRS has standardized penalties that may be adopted with minimum penalties of USD 1,000 or USD 10 per gallon, whichever is greater.

4.7 Evidence

Evidence requirements vary between jurisdictions and depend on whether a violation will be charged civilly or criminally. When charging criminally, the dyed diesel sample may need to go to a lab to be analyzed and multiple samples taken, so the defendant can have an independent lab sample the fuel. A civil penalty may only require the results of a roadside fuel analyzer.



Items to consider while taking a sample:

- Roadside fuel analyzer reading. Does it exceed allowable dyed limits?
- Deliver sample to a lab for analysis
 - Lab analyzes dyed content and produces report

- Video evidence
 - In-car or body-worn camera video
 - Fueling station video
 - Complainant video
- Storage of evidence
 - Secured in accordance with established evidentiary processes
 - Dark or low-light environment to prevent bleaching of dye
- Pictures of sample taken
 - In pipette or bottle while inserted in propulsion tank
 - Suspect vehicle and license plate
- Fuel sample report and narrative report
 - Properly identified vehicle, driver, and license plate
 - Articulate who, what, when, where, why, and how
 - Driver comments
- Follow up investigation
 - Test additionally owned vehicles from carrier
 - Test bulk tanks on owner or carrier property
 - Should the violator be added to a database to check for repeat offenses?

4.8 Federal Regulations

IRS

Effective January 1, 1994, to reduce fraudulent use of untaxed diesel fuel, the federal government required diesel fuel sold for off-road use to be dyed red. Penalties were imposed for the use of dyed diesel in highway vehicles of USD 1,000 or USD 10 per gallon, whichever is greater. In addition to the penalty, the road tax would also be assessed. The penalty is for each occurrence and is increased for subsequent violations. The federal government's statute also allows for a penalty of USD 1,000 if an individual refuses to allow an inspection. If a fuel sample is tested and contains any trace of red dye, the IRS considers this to be a violation. The federal government fuel inspectors are FCOs and fuel compliance agents (FCAs) and are employed by the IRS.

In cases in which a state has an MOU with the IRS, all testers must complete the IRS training program and be certified to conduct dyed diesel sampling. See Section 4.6 for more information regarding IRS and jurisdiction MOU agreements.

For more information about the IRS Fuel Compliance Program, visit their website at www.irs.gov and search Excise Fuel Compliance Program [4.24.13 Overview of Excise Fuel Compliance Program | Internal Revenue Service \(irs.gov\)](#)

Chapter 5 Inspection Process and Equipment

5.1 Background

Dyed diesel inspection programs are the single most effective deterrent of illegal dyed diesel use and have resulted in millions of dollars of reclaimed revenue. Successful dyed diesel inspection programs require proper staffing, training, equipment, and education. Collaborating with other agencies and jurisdictions is also important to foster and strengthen a program.

5.2 Staffing

Dyed diesel enforcement can be administered in several different ways. Some enforcement programs encourage fuel inspections as a routine component of a CMV inspection. Other jurisdictions assign groups of inspectors to perform fuel inspections in targeted locations. These types of activities could include multiple inspectors working in a variety of locations, informing other inspectors of specific vehicles to stop for a fuel inspection. Additional fuel inspections may also be requested or performed during roadside traffic stops. The type of inspection site being used determines the number of staff needed to conduct dyed diesel enforcement operations.

Dyed diesel enforcement, as with other types of enforcement activities, may need to be conducted outside of core business hours. Nights, weekends, and holidays may provide opportunities to discover violators using dyed diesel who may otherwise not be detected. Strategically recruiting and placing staff throughout the jurisdiction ensures enforcement activities are carried out equitably.

Recommendation

5.2.1 Research should be conducted to develop a strategy for best utilization of staff. This information should be reviewed and updated regularly to keep current with trends.

5.3 Training

Regulatory and Law Enforcement Training

Training in dyed diesel laws, detection, procedures, best practices, and administrative processes is critical to the success of a dyed diesel enforcement program. Jurisdictions may also use outside agencies to supplement their training program.

Generally, dyed diesel use laws and regulations are similar among jurisdictions and follow the guidance of the IRS's Internal Revenue Code. Jurisdictions may certify dyed diesel inspectors to enhance the consistency, integrity, and effectiveness of the enforcement program. While there is no current national certification required to perform dyed diesel inspections, many jurisdictions have created their own certification. To complete the certification, inspectors meet certain requirements to perform a safe and proper dyed diesel inspection. The training covers the basics of safety, recognizing dyed diesel, evidence handling, legal issues, and field training performed by certified training officers.

IRS guidance to inspectors on fuel sampling procedures is available by reviewing IRS Manual 4.24.14, included at https://www.irs.gov/irm/part4/irm_04-024-015r

Recommendations

- 5.3.1 Recruit staff who are committed to dyed diesel enforcement activities and are geographically located throughout the jurisdiction.
- 5.3.2 Implement a formal dyed diesel enforcement training program that includes detailed procedures and protocol for criminal and civil enforcement activity.
- 5.3.3 Certify officers and inspectors responsible for dyed diesel enforcement.
- 5.3.4 Jurisdictions considering their own training program are encouraged to include the following areas within this training:
 1. Proper safety procedures
 2. Proper sampling of vehicles
 3. Use and care of equipment
 4. Proper collection of samples and evidence securement
 5. Proper paperwork completion
 6. Conducting of driver interview
 7. Courtroom procedures and testimony

5.4 Equipment

Proper equipment is an essential part of a successful dyed diesel enforcement program. Common equipment used in a dyed diesel inspection may include pipettes (long, thin straws), sample vacuum pump and bottle, liquid fuel analyzer, and safety equipment. Pipettes are commonly used to dip tanks



“Missouri’s success with dyed fuel investigations has been largely due to the partnerships our investigators have created with local, state, and federal law enforcement agencies.”—Lester Elder, Chief Administrator, Department of Revenue, Compliance and Investigation Bureau

and provide access to fuel when a visual inspection is not possible. Sampling bottles are used to extract fuel and store evidence of illegal dyed diesel use. A liquid fuel analyzer is used by some jurisdictions to confirm the dyed diesel has a concentrated amount of dye to be considered illegal. Safety equipment may include gloves, goggles, and safety vests to ensure the safety of inspectors. See Appendix D for a list of applicable equipment.

5.5 Collaboration and Agreements



It is important to have collaboration with other law enforcement and regulatory agencies that may encourage dyed diesel enforcement so they know what action to take or who to reach out to with questions. Multi-jurisdictional projects can increase visibility and impact of dyed diesel enforcement efforts. Lead dyed diesel enforcement agencies are encouraged to provide training to other enforcement and regulatory personnel to enhance their knowledge of potential violations. This training can take place in a basic academy or in-service setting. Not all law enforcement and regulatory agencies within a jurisdiction may have authority to investigate dyed diesel violations so having knowledge of which agencies do will allow a more targeted approach for training and collaboration.

Inter-agency Collaboration

An important aspect of a successful dyed diesel enforcement program is the ability to work and share information with municipal, county, jurisdiction, and federal agencies. Successful collaboration begins with establishing a network of communication between agencies and communicating the importance of dyed diesel enforcement.

