

WAC 308-77-005 Definitions. (1) (~~("Special fuel" as defined in RCW 82.38.020(23) includes diesel fuel, propane, natural gas, kerosene, biodiesel, and any other combustible liquid or gas by whatever name the liquid or gas may be known or sold for the generation of power to propel a motor vehicle on the highways except fuel that is subject to the tax imposed by chapter 82.36 RCW.~~

~~(2))~~ "Biodiesel" a nonpetroleum-based diesel fuel consisting of short chain alkyl (methyl or ethyl) esters, made by transesterification of vegetable oil or animal fat (tallow), which can be used alone, or blended with conventional petro-diesel in unmodified diesel-engine vehicles.

~~((3) "Publicly owned firefighting equipment" means equipment owned and used for firefighting by any agency or political subdivision of the state of Washington and will include fire engines, aid cars, ambulances, and vehicles used to transport firefighting personnel.))~~

(2) "Billed gallons" a gallon of fuel, whether net or gross as billed to the purchaser.

(3) "Ethanol" an anhydrous denatured aliphatic alcohol intended for gasoline blending.

(4) "Export" means to obtain (~~(special)~~) fuel in this state for sale or distribution outside this state. To be considered an "export" and qualify for exemption from the (~~(special)~~) fuel tax, (~~(special)~~) fuel obtained outside the bulk transfer terminal system must be physically off-loaded in the destination state, province, or foreign country. The exporter must be licensed or registered, if required, in the state, province, or country of destination.

(5) (~~("Invoice" means any document, paper or electronic, evidencing the transfer of ownership of special fuel.))~~ "Gasoline" means finished gasoline and gasoline blendstocks as defined in Code of Federal Regulations (C.F.R.) 48.4081. Finished gasoline means all products (including gasohol) that are commonly or commercially known or sold as gasoline and are suitable for use as motor vehicle fuel. The product must have an octane rating of 75 or more.

(6) (~~(Net))~~ Gross gallons" a standard gallon unit of petroleum of 231 cubic inches ((at 60 degrees Fahrenheit (U.S. petroleum gallon)) as measured at the terminal rack.

(7) "Invoice" means any document, paper or electronic, proving the ownership transfer of fuel.

(8) "Motor vehicle fuel" is any product sold as gasoline and fuel ethanol. The blending of any products or chemicals with gasoline or any other flammable liquid when the resultant product is sold or used for the propulsion of motor vehicles is considered a motor vehicle fuel subject to the provisions of chapter 82.38 RCW.

(9) "Net gallons" a standard gallon unit of petroleum of 231 cubic inches at 60 degrees Fahrenheit (U.S. petroleum gallon).

(10) "Publicly owned firefighting equipment" means equipment owned and used for firefighting by any agency or political subdivision of the state of Washington and will include fire engines, aid cars, ambulances, and vehicles used to transport firefighting personnel.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-015 Incidental use or exemptions. (1) **When is the incidental operation of a nonlicensed vehicle exempt the ((special)) fuel tax?** Fuel is exempt the ((special)) fuel tax if ((the)) used in a vehicle which is not licensed or required to be licensed under chapter 46.16 or 46.87 RCW and is operated between two pieces of private property for a distance not exceeding ((fifteen)) twenty-five miles. The movement of the vehicle must be incidental to the primary use of the vehicle.

(2) **When is off-highway fuel use taxable?** If special fuel is used in a continuous trip, which is partly on and partly off the highway, the tax applies to all the fuel used when the total distance traveled off the highway does not exceed one mile.

A continuous trip involves the use of a highway for the transportation of persons or property from one place to another; or, in a round trip, from the origin to the destination and return to the origin.

(3) **Are cash sales to qualified foreign diplomats and consular missions tax exempt?** No, only credit card purchases are exempt.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-035 Cancellation, suspension, or revocation of ((special)) fuel licenses. What happens when my license is canceled, suspended, or revoked? The department will ((notify all special fuel)) post information about these changes in license status for all licensees, except for IFTA((, of the change in license status)).

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-04401 Waiving of bond requirements. (1) **Can the department waive the requirement to maintain a fuel tax bond?** Yes, if the department determines ((that the)) a licensed distributor has sufficient financial assets to cover any Washington state fuel tax liability, including penalties and interest.

