

## WSR 24-22-125

## PROPOSED RULES

## DEPARTMENT OF LICENSING

[Filed November 5, 2024, 12:54 p.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 24-13-125.

Title of Rule and Other Identifying Information: WAC 308-77-102 Appeals and 308-77-114 Unauthorized use of dyed diesel; new WAC 308-78-102 Appeals; new chapter 308-79A WAC, Fuel tax and proration—Investigation procedures; and WAC 308-91-172 Appeals.

Hearing Location(s): On December 11, 2024, at 2:00 p.m., Meeting ID 235 657 432 848, Passcode nwth5d; or dial in by phone +1 564-999-2000,,140744215# United States, Olympia, Phone conference ID 140 744 215#. If you are having trouble accessing the virtual meeting, please call 360-902-3486 at the time of the hearing to request assistance. Please email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov) if you would like to request an interpreter, or other accommodations, at least one week in advance of the public hearing.

PLEASE NOTE: Hearing participants are encouraged to attend in person or be prepared to use the telephonic option (call in) if they experience technical difficulties. In-person attendance will take place at the Black Lake Department of Licensing, 405 Black Lake Boulevard, Olympia, WA 98502, in Building 2, Room 2108.

Date of Intended Adoption: December 12, 2024.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98501, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), beginning November 6, 2024, by December 11, 2024.

Assistance for Persons with Disabilities: Contact Ellis Starrett, 360-902-3846, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov) by December 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules implement the fuel tax discovery team, by defining records request parameters and other investigation requirements for licensees under chapters 46.87, 82.38, and 82.42 RCW. The rules reflect changes to dyed diesel penalties by allowing assessment based on storage capacity and adding repeater penalties for violations within a five-year period. The rules make several technical changes: Verbiage-only change by removing "informal hearing" for "Review by Department," and adding an appeals chapter under aircraft fuel WAC.

Reasons Supporting Proposal: The proposed change implements HB 1964, passed during the 2024 legislative session with an effective date of July 1, 2024. HB 1964 removes informal hearing verbiage from RCW, establishes the prorate fuel tax discovery team at RCW 82.38.390, and changes dyed diesel assessments.

Statutory Authority for Adoption: RCW 82.38.260 Administration and enforcement, 82.41.120 Implementing rules required, and 82.42.130 Administration and enforcement.

Statute Being Implemented: RCW 46.87.080 Credentials—Design, procedures—Issuance, denial, suspension, revocation, 82.38.072 Dyed special fuel—Penalties, 82.38.120 Issuance of license—Refusal, suspension, revocation, 82.38.170 Civil and statutory penalties and interest—Deficiency assessments, 82.38.390 Prorate and fuel tax discovery team, 82.42.118 Civil and statutory penalties and interest—Deficiency assessments, and 82.42.210 Denial—Refusal—Suspension—Revocation.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Debbie Sanders, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1481; Implementation: Lynn Briscoe, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-480-1717; and Enforcement: JD Smith, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 564-464-5740.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because the department of licensing is not imposing additional costs. The rules do not create a new filing or reporting requirement for existing licensees that is not already established in law

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt; and is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. A cost-benefit analysis is not required because the department of licensing is not imposing additional costs. The rules do not create a new filing or reporting requirement for existing licensees that is not already established in law.

November 5, 2024

Ellis Starrett

Rules and Policy Manager

## OTS-5964.1

AMENDATORY SECTION (Amending WSR 16-13-049, filed 6/9/16, effective 7/10/16)

**WAC 308-77-102 Appeals.** (1) **What are the appeal procedures?** Any person having been issued a notice of assessment for taxes, penalties, or interest may contest the notice by petitioning the department for ~~((an informal hearing in lieu))~~ a department review instead of proceeding directly to a formal hearing. This written petition must be received by the department within ~~((thirty))~~ 30 days of the mailing date of the notice of assessment and list the specific reasons for reassessment. Include the amount of tax, interest, or penalties believed to be due.

(2) **What happens after the department receives the petition for ~~((an informal hearing))~~ a department review?** Upon receipt of a petition for ~~((an informal hearing))~~ a department review, the department will establish the time and place for the ~~((hearing))~~ review and notify you by mail or email at least ~~((ten))~~ 10 days prior to the scheduled date. If ~~((you are))~~ the petitioner is unable to attend the

~~((hearing))~~ review on the date or time scheduled, ~~((you))~~ they may request that the department reschedule the ~~((hearing))~~ review.