Law enforcement agencies may include information about their jurisdiction's dyed diesel enforcement program in formal training with other agencies and thereby create a continuous means of communication and collaboration throughout the jurisdiction. Including dyed diesel enforcement training with the other agencies within the jurisdiction, including jurisdiction highway safety offices, enhances communication and improves the effectiveness of the mission of dyed diesel enforcement.

Common examples of successful collaboration include a law enforcement agency investigating an incident unrelated to dyed diesel that leads to information of value to a dyed diesel enforcement officer, a dyed diesel enforcement officer participating in checkpoint inspections with other agencies, or sharing of intelligence information of potential violators by attending law enforcement information-sharing meetings. Additionally, some jurisdictions use non-commissioned officers to enforce dyed diesel laws. These officers may require the assistance of trained law enforcement, and having a network of communication with informed agencies may be valuable in these instances. For these reasons alone, dyed diesel enforcement officers should maintain a network of contacts across jurisdictions to ensure continuous communication relative to dyed diesel enforcement.

For an example of a collaborative project between the Minnesota Department of Revenue and Minnesota State Patrol, see Appendix E.

IRS Joint Operation Center

One area in the U.S. to enhance collaboration is with the IRS Joint Operation Center (JOC). The JOC offers two programs to state partners to assist with dyed diesel enforcement and compliance. The Fuel Inspection Data Gathering Project (FIDGAP) program's mission is to identify locations where dyed diesel is stored for end-use consumption. Additionally, the JOC may provide investigation assistance and investigation results to state partners for dyed diesel violations. For more information about FIDGAP, visit https://www.irs.gov/irm/part4/irm_04-024-018#idm139707828878496. Contact a jurisdiction IRS government liaison for more information about the IRS JOC.

5.6 Conducting Inspections

Dyed diesel inspections are important enforcement measures used to deter illegal use, promote voluntary compliance, and recover lost fuel tax revenue. How inspections occur and reasons for inspections vary and may include random inspections, scheduled checkpoint inspections, and inspections that are initiated from anonymous tips and fraud tip line.



It may be beneficial to invite a local prosecutor to a checkpoint to observe the inspection process. This allows them to observe what is involved in conducting dyed diesel screening and sampling of dyed diesel

when a violation is discovered. It may allow them to see the violation in context rather than words in a report. It may also allow them to see other types of violations that may be documented during a checkpoint such as motor carrier safety inspections, overweight vehicles, and other violations impacting highway safety.

In addition to prosecutors, it may be beneficial to invite members of the media to observe the process. Not only will this allow members of the media to observe and document law enforcement performing inspection duties, but it also serves as another outlet for educating the public about the law as it relates to dyed diesel. For an example of media coverage involving a dyed diesel enforcement project, see Appendix E.

Random Inspections

Random inspections are the most common dyed diesel enforcement measure and generally occur with commercial and non-commercial vehicles. Weigh stations, safety inspection checkpoints, gas stations, and rest areas are other common places for dyed diesel inspections. Industry-specific inspection locations such as lumber yards, construction sites, and livestock auctions are also common locations for random inspections. Generally, inspectors wait in a designated area or location for fuel sampling. The inspection typically takes a couple of minutes, and if no dyed diesel is found, the driver is on their way.

Random inspections are also used to verify compliance of federal and state laws that require all storage of dyed diesel be clearly identified with their contents and legal use. This includes tanks located at construction sites, farms, retailer and wholesaler tanks, and tanks that are being used to transport dyed diesel.

Checkpoint Enforcement

Checkpoint fuel inspections are formally conducted and, if required, may be announced publicly several

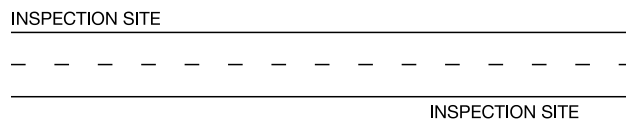
“The Virginia DMV Law Enforcement Division has a multifaceted mission that includes roadside inspections for the illegal use of dyed diesel fuel in vehicles operating in the Commonwealth. Staff deserves praise for this vital work that ensures appropriate taxes and fees are collected and penalties assessed, when warranted. Their efforts directly protect revenue that funds safe and well-maintained highways we all enjoy.”—Richard D. Holcomb, Former Commissioner, Virginia DMV

weeks in advance. Dyed diesel checkpoint inspections generally follow the same protocols as other jurisdiction checkpoint inspections. These inspections are often conducted in collaboration with two or more different agencies and may involve other types of inspections (i.e., seatbelt, driving under the influence).

Checkpoint inspections may be conducted after normal business hours and may require additional approval and resources. These types of inspections may include two to four inspectors on each side of the road calling out diesel fuel vehicles to the other group of inspectors to stop the vehicle. What type of inspection site is being used determines the number of staff needed to conduct dyed diesel enforcement operations. Some jurisdictions send groups of certified inspectors to perform saturations of dyed diesel inspections along roadways.



Below is a sample of a roadside check:



Each side of the road would have inspection sites, and each site would have a spotter for the opposite side of the road inspection site. The spotter would call out diesel-powered vehicles heading in that direction, allowing safe stoppage of the vehicle on the roadway. The use of signs alerting drivers of the inspection site provides added instructions and helps slow drivers entering the location.

Checkpoint Examples

An example of jurisdiction checkpoint enforcement is when state and local law enforcement agencies in Virginia and Kentucky work together each year for an annual “Border to Border Checkpoint” on Route 23 at the Virginia–Kentucky state line. The checkpoint is designed to encourage travelers to buckle up and don’t drink and drive. DMV commercial carrier & tax enforcement special agents participate each year to screen vehicles for possible unlawful use of dyed diesel. Special agents also conduct motor carrier safety inspections of CMVs and work in conjunction with DMV mobile weight enforcement crews to conduct weight enforcement.



In 2019, the checkpoint operation included 11 agencies and 33 officers from Virginia and Kentucky. The checkpoint resulted in 121 citations issued for violations found. In 2021, the operation was reduced in size because of the pandemic with three agencies participating. In total, 139 vehicles were inspected, 27 violations were noted, and 3 vehicles were placed out of service for CMV safety violations.

Another example of an enforcement operation was in 2017 when the Washington State Patrol conducted a four-day project concentrating on CMV safety inspections and illegal use of dyed diesel in Washington’s northwestern border with British Columbia. The project included 293 CMV inspections, resulting in 61 vehicles being placed out of service for safety violations and the discovery of 18 violations for illegal use of dyed diesel. In 2018, four similar projects were conducted in Washington State with 1,215 inspections, resulting in 214 vehicles being placed out of service and 25 vehicles found to be operating illegally with dyed diesel.

Fraud Tip Line

Fraud tip lines can be a useful and inexpensive resource in deterring illegal dyed diesel use. Tip lines allow the public to provide useful, anonymous information about potential illegal activity. Fraud tip line information is often related to illegal activity that would have otherwise gone undetected. Informing the public of the fraud tip line is important to its usefulness. For more information about fraud tip lines, see Section 6.3.

Example of the Inspection Process

The dyed diesel inspection process should be efficient and standardized to ensure fair and equitable application of the law. An example of a standard inspection is as follows:

- Inspector identifies themselves and asks for consent to check fuel.