(2) **What is considered a financial asset?**

(a) A line of credit with a financial institution or supplier covering the cost of product and fuel tax liability; or

(b) United States dollars, bonds, or other obligations of the United States, the state, or any county of the state, deposited with the state treasurer.

(3) **How can I qualify to have my bonding requirement waived?**

(a) By filing a notarized statement with the department stating that your lines of credit with your financial institutions and your fuel suppliers ((is at a)) are sufficient ((amount to include)) to cover product cost and state fuel taxes. You must list the name of

~~((the))~~ each financial institution~~((s))~~, the account numbers and dollar value of your lines of credit, and the names of your fuel suppliers. You must authorize the department to access this information with your financial institutions and suppliers; or

(b) ~~((Depositing in a financial institution))~~ Deposit an amount equal to the estimated monthly fuel tax ~~((payments and assigning))~~ liability in a financial institution and assign this deposit to the department as security for performance under chapter 82.38 RCW; and

(c) ~~((Providing))~~ Provide the department with ~~((satisfactory))~~ documentation indicating that the suppliers will not allow the licensed distributor to incur a liability, including fuel tax, in excess of the lines of credit.

(4) **What if the department denies my request for a waiver of the bond requirement?** You can appeal this decision as provided in chapters 82.38 RCW and 308-77 WAC.

(5) **What if I no longer maintain a line of credit or financial asset?** You must provide a surety bond to the department in the amount required by chapter 82.38 RCW, with a coverage beginning on or before the date the line of credit or financial asset became insufficient.

NEW SECTION

WAC 308-77-048 Collateral requirements in lieu of surety bonds.

(1) **What other forms of collateral will the department accept in lieu of a surety bond?** The department will accept cash or certificates of deposit in U.S. dollars in any of the following forms:

(a) Automatically renewable certificates of deposit insured by the Federal Deposit Insurance Corporation, made in the name of the licensee of applicant for the license, payable to or assigned to the Washington state treasurer;

(b) Certificates of deposit or share account issued by a savings and loan association insured by the federal savings and loan corporation. Evidence of the insured account, in the form of either a certificate of deposit or passbook must be filed with the department along with a properly executed assignment form where the fund on deposit is assigned to the Washington state treasurer;

(c) Certificates of deposit of share account, issued by a credit union doing business in the state of Washington and insured by the Washington credit union share guaranty association. Evidence of the insured account, in the form of either a certificate of deposit or passbook, must be filed with the department along with a properly executed assignment form where the fund on deposit is assigned to the Washington state treasurer; or

(d) Cash deposits with the department, however no interest will accrue or be paid to the licensee.

(2) **Do I earn interest on my certificates of deposit?** Yes, the assignment forms will contain the provision that interest earned will be payable to the depositor.

(3) **How is an assignment canceled?** Assignments may only be canceled with written authorization by the department.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-075 Payment due dates for ((special)) fuel ((taxes)) tax not paid by electronic funds. What if my payment due date falls on a Saturday, Sunday, or state legal holiday? Payment is due on the next state business day. For example, if the payment due date falls on Saturday, the payment must be postmarked by Monday.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-099 Invoices issued by licensees. (1) When is an invoice issued? Every licensee must issue an invoice at the time of sale. ~~((If an electronic invoice is issued, a paper copy of the invoice is required to support a refund claim.))~~

(2) **What information is required on an invoice?**

(a) The name and address of the seller;

(b) The name((,)) and address((, ~~and special fuel tax license number, if applicable,)) of the purchaser;~~

(c) The date of delivery month, day, and year;

(d) The location of the point of shipment. Alphanumeric codes are allowed if the definition keys are provided to the department;

(e) The physical address of the fuel delivery or exchange, if different than the purchaser address, including the name of the state, Canadian Province, or foreign country. Alphanumeric codes are allowed if the definition keys are provided to the department;

(f) In the case of a delivery into a federally recognized Indian reservation or onto Indian country, the invoice must identify the state, U.S. possession, or Canadian Province ~~((in which))~~ where the delivery took place;

(g) Name of carrier transporting fuel;

(h) Name of product sold;

(i) The number of U.S. gallons of product sold in ~~((net or gross))~~ billed gallons;

(j) The price per gallon and total amount charged; and

(k) A statement on the invoice indicating if the fuel has been sold without the Washington state fuel tax.

