

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3, 421.14, and 452A.59, the Department of Revenue proposes to amend Chapter 67, “Administration,” and Chapter 68, “Motor Fuel and Undyed Special Fuel,” Iowa Administrative Code.

The proposed amendments are necessary to reflect the enactment of 2015 Iowa Acts, Senate File 257. 2015 Iowa Acts, Senate File 257, modifies the rate of excise taxes on motor fuel and special fuel, and it establishes a biodiesel distribution percentage formula. The proposed amendments also update terminology and references to the Iowa Code.

Items 1 and 2 amend rule 701—67.1(452A) by amending and adding definitions to reflect the enactment of 2015 Iowa Acts, Senate File 257.

Items 3, 6, and 8 update terminology and references to the Iowa Code.

Items 4, 5, and 7 update the excise tax rates and procedures to reflect the enactment of 2015 Iowa Acts, Senate File 257.

The Department of Revenue has identified administrative costs of \$150,000 due to the implementation of 2015 Iowa Acts, Senate File 257. These costs will be covered by existing resources.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 5, 2015, to Matt Bishop, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Alternatively, requests may be e-mailed to matt.bishop@iowa.gov. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business, or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 22, 2015. Such written comments should be e-mailed to Matt Bishop at matt.bishop@iowa.gov or mailed to Matt Bishop, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact Matt Bishop, Policy and Communications Division, Department of Revenue, at (515)725-1106 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

After analysis and review of this rule making, the Department finds that the amendments related to 2015 Iowa Acts, Senate File 257, are likely to have a positive impact on jobs. The Legislative Services Agency estimated that the rate change for motor fuel and special fuel for motor vehicles will increase deposits to the road use tax fund by about \$200 million per fiscal year from FY 2016 through FY 2020. As expressed in the Act, the General Assembly intended that a significant amount of these increased deposits will fund critical road and bridge construction projects, which will create jobs. The Legislative Services Agency also estimated that the rate change for aviation special fuel (aviation jet fuel) will increase deposits to the state aviation fund by \$790,000 per fiscal year from FY 2016 through

FY 2020. Increased deposits to the state aviation fund will create jobs by funding additional airport grants, aviation-related services, special projects, and statewide planning.

These amendments are intended to implement Iowa Code section 452A.3 as amended by 2015 Iowa Acts, Senate File 257.

The following amendments are proposed.

ITEM 1. Amend rule **701—67.1(452A)**, definitions of “Blender” and “Supplier,” as follows:

“Blender” means a person who owns and blends ~~ethanol with gasoline~~ two or more fuels, including ethanol or biodiesel, at a nonterminal location to produce ethanol blended gasoline and blends the product at a nonterminal location or biodiesel blended fuel. The person is not restricted to blending ethanol with gasoline or biodiesel with diesel. ~~Products blended with gasoline other than ethanol are taxed as gasoline.~~ “Blender” also means a person blending two or more special fuel products at a nonterminal location where the tax has not been paid on all of the products blended. The blend is taxed as a special fuel according to its fuel and alcohol content, which may result in additional tax due or an allowable refund for the blender. See rule 701—68.4(452A).

“Supplier” means a person who acquires motor fuel or special fuel by pipeline or marine vessel from a state, territory, or possession of the United States, or from a foreign country for storage at and distribution from a terminal and who is registered under 26 U.S.C. § 4101 for tax-free transactions in ~~gasoline fuel~~; a person who produces in this state or acquires by truck, railcar, or barge for storage at and distribution from a terminal, biofuel, biodiesel, alcohol, or alcohol derivative substances; or a person who produces, manufactures, or refines motor fuel or special fuel in this state. “Supplier” includes a person who does not meet the jurisdictional connection to this state but voluntarily agrees to act as a supplier for purposes of collecting and reporting the motor fuel or special fuel tax. “Supplier” does not include a retail dealer or wholesaler who merely blends alcohol with gasoline or biofuel with diesel before the sale or distribution of the product or a terminal operator who merely handles, in a terminal, motor fuel or special fuel consigned to the terminal operator.