- If driver refuses, officer advises of dyed diesel laws, provides driver with copy of regulatory code, and advises refusal may result in assessment.
- After driver agrees to allow inspection, officer checks fuel.
- If no dyed diesel observed, officer documents inspection.
- If dyed diesel found, inspector obtains driver's license and vehicle information.
- Inspector secures fuel sample and has driver sign inspection document.
- Inspector stores sample as evidence and inspection is properly documented.
- Inspector ensures sample is properly analyzed to determine dyed diesel markers are present.
- Notice of assessment and appeals procedure is sent to driver and/or address of registered vehicle.
- If the jurisdiction has an agreement with IRS, copies of the inspection documents and assessments are sent to them.
- Driver has option to pay assessment or appeal to the hearing office.

Additionally, the application of detection methods should also be standardized to ensure equal application of the law. Some of the most common detection methods include

- Screening fuel using pipettes
- Inspecting the fuel filter
- Releasing fuel from “petcock” if tank is not accessible
- Verifying transfer and propulsion tanks are not connected

5.7 Emerging Technologies in Detecting Dyed Fuel Fraud

Dyed fuel detection and analysis technology has continuously evolved to keep up with the ever-changing ways fraudsters have found to conceal illegal dyed fuel use. While visual inspections are still routinely relied on, seasoned illegal dyed fuel users have found ways to conceal, or “wash out,” the dye in the fuel to make visual inspections virtually impossible.

To combat the fraudsters techniques in Northern Ireland and Eastern Europe where illegal dyed fuel use is prevalent, Dow Chemical created a hydrocarbon molecule fuel marker called Accutrace that is invisible and difficult to remove from fuel.⁷ Dow's marker, paired with highly sensitive portable gas chromatography with flame ionization detection (GC-FID) equipment used by officers in Northern Ireland, can analyze and detect the dyed fuel at the roadside in less than 5 minutes.

Another emerging form of dyed fuel detection technology is the use of an Internet of Things (IoT; smart technology).⁸ IoT devices allow officers to use a handheld mobile device that uses LEDs to detect dyed fuel in the fuel tank. The use of IoT allows the device to communicate the results to the appropriate server when necessary and automatically alert the officer of the results. The LED technology used in the detection device uses light absorption to determine the type of fuel, dyed or otherwise, in the tank.

7 Alex, S. (February 2016). *How Chemistry is Helping Defeat Fuel Fraud*. Chemical & Engineering News. Retrieved from: <https://cen.acs.org/articles/94/i5/Chemistry-Helping-Defeat-Fuel-Fraud.html>

8 Lloret, J., Parra, L., Rucker, J., and Miran, T. (2018). *IoT Sensor to Detect Fraudulent Use of Dyed Fuels in Smart Cities*. Institute of Electrical and Electronics Engineers. Retrieved from: <https://ieeexplore.ieee.org/document/8554631>

Chapter 6 Outreach and Education

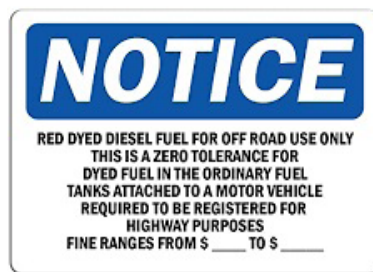
6.1 Background

Educating the public, law enforcement, prosecutors, and court systems is an important part to all enforcement programs. It provides an understanding of the impacts to roadway infrastructure funding and to the related impact on highway safety. It also gives an understanding of the penalties for illegally using dyed diesel, which combined helps act as a deterrent. Educating prosecutors and judges helps them understand the negative impact and volume of dyed diesel fraud, which may aid in more successful prosecution of violators, serving as a deterrent. In the future when reading officers reports or during testimony, they may understand better the illegal use of dyed diesel is not a victimless crime.

6.2 Benefits

Funding for road maintenance is provided by fuel tax revenue. Using dyed diesel on the roadway creates an unfair financial advantage over those who pay the tax for legal fuel. Providing education about the importance of proper dyed diesel use can garner support for enforcement efforts.

Providing outreach at conferences attended by stakeholders allows opportunity to discuss the importance of dyed diesel enforcement and the benefits of successful prosecution. These include deterring illegal dyed diesel use, mitigating unfair



financial advantages, and the impact of lost revenue meant for infrastructure repair and replacement. Providing training at law enforcement sessions will give officers tools to recognize the illegal use of dyed diesel and who to contact if they do come across potential violations.

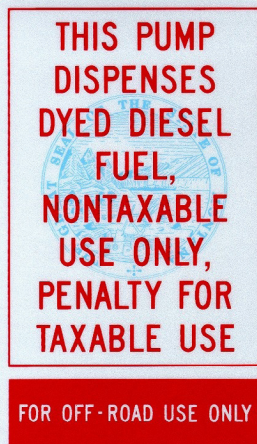
Judges and prosecutors may be invited into the field to observe dyed diesel enforcement operations. When judges and prosecutors are shown the sampling and evidence process, they observe the color difference between clear and dyed diesel. Observing properly labeled dyed diesel pumps allows them to see warnings against the illegal use of dyed diesel in highway vehicles. This demonstrates efforts to help people avoid mistaking dyed diesel as highway fuel.

Meeting with legislators will provide opportunities for education regarding impact to the jurisdiction and companies of illegal use and enhances abilities to establish or enhance laws.

6.3 Audience

Educating the Public About Dyed Diesel Laws

Although dyed fuel violators are usually aware dyed fuel laws exist, they may not know the extent of the fines and other repercussions for violating these laws. For this reason, it is important to verify wholesalers, retailers, and other dispensers of dyed fuel clearly display warnings, fines, and fraud tip line information on all storage tanks and other visible areas. Other means of education may include notification on agency websites and passing out information and items with fraud tip line information at sanctioned events where a significant number of diesel fuel users may attend. This may also be included with promotional material displayed at MVA offices, where it may be easily viewed by the public.



“Marked diesel enforcement and prosecution of violators is an important method of deterrence and control; it safeguards the tax base and protects the remission of fuel taxes on a continental scale. Without enforcement and prosecution, fuel tax loss would be immense, and ‘government’ revenue from fuel taxes would be negligible.

Another important factor in fuel enforcement is the philosophy of a fair playing field. If one carrier has unimpeded access to tax exempt fuel, that carrier has an unfair advantage when compared with other carriers. This unfair advance results in unfair competition when competing for contracts and pricing as compared with law-abiding carriers or companies.”—Rob Chapple, Supervisor of Investigations and Enforcement, Saskatchewan Ministry of Finance, Revenue Division

Expected heavy users of dyed fuel such as general contractors and trucking companies could be notified of dyed fuel laws upon receiving their business license and truck drivers could be educated while obtaining their CDL. Periodic emails could be sent to such companies and individuals as a reminder of dyed fuel laws.

For examples of jurisdiction public outreach, see Appendix E.

AAMVA also has a resource for educating the public on how to interact with law enforcement before and during a traffic stop. This document, *What to Do and Expect When Pulled Over by Law Enforcement*, is a valuable resource for the public about what they can do to assist in making a traffic stop a safe process.