(3) **What happens if I fail to appear for my ~~((informal hearing))~~ department review without prior notification?** Failure to appear may result in the loss of your ~~((informal administrative))~~ department review appeal rights.

(4) **What happens following my ~~((informal hearing))~~ department review?** The department will make a determination in accordance with the Revised Code of Washington, administrative rules, and policies established by the department.

(5) **What if I do not agree with the department's ~~((informal hearing))~~ review determination?** ~~((You may,))~~ Within ~~((thirty))~~ 30 days after the date of the mailing of the determination, appeal in writing and request a formal hearing by an administrative law judge. The appeal must indicate the portions of the determination you feel are in error and list the reasons for believing the decision should be amended. ~~((The department will establish a time and place for a formal hearing and give you at least ten days' notice.))~~

(6) **When does my reassessment become final?** The department's decision ~~((of the department upon a petition))~~ for reassessment ~~((shall))~~ becomes final, due and payable ~~((thirty))~~ 30 days after service ~~((upon you unless you appeal))~~ unless further appealed.

#### OTS-5965.1

AMENDATORY SECTION (Amending WSR 16-13-049, filed 6/9/16, effective 7/10/16)

**WAC 308-77-114 Unauthorized use of dyed diesel.** (1) **What is the minimum dye concentration allowed for on-road use?** None. The department may assess on any dye concentration found in licensed vehicles, vehicles required to be licensed, or in bulk storage tanks used to fuel licensed or required to be licensed vehicles.

(2) **Who can be assessed a penalty for unlawful use of dyed diesel or dyed biodiesel?**

(a) The operator of the vehicle;  
 (b) The registered owners of the vehicle;  
 (c) Any person responsible for the operation, maintenance, or fueling of the vehicle.

(3) **If dyed diesel or dyed biodiesel is discovered in the fuel supply tanks of a vehicle, when must the fuel be removed?** The dyed fuel must be removed from the vehicles within ~~((twenty-four))~~ 24 hours from the time of discovery. Detection of dyed fuel in the same vehicles after the ~~((twenty-four))~~ 24-hour period will be treated as a separate violation.

(4) **Will I be assessed penalties for dyed fuel in bulk storage tanks?** Yes, if any dyed fuel from the bulk storage tanks has been used for unlawful purposes.

(5) **How ~~((is))~~ are the dyed diesel fuel ~~((in a bulk storage tank))~~ penalties assessed?** ~~((The assessment is based on the capacity or estimated quantity of dyed fuel in the bulk storage tanks without regard to how this fuel will be used. A review by the Department or Appeal may be requested to provide evidence supporting a lower quanti-~~

ty of dyed special fuel within bulk storage in violation.)) Dyed diesel found in the fuel supply tank of a vehicle required to be licensed will be penalized \$10.00 for each gallon placed in the supply tank or \$1,000.00 whichever is greater.

Dyed diesel found in bulk storage tanks when used for unlawful purposes will be penalized \$10.00 per gallon based on the capacity of the tank or \$1,000.00 whichever is greater.

**(6) What if I refuse the department or authorized representative access to inspect the vehicles or bulk storage tanks?** The penalty in RCW 82.38.072(2) will be calculated on the capacity of the bulk storage tanks and the number of vehicles subject to the refusal.

**(7) Are there additional penalties for separate or repeated dyed diesel violations?** Yes. Any separate violation of unlawful use of dyed diesel within a five-year period increases with each repeat violation. Any violation for either, or both the fuel supply tank of a motor vehicle and bulk storage tank are included in the repeat violation assessment.

**(8) How are repeat violation assessments calculated?** Each separate violation is multiplied by the prior number of violations, plus one.

## OTS-5969.1

### NEW SECTION

**WAC 308-78-102 Appeals.** (1) **What are the appeal procedures?** Any person having been issued a notice of assessment for taxes, penalties, or interest may contest the notice by petitioning the department for a department review instead of proceeding directly to a formal hearing. This written petition must be received by the department within 30 days of the mailing date of the notice of assessment and list the specific reasons for reassessment. Include the amount of tax, interest, or penalties believed to be due.

(2) **What happens after the department receives the petition for a department review?** Upon receipt of a petition for a department review, the department will establish the time and place for the review and notify you by mail at least 10 days prior to the scheduled date. If the petitioner is unable to attend the review on the date or time scheduled, they may request that the department reschedule the review.

(3) **What happens if I fail to appear for my department review without prior notification?** Failure to appear may result in the loss of your department review appeal rights.

