

Montana Department of Transportation
Report on Biodiesel Refund and Dyed Fuel Enforcement
Submitted to the Revenue and Transportation Interim Committee
2018

Background

Motor fuel tax, including the tax on special fuel (diesel) fuel, is the primary funding source for the construction, maintenance, and administration of the highway system in Montana, including the state match for over \$300 million in federal revenue received each year. Effective July 1, 2017, the tax on special fuel increased from \$0.2775 to \$0.2925 per gallon.

Untaxed special fuel is available in Montana for off-road use and other non-taxable activities such as government use. To distinguish untaxed special fuel from taxed special fuel, a red dye is mechanically injected into the special fuel at the terminal. Dyed special fuel is exempt from both Montana and federal taxes and can be purchased through petroleum distributors or at many retail stations.

Impact on State Special Revenue Fund

Special Fuel Tax accounts for more than \$70 million in revenue to the Highways State Special Revenue Fund. Dyed special fuel represents 37% of the special fuel sold in Montana and is sold at many retail locations across the state. Without adequate enforcement, the state would be at substantial risk of fuel tax evasion, resulting in lower revenue collections at MDT, lower investment in Montana's highway infrastructure and reduced ability to match federal-aid funds.

BioDiesel Refund

MCA 15-70-433 Provides a refund of 2 cents per gallon to licensed distributors and 1 cent per gallon to retailers who sell Biodiesel that is produced entirely from Biodiesel ingredients produced in Montana. The refunds must be applied for within 30 days after the quarter ends.

No distributor or retail outlet has ever applied for this refund.

Motor Carriers Services (MCS) Enforcement Activity:

Montana law allows for the inspection of motor vehicle supply tanks to ensure that dyed diesel is not being consumed on Montana roadways. MDT’s Motor Carriers Services (MCS) Officers routinely check for dyed diesel during motor carrier safety inspections. Additionally, they may pull vehicles over specifically to check for dyed diesel if probable cause exists to suspect dyed diesel abuse.

Civil penalties not to exceed \$1,000 for first offenses and \$5,000 for second and subsequent offenses are imposed on the driver if a concentration of dye of 2 parts per million or greater is found through such an inspection. The below table demonstrates the number of vehicles checked for dyed diesel and the number of violations found.

Fiscal Year	Vehicles Inspected	First Offense (\$1,000)	Second Offense (\$5,000)
2013	25,016	76	1
2014	29,521	54	2
2015	36,013	27	0
2016	36,878	22	0
2017	35,195	33	0
5 year TOTAL	162,623	212	3

Construction Sites

Contractors performing work on public road projects are required to use clear (taxed) fuel for all project activities. MCS officers periodically inspect contractor's vehicles and equipment for compliance with this requirement. Below is a summary of the construction inspections:

FY2016 Construction Site Fuel Checks Summary			
JOB Type	# Checked	Contractor Type	# Checked
City	0	Prime	29
County	3	Sub	7
State	29	Unknown	0
Federal	1	TOTAL	36
Unknown	3		
TOTAL	36		
		Total Vehicles / Equip Ckd	
		144	
		Total Time	
		29.5 hrs.	
FY2017 Construction Site Fuel Checks Summary			
JOB Type	# Checked	Contractor Type	# Checked
City	2	Prime	22
County	0	Sub	11
State	30	Unknown	0
Federal	1	TOTAL	33
Unknown	0		
TOTAL	33		
		Total Vehicles / Equip Ckd	
		158	
		Total Time	
		26 hrs.	

Appeals

Once a citation has been issued, the driver may file an appeal to the department, either through an informal review or formal appeal. If the penalty is upheld at the department level, the driver may wish to elevate to the State Tax Appeal Board (STAB) and ultimately to the District Court.

During the informal review, the penalty may be upheld at the full \$1,000, dismissed completely, or reduced based on the circumstances. The below table summarizes the dyed fuel citations that have been appealed.

Fiscal Year	Informal Appeal	Formal Appeal	STAB	District Court	Supreme Court
2012	28	6	1	0	0
2013	11	1	0	0	1
2014	10	2	0	0	0
2015	15	2	0	0	0
2016	7	1	0	0	0
2017	10	1	0	0	0
TOTAL	81	13	1	0	1

Contacts

If you have questions or comments regarding MDT's dyed fuel enforcement activities, please contact one of the following:

Larry Flynn, Administration Division Administrator

444-9418

lflynn@mt.gov

Duane Williams, Motor Carriers Services Division Administrator 444-7312

duwilliams@mt.gov