Appendix A **FAQ for Administration of a Dyed Diesel Enforcement Program**

1. How can I obtain help in implementing a new dyed diesel enforcement program?

Help can be obtained through resources such as published documents produced by AAMVA, IRS, and IFTA. Seeking advice from jurisdictions that have successful programs can be a source of important lessons learned. Consulting with legislators, public policy experts, and motor carrier associations with expertise in fuel tax fraud may prove to be beneficial sources as well.

2. Are there alternatives to roadside enforcement?

Fuel fraud tip lines, surveillance operations at strategic locations, motor carrier audits, and weigh station fuel inspections programs are alternatives. Additionally, interagency information sharing and analysis of disparities between amounts of dyed diesel sold and fuel taxes collected can result in strategies to concentrate enforcement resources.

3. What other type of fuel tax evasion should I be aware of?

There are several other types of fuel tax evasion schemes, including but not limited to false reporting documents, false refunds or credits, failing to report import and export fuel, improperly blending of fuel, and improper use of fuel intended for government vehicles.

4. How do I improve prosecution of cases?

The key to successful prosecution of dyed diesel fraud cases requires key considerations that are not often utilized in other types of cases. The first is developing relationships with the stakeholders such as the courts, prosecuting attorneys, and legislatures. These partnerships should focus on

educating stakeholders on what the case involves, the importance of these types of cases, and what the benefits are. Ways to accomplish this include:

- A. Present the information to stakeholders at an annual conference or meeting. Networking with these groups may allow opportunity to request to present during these events.
- B. Develop specific training for staff with the focus of improving the quality of cases through better evidence collection practices and improving communication skills specifically with testimony to make a stronger case.
- C. Ensure staff are trained on requirements for preparing and presenting a civil case as the legal requirements are often different.
- D. Utilize jurisdiction or agency legal staff to prepare and present a civil case. Civil cases, whether presented in court or before a hearing officer, sometimes do not have a lawyer presenting the case, only the investigating officer.

5. What can an operator of a vehicle expect when stopped at a checkpoint?

When stopped at a dyed diesel enforcement checkpoint, the operator is notified by enforcement personnel of the reason for the stop to include the legal or statutory authority. Many jurisdictions are also require written notice be provided to the operator informing them of the legal requirements, consequences for refusal to comply, and penalties for operating a vehicle on the highways with dyed diesel. As part of the check, an operator may be asked to assist with the removal of the fuel cap so the fuel can be screened for the presence of dyed diesel. In addition, enforcement personnel should provide the operator with contact information.

Appendix B Examples of Jurisdiction Laws

Authority for Inspection

GEORGIA

<http://ga.elaws.us/law/section48-9-8>

O.C.G.A. § 48-9-8. Tax reports from distributors; quarterly or annual; contents; payment; time; business records of distributors, resellers, and retailers; inspection; dyed fuel oil notices

Authorizes the commissioner or their authorized agents to inspect the books and records of any entity who receives, sells, uses, or stores motor fuels.

MISSOURI

<https://revisor.mo.gov/main/OneSection.aspx?section=142.944&cbid=7179&hl=142.944%u2044>

142.944. Audits.

Authorizes the audit and examination of records related to the selling, transporting, storing, or using of motor fuel.

TENNESSEE

[Tenn. Code Ann. § 67-3-816](#)

Authorizes the Tennessee Department of Revenue commissioner, and the commissioner's designees to inspect any motor vehicle to ascertain whether the fuel supply tank contains dyed diesel fuel or diesel fuel contaminated with dye.

VIRGINIA

<https://law.lis.virginia.gov/vacode/58.1-2277/>

§ 58.1-2277. Administrative authority

Authorizes designated staff authority to inspect, upon written notice, any place where taxable fuel or fuel

dyes are produced, altered, or stored. Includes explicit authority to inspect terminals, non-terminal storage facilities, and retail fuel facilities. Inspection can include fuel and its storage containers, equipment used in connection with fuel, and any books and records. Additionally, includes the taking and removal of samples.

WASHINGTON

<http://app.leg.wa.gov/RCW/default.aspx?cite=82.38.072>

RCW 82.38.072 - Dyed special fuel—Penalties.

Authorizes the state patrol or other CVSA certified officer to inspect, collect, and secure samples of special fuel in the propulsion tank of a vehicle to detect dye or other chemicals.

Authority to Stop

IDAHO

<https://legislature.idaho.gov/statutesrules/idstat/title49/t49ch6/sect49-676/>

49-676. Dyed fuel – Inspection

Authorizes inspection by Idaho state police to visually inspect fuel used by commercial vehicles in excess of 26,000 pounds as a secondary action when detained for other lawful reasons, such as at a fixed or portable check station or when detained for a suspected violation of another law.

MISSOURI

142.950. Enforcement authority

<https://revisor.mo.gov/main/OneSection.aspx?section=142.950>

States that the director, his or her agents and appointees, and the Missouri state highway patrol and

its officers shall have full authority in enforcing the provisions of this chapter.

MONTANA

https://leg.mt.gov/bills/mca/title_0150/chapter_0700/part_0040/section_0150/0150-0700-0040-0150.html

15-70-415. Examination of records.

Authorizes the creation of vehicle inspection sites that may stop, detain, and inspect vehicles propelled by special fuel.

OKLAHOMA

<https://oksenate.gov/sites/default/files/2019-12/os47.pdf>

47 OK Stat § 47-2-117 (2014) – Police authority of department - Traffic-related enforcement authority on National System of Interstate and Defense Highways - special traffic-related enforcement in municipalities

Authorizes the commissioner and each officer of the Department of Public Safety to investigate and report violations relating to the collection of excise taxes on motor vehicle fuels.

Consent and Refusal

MAINE

<https://legislature.maine.gov/legis/statutes/36/title36sec3204-B.html>

§3204-B. Dyed fuel; prohibition on highway use

Describes a refusal as prima facie evidence that a tank or container in question contains dyed fuel, subject to the penalty described.

MONTANA

https://leg.mt.gov/bills/mca/title_0150/chapter_0700/part_0040/section_0150/0150-0700-0040-0150.html

15-70-415. Examination of records

Prescribes a penalty for purposely or knowingly refusing to permit an inspection at fuel facilities and vehicle inspection sites.

NEBRASKA

<https://nebraskalegislature.gov/laws/statutes.php?statute=66-495.01>

66-495.01. Diesel fuels; restrictions on use; inspections authorized; violations; penalties; government vehicles; treatment

Requires the inspection of fuel supply tanks or storage facilities based on reasonable grounds and prescribes a violation and penalty for refusal to comply with a lawful inspection.

Civil Penalties

LOUISIANA

<http://legis.la.gov/legis/Law.aspx?d=321860>

§818.52. Fuel use violations; penalty

Assesses a civil penalty of ten dollars for every gallon of fuel involved or USD 1,000, whichever is greater. Subsequent penalties are multiplied.

MINNESOTA

<https://www.revisor.mn.gov/statutes/cite/296A.22>

296A.22 Nonpayment of tax; civil penalties

Prescribes a civil penalty, in addition to the tax, of USD 10 for every gallon of fuel involved or USD 1,000, whichever is greater. Subsequent penalties are multiplied.

NORTH CAROLINA

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-449.117.pdf

§ 105-449.117. Penalties for highway use of dyed diesel or other non-tax-paid fuel

Assesses a civil penalty in the name of the registered owner in the amount of USD 1,000 or five times the amount of motor fuel tax payable, whichever is higher, in addition to any motor fuel tax assessed.