ITEM 2. Adopt the following **new** definitions of “B-11,” “Biodiesel distribution percentage” and “Petrodiesel” in rule **701—67.1(452A)**:

“B-11” means biodiesel blended fuel formulated with a minimum percentage of 11 percent by volume of biodiesel, if the formulation meets the standards provided in Iowa Code section 214A.2. A similar notation refers to biodiesel blended fuel containing other percentages of biodiesel. For example, “B-5” means biodiesel blended fuel formulated with a minimum percentage of 5 percent by volume of biodiesel, if the formulation meets the standards provided in Iowa Code section 214A.2.

“Biodiesel distribution percentage” means the number of gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state as expressed as a percentage of the number of gallons of special fuel for diesel engines of motor vehicles distributed in this state during the determination period. The determination period is the previous calendar year.

“Petrodiesel” means petroleum-based diesel fuel. Petrodiesel contains no biodiesel.

ITEM 3. Amend rule 701—67.21(452A) as follows:

701—67.21(452A) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code sections ~~422.52(3)~~ 423.35 and 452A.66, the director has determined that the following procedures will be instituted with regard to bonds:

67.21(1) and **67.21(2)** No change.

This rule is intended to implement Iowa Code sections ~~422.52(3)~~ 423.35 and 452A.66.

ITEM 4. Amend subrule 68.2(1) as follows:

68.2(1) The following rates of tax apply to the use of fuel in operating motor vehicles and aircraft:

Gasoline	20.3¢ per gallon (for July 1, 2003, through June 30, 2004) 20.5¢ per gallon (for July 1, 2004, through June 30, 2005) 20.7¢ per gallon (for July 1, 2005, through June 30, 2006) 21¢ per gallon (for July 1, 2006, through June 30, 2007) 20.7¢ per gallon (for July 1, 2007, through June 30, 2008) 21¢ per gallon (for July 1, 2008, through June 30 <u>February 28, 2015</u>) <u>31¢ per gallon (for March 1, 2015, through June 30, 2015)</u> <u>30.8¢ per gallon (beginning July 1, 2015)</u>
LPG	20¢ per gallon
Ethanol blended gasoline	19¢ per gallon (for July 1, 2003, through June 30 <u>February 28, 2015</u>) <u>29¢ per gallon (for March 1, 2015, through June 30, 2015)</u> <u>29.3¢ per gallon (beginning July 1, 2015)</u>
E-85 gasoline	17¢ per gallon beginning (for January 1, 2006, through June 30, 2007) 19¢ per gallon (for July 1, 2007, through June 30 <u>February 28, 2015</u>) <u>29¢ per gallon (for March 1, 2015, through June 30, 2015)</u> <u>29.3¢ per gallon (beginning July 1, 2015)</u>
Aviation gasoline	8¢ per gallon (<u>beginning July 1, 1988</u>)
Special fuel (biodiesel, diesel, LNG)	22.5¢ per gallon
<u>Diesel fuel other than B-11 or higher</u>	<u>22.5¢ per gallon (on and before February 28, 2015)</u> <u>32.5¢ per gallon (beginning March 1, 2015)</u>
<u>Biodiesel blended fuel (B-11 or higher)</u>	<u>22.5¢ per gallon (on and before February 28, 2015)</u> <u>32.5¢ per gallon (for March 1, 2015, through June 30, 2015)</u> <u>29.5¢ per gallon (beginning July 1, 2015)</u>
Special fuel (aircraft) <u>Aviation jet fuel</u>	3¢ per gallon (<u>on and before February 28, 2015</u>) <u>5¢ per gallon (beginning March 1, 2015)</u>
<u>L.P.G.</u>	<u>20¢ per gallon (on and before February 28, 2015)</u> <u>30¢ per gallon (beginning March 1, 2015)</u>
<u>C.N.G.</u>	21¢ per gallon <u>16¢ per 100 cu. ft. (on and before June 30, 2014)</u> <u>21¢ per gallon (for July 1, 2014, through February 28, 2015)</u> <u>31¢ per gallon (beginning March 1, 2015)</u>
<u>L.N.G.</u>	<u>22.5¢ per gallon (on and before February 28, 2015)</u> <u>32.5¢ per gallon (beginning March 1, 2015)</u>

ITEM 5. Amend subrule 68.2(2) as follows:

68.2(2) Fuel distribution percentages.

a. Ethanol distribution percentage.