(3) **What happens if a purchaser's invoice is lost or destroyed?** The seller can issue a duplicate or copy containing all information on the original invoice, if requested by the purchaser. The copies must be plainly marked "copy" or "duplicate."

(4) **What happens if an incorrect invoice is issued to the purchaser?** The seller must issue a corrected invoice to the purchaser. The invoice must clearly indicate that it is a corrected invoice and reference the original invoice.

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-102 Appeals. (1) **What are the appeal procedures?** Any person having been issued a notice of assessment for taxes, penalties, ~~((and/or interest who wishes to contest such notice may petition))~~ or interest may contest the notice by petitioning the department for an informal hearing in lieu of proceeding directly to a formal hearing. ~~((A))~~ This written petition ~~((for a hearing must be in writing and))~~ must be received by the department within thirty days ~~((after the receipt))~~ of the mailing date of the notice of assessment ~~((. A petition shall set forth))~~ and list the specific reasons ~~((why reassessment is sought and))~~ for reassessment. Include the amount of tax, interest, ~~((and/or penalties which you believe))~~ or penalties believed to be due.

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

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

(4) **What happens following my informal hearing?** 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 determination?** You may, within thirty 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 ~~((shall))~~ must indicate the portions of the determination you feel are in error and ~~((set forth))~~ 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 decision of the department upon a petition for reassessment shall become final, due and payable thirty days after service upon you unless you appeal further.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-103 Mitigation of penalties and interest. (1) **What fee, penalty or interest may be mitigated or reduced?** The department may mitigate fees, penalties, ~~((dyled special fuel penalties,))~~ or interest from:

- Late or missing fuel tax returns;
- Unpaid or underpaid taxes;
- Incomplete records to support reported fuel usage;
- License reinstatement fees;
- Assessments; or

- Unlawful use of dyed special fuel.

(2) **How will the department make the decision?** The department may review records, account history, or other information.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-104 Filing of refund claims for nonlicensees. (1)

How do I apply for a refund? Contact the department for a refund permit application and instructions or sign up electronically.

(2) **What time period can I file for a refund claim?** You must file within thirteen months of the fuel purchase date. The department will use the postmark date to determine ~~((the thirteen-month time frame))~~ eligibility. We will not accept multiple refund claims for the same month. For example, if you ~~((have))~~ made a claim for purchases in June you ~~((cannot))~~ could not claim additional purchases for June on another claim form.

(3) **What do I need to send with my refund claim?** You must ~~((send in))~~ include your fuel purchase invoices, schedules, and other documents listed on the refund claim form. ~~((If electronic invoices were issued, you must provide paper copies.))~~

(4) **How do I account for my inventory?** Any fuel on hand by physical measurement at the end of the claim period, should be reported as ending inventory. This figure ~~((should))~~ must be reported as the beginning inventory on your next claim form.

~~((5))~~ ~~**What does a licensed distributor send with their refund claim?**~~ Summary schedules must be provided and the department may request invoices.

~~((6))~~ ~~**The following**~~ **Who can sign a refund claim form((+))?**

(a) Individuals - Permit holder;

(b) Partnership - Any one of the partners;

(c) Business firm or corporation - Owner, corporate officer or other authorized agent.

~~((7))~~ ~~**Can invoices have a different name than what is on the claim form?**~~ (6) **Can I claim a refund using another person's fuel invoices?** No.

~~((8))~~ (7) **Can I request that my refund be assigned to another person?** Yes~~((, if we receive a letter stating whom))~~. You must submit a written request naming the person you would like ~~((the claim assigned))~~ to receive the refund.

~~((9))~~ (8) **How long will it take** ~~((until I receive))~~ to process my refund? Within thirty business days after we receive a properly ~~((completed))~~ submitted claim.

~~((10))~~ (9) **How long do I maintain my refund records?** Keep them for five years after submitting your claim.