TENNESSEE

Tenn. Code Ann. § 67-3-809

Authorizes the Tennessee Department of Revenue commissioner to assess civil penalties for the illegal use of dyed fuel.

Criminal penalties

DELAWARE

<https://delcode.delaware.gov/title30/c051/sc02/index.html#5140>.

§ 5140. Prohibiting use of dyed diesel fuel on highways; violations and penalties

Provides for a first offence violating dyed diesel use, inspection, or refusal of inspection to be subject to imprisonment of not more than 90 days. Subsequent offences are subject to imprisonment of not more than 6 months.

ILLINOIS

<https://ilga.gov/legislation/ilcs/documents/003505050K15.htm>

(35 ILCS 505/15) Motor fuel tax law

Describes any person knowingly possessing dyed diesel fuel for taxable use guilty of a Class A misdemeanor. Subsequent offences are described as a Class 4 felony.

MISSOURI

<https://revisor.mo.gov/main/OneSection.aspx?section=142.932&cbid=7175&chl>

142.932 Penalties

Establishes criminal penalties for use of dyed fuel on the highway except as provided for in specified situations. Prohibits the selling of dyed fuel with the knowledge it will be used unlawfully and provides for penalties for anyone willfully participating in any act in violation of this section.

TENNESSEE

Tenn. Code Ann. § 67-3-819

Establishes a criminal penalty (class E felony) for the illegal use of dyed fuel.

TEXAS

<https://statutes.capitol.texas.gov/SOTWDocs/TX/htm/TX.162.htm#162.403>

Sec. 162.403. Criminal offenses

Establishes a criminal offense for multiple aspects of dyed fuel use, including refusal to permit inspection, sells or delivers dyed diesel for operation on a public highway, and uses dyed diesel for operation on a public highway. Sec. 162.405 describes the various criminal penalties ranging from Class C misdemeanor, or second- and third-degree felony charges based on the violation and/or combination of violations.

Exceptions and Exemptions

MICHIGAN

<http://legislature.mi.gov/doc.aspx?mcl-207-1122>

207.1122 Dyed diesel fuel; use in motor vehicle on public roads or highways; exception; penalty

Allows for exceptions to the use restrictions of dyed fuel use for motor vehicles owned and operated or leased and operated by the federal or state government, motor vehicles used by the American Red Cross, certain

agricultural uses, and for certain large passenger vehicles operating under specific licenses, permits, or grants.

NEBRASKA

<https://nebraskalegislature.gov/laws/statutes.php?statute=66-495.01>

66-495.01. Diesel fuels; restrictions on use; inspections authorized; violations; penalties; government vehicles; treatment

Requires that any motor vehicle registered, or required to be registered, not contain or use dyed diesel with exceptions allowed for any motor vehicle owned or leased by any state or political subdivision thereof.

NORTH DAKOTA

<https://www.legis.nd.gov/cencode/t57c43-2.pdf#nameddest=57-43p2-02p3>

57-43.2-02.3. Exemptions

Describes the exemption of the fuel tax for use in agricultural, industrial, or railroad purposes and the imposition of a special excise tax in its place. Additionally, describes the exemption of the fuel tax for use as a heating fuel.

Appendix C Dyed Diesel Inspection and Violation Notices

IRS Dyed Fuel Penalty Information Notice 886-A

Form 886-A	EXPLANATION OF ITEMS
Dyed Fuel Penalty Information	
Issue:	Using dyed fuel for a taxable purpose, or Selling dyed fuel for use in a taxable manner, or Altering the strength or composition of dye and/or markers
Date:	Auto Fill Location: <u>Q</u>
Section 6715 of the Internal Revenue Code requires us to charge a penalty if:	
<ol style="list-style-type: none">any dyed fuel is sold or held for sale by any person for any use which such person knows or has reason to know is not a nontaxable use of such fuel.any dyed fuel is held for use or used by any person for a use other than a nontaxable use and such person knew, or had reason to know, that such fuel was so dyed, orany person willfully alter, or attempts to alter, the strength or composition of any dye or marking done pursuant to section 4082 in any dyed fuel.	
If you fail to remove any dyed fuel from the propulsion tank(s) within 24 hours of this date, you may be subject to additional penalties.	
The fuel sample(s) will be sent to the lab to verify evidence of dye. If the results show evidence of dye, a penalty may be recommended. You will be notified regarding the lab results.	
Penalty Amounts:	
<ol style="list-style-type: none">For first violations, the penalty is the greater of:<ul style="list-style-type: none">\$1,000 per vehicle and/or storage tank, or\$10 per gallon for each containing greater than 100 gallons.On subsequent violations, the penalty is the greater of:<ul style="list-style-type: none">\$1,000 multiplied by the number of prior penalties imposed plus this inspection, then multiplied by the number of vehicles and/or storage tanks involved, or\$1,000 multiplied by the number of prior penalties imposed plus this inspection, then multiplied by the number of vehicles and/or storage tanks involved containing less than or equal to 100 gallons. For any vehicle and/or storage tank containing greater than 100 gallons of fuel, those gallons are multiplied by \$10 a gallon and added to the product of the calculation on vehicles and/or storage tanks containing less than or equal to 100 gallons.	
If you have any questions, please contact: Karmen Lawrence Acting Supervisor - Fuel Compliance Officer (515)201-1359	
Department of Treasury - Internal Revenue Service	

IRS Taxable Fuel Inspection Notice 916 (1-2007)



Department of the Treasury
Internal Revenue Service

www.irs.gov

Notice 916 (EN/SP) (1-2007)
Catalog Number 38986H

Taxable Fuel Inspection Notice

Internal Revenue Code section 4083(d) authorizes officials of the Internal Revenue Service to enter any place at which taxable fuel is produced or is stored (or may be stored) for the purposes of inspecting, examining, or searching:

- equipment used or capable of being used for the production, storage, or transportation of fuel, fuel dyes, or fuel markers;
- equipment used to determine the amount or composition of taxable fuel;
- equipment used for the dyeing or marking of fuel;
- containers used or capable of being used for the production, storage, or transportation of fuel, fuel dyes, or fuel markers; and
- books and records and any shipping papers kept to determine excise tax liability under Internal Revenue Code sections 4081

Officials may detain any container which contains or may contain any taxable fuel.

Officials may detain any vehicle, train, or marine transport vessel to inspect its fuel propulsion tanks or fuel cargo storage.

Officials may take and remove samples of fuel to determine the composition of the fuel.

The Internal Revenue Service may penalize any person who refuses to admit entry or allow an authorized inspection. The penalty is \$1,000 for each refusal. The penalty is in addition to other penalties that may apply and any tax due on the taxable fuel.

Aviso De Inspección De Combustible Sujeto A Impuestos

El Código de Rentas Internas, sección 4083(d) autoriza a los oficiales del Servicio de Impuestos Internos a entrar en cualquier lugar en que combustibles sujetos a impuestos se producen o se guardan (o pueden guardarse) para los propósitos de inspeccionar, examinar, o investigar:

- Equipos que usaron o fueron capaz de usarse para la producción, almacenamiento, o transporte de combustible, tintes de combustible, o marcadores de combustible;
- Equipos que usaron para determinar la cantidad o los componentes de combustible sujeto a impuestos;
- Equipos usados para dar el tinte o marcar el combustible;
- Envases que se usaron o fueron capaz de usarse para la producción, almacenamiento, o el transporte de combustible, tintes de combustible, o los marcadores de combustible; y
- Libros y documentación y cualquier documento de envío mantenido para determinar la obligación del impuesto sobre artículos de uso y consumo, bajo el Código de Rentas Internas sección 4081.

