

Notice of Emergency Rule

DEPARTMENT OF REVENUE

Miscellaneous Tax

RULE NO.: RULE TITLE:

12BER20-7 Dyeing and Marking; Mixing

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Section 32 of Chapter 2020-10, Laws of Florida, authorizes the Department of Revenue to promulgate emergency rules to implement the changes to penalty amount assessed against any person who fails to provide or post the required notice regarding dyed diesel fuel pursuant to s. 206.8741, F.S.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Legislature expressly authorized the promulgation of emergency rules to implement the provisions of Section 15 of Chapter 2020-10, Laws of Florida. Additionally, this emergency rule is the most expedient and appropriate means of notifying taxpayers of the provisions of Section 15 of Chapter 2020-10, Laws of Florida.

SUMMARY: Emergency Rule 12BER20-7 amends Rule 12B-5.140, F.A.C., to replace the previous penalty amounts and schedule. The penalty is reduced to a flat fee of \$2,500 for each month the proper notice is not included on the applicable source record or pump, from \$10 per gallon or \$1,000, whichever is greater, and which increased with subsequent violations by multiplying the penalty amount by the number of prior violations. This change will simplify audits and reduce the burden on the taxpayer but still hold the applicable parties accountable for notifying customers of the requirements for purchasing a dyed product.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Danielle Boudreaux, Technical Assistance and Dispute Resolution, telephone (850)717-7082, email RuleComments@floridarevenue.com.

THE FULL TEXT OF THE EMERGENCY RULE IS:

12BER20-7 ~~12B-5.140~~ Dyeing and Marking; Mixing.

(1) Marking and Dyeing.

(a) The dyeing and marking of diesel fuel will follow the requirements of 48.4082-1, Treasury Regulations (February 26, 2002, hereby incorporated by reference in this rule), and shall conform to the Environmental Protection Agency's high sulfur diesel fuel requirements as found in 40 C.F.R. Chapter 1, s. 80.29 (January 18, 2001, hereby incorporated by reference in this rule).

(b) Persons found in violation of the marking requirements will be subject to a penalty of \$2,500 per month such failure occurs.

(c) Persons found in violation of the dyeing provisions will be subject to the penalty imposed under Section 206.872(11), F.S.

(2) Mixing.

(a) through (b) No change

(c)1. The discovery by the Department of dye in any fuel storage facility that is not properly marked for off highway or other exempt use as dyed fuel will be prima facie evidence of a violation of Section 206.8741, F.S., and subject to the penalty imposed under Section 206.8741(6) ~~206.872(11)~~, F.S.

2. Unless the misfueling incident has been previously reported, persons found in violation of the marking provisions will be subject to a penalty of \$2,500 per month such failure occurs ~~the greater of \$10 for each gallon of diesel fuel involved or \$1,000, and no refund of tax paid on the diesel fuel will be granted.~~

Rulemaking Authority 206.14(1), 206.59(1), 206.8741(1), 213.06(1) FS; s. 32, ch. 2020-10, LOF. Law Implemented 206.8741, 206.8745(3) FS; s. 15, ch. 2020-10, LOF. History—New 7-1-96, Amended 11-21-96, 5-1-06, 1-20-14.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: 7/1/20