

§ 5140. Prohibiting use of dyed diesel fuel on highways: Violations and penalties.

- (a) Notices with respect to dyed diesel fuel.
- (1) A notice, stating: "dyed diesel fuel, nontaxable use only, penalty for taxable use" shall be:
 - a. Provided by the terminal operator to any person that receives dyed diesel fuel at a terminal rack of that operator;
 - b. Provided by the seller of dyed diesel fuel to its buyer if the fuel is located outside the bulk transfer or terminal system and is not sold from a retail pump posted in accordance with the requirements of subparagraph c. of this paragraph;
 - c. Posted by a seller on any retail pump where it sells dyed diesel fuel for use by its buyer.
 - (2) The notice required under subparagraph (1)(a) or (b) of this paragraph shall be provided at the time of the removal or sale and shall appear on shipping papers, bills of lading and invoices accompanying the sale or removal of the fuel.
 - (3) The Department may designate any federal notice provision which is substantially similar to a provision of this subsection as satisfying any notice requirement of this subsection.
- (b) Dyed diesel fuel not to be used on public highways.
- (1) A person may not operate a motor vehicle on the public highways of this State if the fuel supply tanks of the vehicle contain dyed diesel fuel unless permitted to do so under a federal law or regulation relegating to the use of dyed diesel fuel on the highways.
 - (2) A person may not sell or deliver any dyed, diesel fuel knowing or having reason to know that the fuel will be consumed in a highway use. A person who dispenses dyed diesel fuel from a retail pump that is not properly labeled with the notice required by subsection (a) of this section or who knowingly delivers dyed diesel fuel into the storage tank of such a pump shall be presumed to know the fuel will be consumed on the highway.
- (c) Enforcement. Any certified Diesel Compliance Officer or other person authorized by the Department may enter any place where fuels are used, produced or stored and may physically inspect any tank, reservoir or other container that can be used for the production, storage, use or transportation of diesel fuel, diesel fuel dyes or diesel fuel markers. Inspection may also be made of any equipment used for or in connection with the production, storage or transportation of diesel fuel, diesel fuel dyes or diesel fuel markers. This includes any equipment used for the dyeing or marking of diesel fuel. Books, records and other documents may be inspected to determine tax liability. An agent may detain a vehicle, vessel or railroad tank car placed on a customer's siding for the use or storage for the purpose of inspecting fuel tanks or fuel storage tanks as necessary to determine the amount and composition of the fuel. An agent may take and remove samples of diesel fuel in reasonable quantities necessary to determine the composition of the fuel.
- (d) Penalties. Any person who violates any provision of subsections (a) and (b) of this section including refusal to allow an inspection as set forth herein, shall for the first offense be fined not more than \$1,000, or imprisoned not more than 90 days, or both. For a second and any subsequent offense the person shall be fined not more than \$2,000, or imprisoned not more than 6 months, or both.
- (e) Disposition of fees, fines and forfeitures. All fees, fines and penalties collected in the enforcement of this section shall be paid into the Transportation Trust Fund established under Title 2.
- (f) Enforcement. The Delaware State Police is authorized and directed to assist in the enforcement of this section.
- (g) Cooperative agreements. The Secretary of the Department of Transportation may enter into cooperative agreements with other states and federal agencies for exchange of information and to perform joint investigations of alleged dyed diesel fuel violators.