Los oficiales pueden detener cualquier recipiente que contiene o pueda contener cualquier combustible sujeto a impuestos.

Los oficiales pueden detener cualquier vehículo, tren, o embarcación de transporte marino para inspeccionar sus tanques de propulsión de combustible o los tanques de almacenamiento de la carga de combustible.

Los oficiales pueden tomar y remover muestras de combustibles para determinar la composición del combustible.

El Servicio de Impuestos Internos puede penalizar a cualquiera persona que se niegue, a admitir la entrada, o permitir una inspección autorizada. La multa es \$1,000 por cada negativa o inspección rechazada. La multa es en adicción a otras multas que pueden ser aplicables y cualquier impuesto adeudado en el combustible sujeto a impuestos.

Kansas Dyed Diesel Fuel Inspection Notice MF-64 (05-12)

Customer Relations / Motor Fuel Tax
Division of Taxation
915 SW Harrison St
Topeka, KS 66625-2007



Phone: 785-368-8222
Fax: 785-296-2703

www.ksrevenue.org

Nick Jordan, Secretary
Steve Stotts, Director of Taxations

Sam Brownback, Governor

DYED DIESEL FUEL INSPECTION NOTICE

K.S.A. 79-3464a authorizes the Director of Taxation, any deputy or agent appointed by the director to conduct inspections to determine compliance with the provisions relating to the use of dyed fuel. The director or any deputy or agent is authorized to examine the books, papers, records, storage tanks, tank wagons, trucks, and any other equipment of any distributor, dealer, transporter, manufacturer, importer, exporter, retailer, user or any other person pertaining to the use, storage, transportation or sale and delivery of dyed fuel.

No person shall operate or cause to be operated in this state a motor vehicle with special fuel that contains any quantity of dye or marker as prescribed pursuant to 26 U.S.A. 4082 in the fuel supply tank of the motor vehicle.

No person shall use any motor fuels purchased exempt in a taxable manner.

No person shall sell or hold for sale dyed fuel that such person knows or has reason to know will be used for a taxable purpose.

No person shall use dyed fuel other than for a nontaxable use.

The Director of Taxation may assess an administrative penalty of \$10 per gallon of motor fuels involved, or a penalty of not less than \$1,000 nor more than \$10,000 for any of the above referenced violations.

Upon a second or subsequent violation, a penalty of \$25 per gallon of motor fuels involved or a penalty of not less than \$5,000 nor more than \$50,000 may be assessed.

This inspection is authorized under K.S.A. 79-3464a and K.S.A. 79-3420. Penalties are authorized under K.S.A. 79-3464e.

The federal government has an agreement with the Kansas Department of Revenue authorizing the two parties to share information pertaining to the enforcement of certain fuel tax laws. The enforcement of the tax laws may result in the assessment of additional tax and penalties by both the IRS and the Kansas Department of Revenue.

The potential federal tax and penalty is independent of the tax and penalty consequences that may be proposed by the Kansas Department of Revenue.

MF-64 (Rev. 05-12)

Customer Relations / Motor Fuel Tax
Division of Taxation
915 SW Harrison St
Topeka, KS 66625-2007



Phone: 785-368-8222
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The potential federal tax and penalty is independent of the tax and penalty consequences that may be proposed by the Kansas Department of Revenue.

MF-64 (Rev. 05-12)

Minnesota Taxable Fuel Inspection Notice

TAXABLE FUEL INSPECTION NOTICE

The Minnesota Department of Revenue in partnership with the Internal Revenue Service and other agencies are conducting fuel inspections at this site.

296A.22 NONPAYMENT OF TAX; CIVIL PENALTIES. Subd. 4. Unlawful use of dyed fuel.

(a) If any dyed fuel is sold or held for sale by a person for any use which the person knows or has reason to know is not a nontaxable use of the fuel; or if any dyed fuel is held for use or used in a licensed motor vehicle or for any other use by a person for a use other than a nontaxable use and the person knew, or had reason to know, that the fuel was so dyed; or if a person willfully alters, or attempts to alter, the strength or composition of any dye or marking in any dyed fuel, then the person shall pay a penalty in addition to the tax, if any.

(b) Except as provided in paragraph (c), the amount of penalty under paragraph (a) for each act is the greater of \$1,000, or \$10 for each gallon of dyed fuel involved.

(c) With regard to a multiple violation under paragraph (a), the penalty shall be applied by increasing the amount in paragraph (b) by the product of (1) such amount, and (2) the number of prior penalties, if any, imposed by this section on the person, or a related person, or any predecessor of the person or related person.

296A.02 ADMINISTRATION

Subdivision 1. **Enforcement responsibility.**

The commissioner of revenue shall enforce and administer the provisions of this chapter with the assistance of the commissioners of public safety, commerce, and transportation.



This information will be used to evaluate your liability for petroleum excise tax and to determine if a penalty for the improper use of untaxed fuel is appropriate. The information may be used for collection purposes. You are not legally required to provide the information requested; however, if no information is provided or the information is insufficient to make a determination of liability you may be held responsible for unpaid tax.

The information you provide on this form is confidential. It can only be given to the Internal Revenue Service, other states, Minnesota municipalities, the Minnesota Department of Revenue, the Minnesota Attorney General in the administration of tax laws, the Minnesota Department of Human Services if there is any evidence you deserted your children or are delinquent in child support payments, or another person who must list some or all of your income or expenses on his or her tax returns.

Minnesota Initial Violation Notice

Form PDF-2

INITIAL VIOLATION NOTICE

Dyed Fuel Penalty Information

Issue: Using dyed fuel for a taxable purpose, or
Selling (or holding for sale) dyed fuel for use in a taxable manner, or
Altering the strength or composition of dye and/or markers

Date: Auto Fill Location: 0

Minnesota Statutes, section 296A.22 requires us to charge a penalty if:

1. any dyed fuel is sold or held for sale by any person for any use which such person knows or has reason to know is not a nontaxable use of such fuel;
2. any dyed fuel is held for use or used in a licensed motor vehicle or for any other use by a person for a use other than a nontaxable use and the person knew or had reason to know that the fuel was so dyed; or
3. if a person willfully alters, or attempts to alter, the strength or composition of any dye or marking in any dyed fuel.

If you fail to remove any dyed fuel from the propulsion tank(s) within 24 hours of this date, you may be subject to additional penalties.

The fuel sample(s) will be sent to the lab to verify evidence of dye. If the results show evidence of dye, a penalty will be assessed. You will be notified regarding the lab results.

Any penalty assessed by the Minnesota Department of Revenue in this matter will be in addition to any penalty or penalties assessed by the Internal Revenue Service.