(4) **What happens following my department review?** The department will make a determination in accordance with the Revised Code of Washington, administrative rules, and policies established by the department.

(5) **What if I do not agree with the department's review determination?** Within 30 days after the date of the mailing of the determination, appeal in writing and request a formal hearing by an administrative law judge. The appeal must indicate the portions of the determination you feel are in error and list the reasons for believing the decision should be amended.

(6) **When does my reassessment become final?** The department's decision for reassessment becomes final, due, and payable 30 days after service unless further appealed.

OTS-5970.1

**Chapter 308-79A WAC**  
**FUEL TAX AND PRORATION—INVESTIGATION PROCEDURES**

NEW SECTION

**WAC 308-79A-010 Introduction.** (1) Chapters 46.87, 82.38, and 82.42 RCW establish the department's authority for ensuring that all statutory requirements related to fuel transactions, licensure, and/or proportional registration are met and that tax obligations are reported to the state accurately and timely. The department is also responsible for ensuring that all fuel taxes and fees are collected appropriately.

(2) Persons must cooperate with the department during investigations conducted to confirm compliance with statutory requirements.

(3) These rules are designed to promote efficiency and consistency in conducting investigations and to give persons notice of what is required of them with respect to investigations and producing records to the department.

NEW SECTION

**WAC 308-79A-020 Records.** (1) Pursuant to chapters 46.87, 82.38, and 82.42 RCW, persons must comply with department requests to inspect any record or document related to fuel transactions, licensure, and/or proportional registration.

(2) Persons must comply with department requests to examine items such as storage facilities, equipment, books, papers, correspondence, memoranda, agreements, or other documents and records which are deemed by the department to be relevant or material to the investigation. The department will make these requests during normal business hours, or during the hours of an appointment agreed to by the parties involved.

(3) It is unlawful for a person to refuse to provide books, records, etc., if requested by the department.

NEW SECTION

**WAC 308-79A-030 Investigation.** (1) During an investigation, persons may be required to provide records or written statements and/or explanations relating to any potential violations.

(2) The department may administer oaths and affirmations, subpoena witnesses, compel their attendance, and take evidence.

(3) All requests will be issued by an authorized representative, such as investigators, auditors, program staff, or other designee.

(4) Requests for records, documents or detailed explanations shall be in writing, by regular mail, facsimile, electronic mail, or in person pursuant to an investigation.

(5) Persons are advised that failure to cooperate or refusal to permit access may result in further action as authorized by statute or rule, and may include civil or criminal penalties.

## OTS-5966.1

AMENDATORY SECTION (Amending WSR 16-03-071, filed 1/19/16, effective 2/19/16)

**WAC 308-91-172 Appeals.** (1) **What are the appeal procedures?** Any person issued a notice of assessment for taxes, fees, penalties or interest who chooses to appeal the notice, may petition the department for ~~((an informal hearing))~~ a department review instead of proceeding directly to a formal hearing. A petition for a ~~((hearing))~~ review must be in writing and must be received by the department within ~~((thirty))~~ 30 days ~~((after))~~ of the ~~((receipt))~~ mailing date of the notice of assessment. The appeal must include the specific reasons why reassessment is wanted and the amount of tax, fees, penalties or interest believed to be due.

(2) **What happens after the department receives the request for ~~((an informal hearing))~~ a department review?** The department will establish the time and place for the ~~((hearing))~~ review and notify the petitioner by mail or email at least ~~((ten))~~ 10 days prior to the scheduled date. If the petitioner is unable to attend the ~~((hearing))~~ review on the date or time scheduled, they may request the department to reschedule the ~~((hearing. The petitioner may appear in person or a representative authorized to present the case))~~ review.

(3) **What happens if I fail to appear for my ~~((hearing))~~ department review without prior notification?** Failure may result in the loss of your ~~((administrative))~~ department review appeal rights.

(4) **What happens following my ~~((informal hearing))~~ department review?** The department will make a determination in accordance with the Revised Code of Washington, administrative rules, and policies established by the department.

(5) **What if I do not agree with the department's ~~((informal hearing))~~ review determination?** Within thirty days after the date of mailing of the determination, appeal in writing and request a formal hearing by an administrative law judge. The appeal must indicate the portions of the determination that the petitioner believes are in error and provide the reasons the decision should be amended. ~~((The department will establish a time and place for a formal hearing within at least ten days notice.))~~

(6) **When does my reassessment become final?** The department's decision for reassessment becomes final, due, and payable ~~((thirty))~~ 30 days after service unless further appealed.