



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: November 10, 2021
TIME: 2:37 PM

WSR 21-23-055

Agency: Department of Revenue

Title of rule and other identifying information: (describe subject) WAC 458-20-134 Commercial or industrial use.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is amending WAC 458-20-134 to incorporate 2021 legislation, Engrossed Substitute Senate Bill 5251, Section 11. This section of the legislation provides a written definition of "biofuel" to replace an outdated statutory reference

Reasons supporting proposal: Updating this rule provides clarity on the definition of "biofuel" in determining whether a sale of hog fuel used to produce biofuel qualifies for an exemption from retail sales tax.

Statutory authority for adoption: RCW 82.01.060 and RCW 82.32.300

Statute being implemented: RCW 82.08.956

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Name of proponent: (person or organization) Department of Revenue

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Leslie Mullin	6400 Linderson Way SW, Tumwater, WA	(360) 534-1589
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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The expedited rule-making process is applicable to this rule update because the Department is incorporating changes resulting from 2021 legislation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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AND RECEIVED BY (date) 1/17/22

Date: 11/10/21

Name: Atif Aziz

Title: Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 18-05-011, filed 2/8/18, effective 3/11/18)

WAC 458-20-134 Commercial or industrial use. (1) Definitions.

(a) ~~((s))~~The term ~~((s))~~"commercial or industrial use~~((s))~~" means the following uses of products, including by-products, by the same person that extracted or manufactured them:

(i) Any use as a consumer; and

(ii) The manufacturing of articles, substances, or commodities.

~~((s))~~ (RCW 82.04.130.)

(b) The term "biomass fuel" means wood waste and other wood residuals, including forest derived biomass, but does not include firewood or wood pellets. "Biomass fuel" also includes partially organic by-products of pulp, paper, and wood manufacturing processes.

(2) **Examples of commercial or industrial use.** The following are examples of commercial or industrial use:

(a) The use of lumber by the manufacturer of that lumber to build a shed for its own use.

(b) The use of a motor truck by the manufacturer of that truck as a service truck for itself.

(c) The use by a boat manufacturer of patterns, jigs, and dies which it has manufactured.

(d) The use by a contractor building or improving a publicly owned road of crushed rock or pit run gravel which it has extracted.

(3) **Business and occupation tax.** Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to tax under the manufacturing or extracting B&O tax classifications, as the case may be. The tax is measured by the value of the product manufactured or extracted and used. ~~((s))~~See WAC 458-20-112 Value of products, for ~~((definition and explanation of value of products))~~ additional information.~~((s))~~

(4) **Use tax.** Persons manufacturing or extracting tangible personal property for commercial or industrial use are subject to use tax on the value of the article~~((s))~~ used, unless a specific exemption is provided. ~~((s))~~See WAC 458-20-178 Use tax and the use of tangible personal property, for further explanation of ~~((the))~~ use tax and the definition of "value of the article used.~~((s))~~"

(5) **Exemptions.** The following uses of articles produced for commercial or industrial use are expressly exempt ~~((of))~~ from use tax.

(a) RCW 82.12.0263 exempts from the use tax the use of biomass fuel by the same person that extracted or manufactured that biomass fuel when it is used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same biomass fuel.

(b) Property produced for use in manufacturing ferrosilicon which is subsequently used to make magnesium for sale is exempt ~~((of))~~ from use tax if the primary purpose is to create a chemical reaction directly through contact with an ingredient of ferrosilicon. ~~((s))~~RCW 82.04.190(1).~~((s))~~

(c) ~~((Effective July 1, 2009,))~~ Hog fuel used to produce electricity, steam, heat, or biofuel is exempt from use tax. RCW 82.12.956. For the purposes of this exemption, "hog fuel" means wood waste and other wood residuals including forest derived biomass, but not including firewood or wood pellets. "Biofuel" ~~((has the same meaning as provided in RCW 43.325.010))~~ means a liquid or gaseous fuel derived from organic matter intended for use as a transportation fuel

including, but not limited to, biodiesel, renewable diesel, ethanol, renewable natural gas, and renewable propane.

(6) **Special provisions regarding value of article used.** RCW 82.12.010 provides the following special valuation provisions to persons manufacturing products for commercial or industrial use:

(a) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the United States Department of Defense, the value of the articles used is determined according to the value of the ingredients of those articles.

(b) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used is determined by:

~~((+))~~ (i) The retail selling price of such new or improved product when first offered for sale; or

~~((+))~~ (ii) The value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.