Penalty Amounts:

1. For first violations, the penalty is the greater of:
 - \$1,000 per vehicle and/or storage tank, or
 - \$10 per gallon for each containing greater than 100 gallons.
2. **On subsequent violations, the penalty is the greater of:**
 - \$1,000 multiplied by the number of prior penalties imposed plus this inspection, then multiplied by the number of vehicles and/or storage tanks involved, or
 - \$1,000 multiplied by the number of prior penalties imposed plus this inspection, then multiplied by the number of vehicles and/or storage tanks involved containing less than or equal to 100 gallons. For any vehicle and/or storage tank containing greater than 100 gallons of fuel, those gallons are multiplied by \$10 a gallon and added to the product of the calculation on vehicles and/or storage tanks containing less than or equal to 100 gallons.

If you have any questions, please contact:

David Savard - Diesel Compliance Officer

Minnesota Department of Revenue - Special Taxes Division, Petroleum Tax Unit

Mail Station 3333

St. Paul, MN 55145-3333

(651)556-6354

Minnesota Department of Revenue - Special Taxes Division, Petroleum Tax Unit

Missouri Fuel Inspection Notice

Compliance & Investigation Bureau
Post Office Box 2073
Jefferson City, Missouri 65105-2073
(573) 526-1525

TAXABLE FUEL INSPECTION NOTICE

Revised Statutes of Missouri Section (RSMo) 142.941, authorizes the director of revenue, his agents or appointees, including federal government employees to inspect, examine, search:

- any tank, reservoir, or other container that can or might be used for the production, storage, or transportation of fuel;
- any equipment used for, or in connection with, the production, storage, or transportation of fuel;

Section 142.944 RSMo, authorizes the examination of records, books, paper and equipment of anyone selling, transporting storing or using motor fuel in order to verify the completeness, truth and accuracy of any statement or report. Any person who refuses to permit such inspection shall be subject to a penalty of \$5000.00.

No person shall operate or maintain a motor vehicle on any public highway in this state with motor fuel contained in the fuel supply tank for the motor vehicle that contains dye. No person shall sell or hold for sale dyed diesel fuel or dyed kerosene for any use that the person knows or has reason to know is a taxable use as provided pursuant to Section 142.932 RSMo.

- The Director of Revenue may assess in addition to the tax an administrative penalty of \$10.00 per gallon of motor fuel involved, or a penalty of not less than \$1,000.00 nor more than \$10,000.00.

Authorized agents may detain any vehicle to inspect its fuel propulsion tanks or storage tanks. Authorized agents may also take and remove samples of fuel to determine composition of the fuel.

Each person transporting motor fuel in a fuel transportation vehicle upon the public highways of this state shall carry on board adequate shipping papers issued by the terminal operator or bulk plant operator of the facility where the motor fuel was obtained. A penalty of \$1,000.00 shall be imposed for the first occurrence of transporting motor fuel without adequate shipping papers pursuant to Section 142.914 RSMo.

In addition to the tax and penalties due the State of Missouri, you may be subject to Federal taxes and penalties. Appeals of penalties imposed by the State of Missouri must be made within 30 days of assessment.

Montana Dyed Fuel Citation Process

Dyed Fuel Citation Process:

The samples will be sent to the Montana Department of Transportation's (MDT) lab to be tested for the presence of dye. The testing process takes about two to three weeks from the date of inspection. The presence of dye at a concentration of 2.0 milligrams per liter (mg/l) or greater is in violation of 15-70-441 Montana Codes Annotated (MCA). Samples found in violation will result in a notice of assessment mailed to the operator of the vehicle. The penalty amounts are a \$1,000 civil penalty for a first offense, and a \$5,000 civil penalty for a second offense. A subsequent offense is subject to criminal penalties with a fine of up to \$1,000 per offense, or by imprisonment for not less than 30 days, or more than 6 months, or both.

The department will allow a grace period of ten days from the date of a dyed fuel inspection that resulted in a violation to remove the presence of dye before a subsequent violation may be issued. After the grace period, the operator of the vehicle may be cited for violation of 15-70-441 MCA.

What are your rights if you have been issued a civil penalty?

You are entitled to a fair hearing as provided by the Montana Administrative Procedure Act, Title 2, Chapter 4, Part 6 MCA.

The department provides two options for appeal:

1. **INFORMAL REVIEW** Within 30 calendar days of the date on the notice of assessment, submit a completed Informal Review Form to MDT by mail, Fax, or e-mail to MDTAppeal@mt.gov. Obtain the form by calling 406 444-6030.
2. **FORMAL APPEAL** Within 30 calendar days of the date on the notice of assessment, submit a written request for Formal Appeal to MDT by mail, Fax, or e-mail to MDTAppeal@mt.gov.

Failure to pay or notify MDT of your request for appeal within the time allowed will result in a default, allowing the department to initiate collection procedures without additional prior notice to you. This will automatically result in a subsequent offense if you are found using dyed fuel again.

What are your rights if you have been issued a criminal penalty?

You may appear before the court shown on the citation, on or before the appearance date shown. At that time, you can contest the citation, enter a plea, and request a trial. Once a citation is issued, it is solely in control of the court into which it was written.

Contacts:

Contact the Enforcement Bureau with questions regarding the information on the front of this form.

Motor Carrier Services Division
2701 Prospect Avenue
PO Box 4639
Helena MT 59604-4639
(406) 444-6139 FAX (406) 444-6131

Contact the Motor Fuel Section in the Fiscal Operations Bureau with any questions regarding Montana's Fuel Tax Laws.

Administration Division
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001
(406) 444-0806 FAX (406) 444-5411

How to avoid a dyed fuel citation:

- Use only tax paid fuel.
- Know your supplier.
- Observe pump labels.
- Visually inspect the fuel.
- Look for evidence of tampering.
- Keep receipts.

Virginia Fuel Inspection Notice LE 444 (05/19/2017)



Fuel Inspection Notice

The *Code of Virginia*, Chapter 22, §58.1, Virginia Fuels Tax Act, allows authorized Virginia DMV agents to physically inspect, examine, or search any of the following:

- ▶ Any tank, reservoir, or containers that can be or may be used for the production, storage, transportation, or use of fuel, fuel dyes, or markers
- ▶ Equipment used for dyeing or marking of fuel
- ▶ Books and records kept to determine fuels tax liability under Chapter 22, §58.1-2276

Virginia DMV agents may detain any vehicle or any other mode of fuel transportation to inspect its fuel or storage tanks, and may extract and keep samples of fuel to clarify the fuel composition.

Penalties

Any person refusing to allow an inspection shall be subject to a civil penalty of \$5,000 for each refusal. This penalty is in addition to any other penalty or tax imposed.

Civil penalty – The greater of \$1,000 or \$10 per gallon of the maximum fuel tank capacity.

Criminal penalty – Over 20 gallons, Class 6 felony; 20 gallons or less, Class 1 misdemeanor.

Department of  Motor Vehicles

Permissible Use of Dyed Diesel Fuel

Dyed diesel is diesel fuel that has been marked with red dye to indicate that tax has not been paid on it and that it is destined for and restricted to non-taxable uses.

In Virginia, dyed diesel may not be used in the propulsion tank of a diesel-powered highway vehicle driven on Virginia highways if the vehicle is registered, or required by Virginia statute to be registered, or if an overweight or oversized permit must be obtained for the vehicle to travel over Virginia highways. This applies to all highway vehicles driven on Virginia highways, whether the vehicle is garaged in the Commonwealth or driven into Virginia from another state.