NEW SECTION

WAC 308-77-108 Special rules and requirements for fuel tax refunds. Can I claim a refund for motor vehicle fuel used in my unlicensed off-road vehicles, alterrain vehicles, and snowmobiles? Yes,

only if the motor vehicle fuel is used for nonrecreational purposes such as farming, logging, and construction. An off-road vehicle (ORV) permit is considered a license. Off-road vehicles, allterrain vehicles, and snowmobiles are defined in RCW 46.09.310 and 46.10.300.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-109 Invoice requirements for refund to nonlicensees and IFTA licensees. (1) ~~What is a valid invoice? A ((separate invoice must be issued for each fuel purchase. A single invoice may list multiple deliveries of fuel purchases made during a calendar month.~~

~~(2) The following information must be included on the invoice))~~
valid invoice must include:

- (a) Name and address of the seller;
- (b) The type of fuel and number of gallons purchased;
- (c) Complete date of sale including month, day, and year;
- (d) Price per gallon; and
- (e) Total amount of sale.

(2) A separate invoice must be issued for each fuel purchase. A single invoice may list multiple deliveries of fuel purchases made during a calendar month.

(3) **The department will not accept invoices with altered, corrected, or erased information.**

~~(4) ((What happens if the seller issues an electronic invoice? A paper copy must be submitted with your refund claim.~~

~~(5))~~ **What happens if I get an incorrect invoice?** The seller must issue a new invoice marked "correction" and reference the original.

~~((6))~~ **(5) What happens if I lose or destroy my invoice?** The seller may issue a copy. The copies must be plainly marked "copy" or "duplicate."

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-112 Power take-off (PTO) use. (1) **What is PTO use?** It is fuel used in a motor vehicle engine to operate auxiliary equipment. ~~The ((fuel must be supplied from))~~ equipment must be fueled by the propulsion tank of the motor vehicle.

(2) **What is not considered auxiliary equipment?** Equipment such as air conditioning, power steering, generator, etc., that ~~((is))~~ are considered ~~((an))~~ integral ~~((part of))~~ to the operation of the vehicle.

(3) **What formula does the department use in determining PTO usage?** The tax exemption is calculated as a percentage of the total Washington taxable fuel:

Cement mixer	25%
Fire trucks (private)	25%
Mobile cranes	25%

Garbage trucks (with load compactor)	25%
Sewer cleaning truck/jet vactor	25%
Super suckers	25%
Line truck with digger/derrick or aerial lift	20%
Log truck with self loader	20%
Refrigeration trucks	20%
Sweeper trucks (must be motor vehicle)	20%
Boom truck/block boom	15%
Bulk feed truck	15%
Dump trailers	15%
Dump trucks	15%
Hot asphalt distribution truck	15%
Leaf truck	15%
Lime spreader	15%
Pneumatic tank truck	15%
Salt spreader on dump truck	15%
Seeder truck	15%
Semiwrecker	15%
Service truck with jack hammer/drill	15%
Snow plow	15%
Spray truck	15%
Tank transport	15%
Tank trucks	15%
Truck with PTO hydraulic winch	15%
Wrecker	15%
Car carrier with hydraulic winch	10%
Carpet cleaning van	10%
Others	7.5%

(4) **What if my fuel consumption is greater than the percentages indicated above?** If you can provide satisfactory documentation and records to show that the fuel consumed by the PTO is greater than the percentages indicated, the department may grant the higher percentage on a case-by-case basis.

(5) **What documents must accompany the refund claims?** All claims must be accompanied by valid purchase invoices to cover the total gallons of (~~special~~) fuel purchased, except that invoices for (~~special~~) fuel used in fuel oil delivery trucks or when measured by a metering device need only be equal to or greater than the gallons claimed as refundable. A support schedule for Washington PTO and power pumping credits must accompany each claim for refund.

(6) **What records do I need to keep?** All individual vehicle mileage and fuel records that reflect total mileage, total fuel, Washington taxable mileage, and Washington taxable fuel by vehicle.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-114 Unauthorized use of dyed diesel. (1) ~~((Is there any dye concentration in diesel fuel that the department cannot assess penalties for unlawful use? No.))~~ 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 ~~((diesel))~~ fuel must be removed from the vehicles within twenty-four hours from the time of discovery. Detection of dyed ~~((diesel))~~ fuel in the same vehicles after the twenty-four-hour period will be ~~((considered))~~ treated as a separate violation.