Exemptions from registration are described in the *Code of Virginia*, Title 46.2, Chapter 6, Article 6. Vehicles which may be exempt from registration but do not meet all parameters to remain exempt (including limited permitted highway use) may not use dyed diesel fuel on the highway.

Using dyed diesel for taxable use is a serious offense because it deprives the Commonwealth of revenues to maintain and repair its public highways. Such use is unlawful and violators may be subject to a substantial civil penalty, may be charged with a criminal violation, or both.



Virginia Department of Motor Vehicles
P. O. Box 27412
Richmond, Virginia 23269-0001
(804) 497-7100

LE 444 (05/19/2017)

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Department of Motor Vehicles (DMV) 2017.
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Appendix D Fuel Sampling Supplies

Recommended Fuel Sampling Supplies

Eye protection

Nitrile gloves

¼" polypropylene pipettes 60" in length

¼" polypropylene tubing 100' roll

Clear 4-oz PVC bottles and caps

Vacuum pump

Evidence supplies: seals, labels, bags, and boxes

Absorbent towels

Heavy-duty hand cleaning wipes

Optional Fuel Sampling Supplies

Diesel fuel dye analyzer with rechargeable batteries,

DC charger, and printer

Pipette and cuvette for fuel analysis

Digital camera



Appendix E Additional Resources

FTA Uniformity Guide – Dyed Fuel Enforcement

Effective January 1, 1994, in an effort to reduce fraudulent use of untaxed diesel fuel, the federal government required diesel fuel sold for off-road use to be dyed red. Penalties were imposed for the use of dyed fuel in highway vehicles of \$1,000 or \$10 per gallon, whichever is greater. In addition to the penalty, the road tax would also be assessed. The penalty is for each occurrence and is increased for subsequent violations. The federal government's statute also allows for a penalty of \$1,000 if an individual refuses to allow an inspection. If a fuel sample is tested and contains any trace of red dye, the IRS considers this to be a violation. The federal government fuel inspectors are Fuel Compliance Officers (FCO) and Fuel Compliance Agents (FCA) and are employed by the IRS.

Many states have developed their own dyed fuel programs. In some states the diesel fuel compliance programs often involve participation of multiple state agencies. It is preferable for fuel inspectors to have the authority to stop vehicles traveling on the highway in order to check for the use of dyed fuel. Law enforcement personnel such as State Highway Patrol officers or Motor Vehicle Inspectors who routinely inspect vehicles for safety violations may be the best choice to perform inspections for use of dyed diesel. States must determine the penalty amounts that will be assessed at the state level for violations. Some state programs have adopted the federal penalties.

Testing of samples to determine presence of dye may be performed in a petroleum laboratory. These labs are often operated by the state's Department of Agriculture. States also have the option of contracting with the Internal Revenue Service to do the testing at their labs.

If your state is considering developing a dyed fuel program there are several things that should be considered. Some examples are:

1. Do your statutes support the taking of fuel samples?
2. Do you have an MOU (Memorandum of Understanding) signed with the IRS to partner with them in dyed fuel enforcement?
3. Who has the authority to stop a vehicle?
4. Where will the laboratory testing take place?
5. Have penalties been determined?
6. Who will train your fuel inspectors or enforcement personnel?
7. Talk to states that have an existing dyed fuel program

If your state does not have a dyed fuel enforcement program today, chances are there is dyed fuel being used on your state highways and roads. When dyed fuel programs are first developed you may see a high percentage of violations; but as time goes on, percentages should diminish due to the presence of fuel inspectors in the field.

IRS Chain of Custody Information

INTERNAL REVENUE SERVICE CHAIN OF CUSTODY CONTROL DOCUMENT

Place lower portion of sample label on the back of the Fuel Inspection Check sheet	
1. Name (Print) Signature	Agency (Print) Date Received Date Relinquished
2. Name (Print) Signature	Agency (Print) Date Received Date Relinquished
3. Name (Print) Signature	Agency (Print) Date Received Date Relinquished
4. Name (Print) Signature	Agency (Print) Date Received Date Relinquished
5. Name (Print) Signature	Agency (Print) Date Received Date Relinquished
6. Name (Print) Signature	Agency (Print) Date Received Date Relinquished
7. Name (Print) Signature	Agency (Print) Date Received Date Relinquished
8. Name (Print) Signature	Agency (Print) Date Received Date Relinquished
9. Name (Print) Signature	Agency (Print) Date Received Date Relinquished
10. Name (Print) Signature	Agency (Print) Date Received Date Relinquished
Form XXXX Department of the Treasury - Internal Revenue Service	

IFTA Law Enforcement Committee Best Practices Guide (May 2019)

<https://www.iftach.org/committee/lec/LEC%20BPG%20-%20REVISED%20May%202019.pdf>

Minnesota Department of Revenue – Public Education about Dyed Fuel Inspections

<https://vimeo.com/mnrevenue/revenue-successes/video/279748533>

Media Coverage of a Dyed Diesel Enforcement Project in Montana

[https://urldefense.com/v3/__https://www.kxlf.com/news/montana-news/mdt-conducts-spot-checks-for-improper-use-of-dyed-fuel__;!!GaaboA!7H_g-QySUBsCROClYlhVbde0ZYOAKOo2z3MG6qOxOwkqHdFmhK-wr3j5sZe0Eg\\$](https://urldefense.com/v3/__https://www.kxlf.com/news/montana-news/mdt-conducts-spot-checks-for-improper-use-of-dyed-fuel__;!!GaaboA!7H_g-QySUBsCROClYlhVbde0ZYOAKOo2z3MG6qOxOwkqHdFmhK-wr3j5sZe0Eg$)

Public Education and Outreach Examples

Virginia Department of Motor Vehicles – Diesel Fuel
https://www.dmv.virginia.gov/vehicles/#farm_diesel.asp

Washington Department of Licensing – Dyed Diesel Things to Know
<https://www.dol.wa.gov/vehicleregistration/dyeddieasel.html>

Appendix F Working Group Roster

Leonard McLaughlin, Chair

Trooper
Washington State Patrol
Fuel Tax Fraud Unit

JURISDICTION MEMBERS

Brad Berg

Director
Virginia Department of Motor Vehicles
Law Enforcement Division, Field Operations

Wesley Marks

Program Manager
State of Washington
Prorate and Fuel Tax Services

David Mease

Special Agent
Missouri Department of Revenue
Compliance and Investigations Bureau

Jeremy Neeck

Revenue Tax Specialist Principal
Minnesota Department of Revenue
Petroleum Tax Unit

Paul Pender

Revenue Regulatory Supervisor
Tennessee Department of Revenue
Special Investigations

Captain Mike Poole

Montana Department of Transportation
Motor Carrier Services

AAMVA STAFF – PROJECT MANAGER

Paul Steier

Director, Vehicle Programs

AAMVA STAFF

Tom Foster

Law Enforcement Program Manager

Brian Ursino

Director, Law Enforcement

OUR VISION

Safe drivers

Safe vehicles

Secure identities

Saving lives!



**American Association of
Motor Vehicle Administrators**

4401 Wilson Blvd, Suite 700
Arlington, Virginia 22203
703.522.4200 | aamva.org