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

(5) How is the dyed ~~((diesel))~~ fuel in a bulk storage tank assessed? The assessment is based on the capacity or estimated quantity of dyed ~~((diesel))~~ fuel in the bulk storage tanks without regard to how this fuel will be used.

(6) What if I refuse the department or authorized representative access to inspect the vehicles or bulk storage tanks? The penalty in RCW ~~((82.38.170(13))~~) 82.38.072(2) will be calculated on the capacity of the bulk storage tanks and the number of vehicles subject to the refusal.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-116 Records. (1) What ~~((special))~~ fuel records must be kept? Every person licensed or required to be licensed must maintain a complete monthly stock summary of the gallons of ~~((special))~~ fuel reflecting inventories, receipts, sales, use, other distribution, and loss or gain. The stock summary must be supported by:

(a) Physical inventories of bulk storage plants taken at the close of each calendar month.

(b) Meter readings taken at the close of each calendar month for pumps through which fuel is dispensed.

(c) A record of fuel receipts, invoices, bills of lading, transfer documents, yield reports, and other documents relative to the acquisition of fuel.

(d) A record of fuel disbursements, invoices, bills of lading and other documents relative to the disbursement of fuel.

(2) If I am a licensed dyed fuel user or someone who is required to be licensed, do I keep the same records? Yes.

NEW SECTION

WAC 308-77-121 Tax computation in the absence of records. In the absence of records showing the number of miles operated per gallon of fuel consumed, fuel consumption will be calculated by the department. The department may adopt a mileage per gallon basis for determining the taxable use of fuel used in motor vehicles which travel on and off the highways within the state of Washington.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-240 Refund records. What records do I need to keep to claim a refund of fuel taxes?

- All (~~special~~) fuel receipts;
- The gallons of fuel used in each piece of equipment, both refundable and nonrefundable;
- Fuel inventory in bulk storage;
- Detailed fuel records for all withdrawals from bulk storage;
- Fuel purchased in small containers (ten gallons or less) for nonhighway use must show the type of equipment being used, i.e., boats, tractors, power saws, etc.

Each claimant using special fuel must also keep on-highway and off-highway mileage records for each licensed vehicle.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-265 Tax exempt losses. (1) (~~What is acceptable proof of loss~~) How can I document lost fuel for a credit or refund of fuel tax paid?

(a) A notarized affidavit by a person having actual knowledge of the circumstances of the loss explaining the origin and destination of the shipment, the circumstances surrounding the quantity of fuel lost, fuel salvaged, disposition of the salvaged fuel, and procedures used in the determination of the quantity of fuel lost; or

(b) A signed statement by a federal, state, local or provincial official who has authority to investigate fuel loss; and

(c) A bill of lading or other shipping documents; and

(d) A statement by the licensee establishing ownership of the fuel at time of loss.

(2) **Are deductions for losses from bulk storage allowed?** Yes, (~~special~~) fuel that has been proven lost or destroyed, prior to distribution from a licensee's bulk storage facility outside of the bulk transfer terminal system may be considered a tax exempt loss.

- (3) How long do I retain my evidence substantiating my loss? Five years from date of claim.
- (4) May I claim a deduction for stolen fuel? No.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-280 Natural gas, propane decal as evidence of payment of annual license fees. (~~((1) Do I pay fuel tax when I purchase natural gas or liquefied petroleum gas (propane) for my licensed vehicle? No, once you have licensed your vehicle as being powered by natural gas or propane, you will pay an annual license fee in lieu of the fuel tax.~~

~~((2) What proof is required to purchase natural gas or propane for my vehicle? A decal will be issued that must be displayed on your vehicle that allows the purchase of natural gas or propane. This decal must be displayed in plain view on the vehicle near the fuel supply tank.~~

~~((3) What)) Am I required to buy a decal if my vehicle operates with both motor fuel gasoline and natural gas or propane? ((You will)) Yes, you must pay fuel tax on the gasoline purchases as well as purchasing a decal.~~

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
308-77-04401	308-77-046