(1) Except as otherwise provided in this ~~subrule paragraph~~, ~~until June 30, 2015~~ for March 1, 2015, through June 30, 2020, this ~~subrule paragraph~~ shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the ethanol distribution percentage. The ethanol distribution percentage is the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel, excluding aviation gasoline, distributed in this state. The number of gallons of ethanol blended gasoline and motor fuel distributed in this state shall be based on the total

taxable gallons of ethanol blended gasoline and motor fuel as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

<u>Ethanol Distribution %</u>	<u>Ethanol Tax</u>	<u>Gasoline Tax</u>
00/50	19.0 <u>29.0</u>	20.0 <u>30.0</u>
50+/55	19.0 <u>29.0</u>	20.1 <u>30.1</u>
55+/60	19.0 <u>29.0</u>	20.3 <u>30.3</u>
60+/65	19.0 <u>29.0</u>	20.5 <u>30.5</u>
65+/70	19.0 <u>29.0</u>	20.7 <u>30.7</u>
70+/75	19.0 <u>29.0</u>	21.0 <u>31.0</u>
75+/80	19.3 <u>29.3</u>	20.8 <u>30.8</u>
80+/85	19.5 <u>29.5</u>	20.7 <u>30.7</u>
85+/90	19.7 <u>29.7</u>	20.4 <u>30.4</u>
90+/95	19.9 <u>29.9</u>	20.1 <u>30.1</u>
95+/100	20.0 <u>30.0</u>	20.0 <u>30.0</u>

(2) Except as otherwise provided in this ~~subrule~~ paragraph, after June 30, ~~2015~~ 2020, an excise tax of ~~20~~ 30 cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

b. Biodiesel distribution percentage.

(1) Except as otherwise provided in this paragraph, for July 1, 2015, through June 30, 2020, this paragraph shall apply to the excise tax imposed on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the biodiesel distribution percentage. The biodiesel distribution percentage is the number of gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state as expressed as a percentage of the number of gallons of special fuel for diesel engines of motor vehicles distributed in this state. The number of gallons of biodiesel blended fuel and special fuel for diesel engines of motor vehicles distributed in this state shall be based on the total taxable gallons of biodiesel blended fuel and special fuel for diesel engines of motor vehicles as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

<u>Biodiesel Distribution %</u>	<u>B-11 or Higher Tax</u>	<u>Other Than B-11 or Higher Tax</u>
<u>00/50</u>	<u>29.5</u>	<u>32.5</u>
<u>50+/55</u>	<u>29.8</u>	<u>32.5</u>
<u>55+/60</u>	<u>30.1</u>	<u>32.5</u>
<u>60+/65</u>	<u>30.4</u>	<u>32.5</u>
<u>65+/70</u>	<u>30.7</u>	<u>32.5</u>
<u>70+/75</u>	<u>31.0</u>	<u>32.5</u>
<u>75+/80</u>	<u>31.3</u>	<u>32.5</u>
<u>80+/85</u>	<u>31.6</u>	<u>32.5</u>
<u>85+/90</u>	<u>31.9</u>	<u>32.5</u>
<u>90+/95</u>	<u>32.2</u>	<u>32.5</u>
<u>95+/100</u>	<u>32.5</u>	<u>32.5</u>

(2) The determination period for the biodiesel distribution percentage is January through December each calendar year. Prior to July 1, 2015, Iowa licensees did not separately report the total taxable gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state. Accordingly, the department cannot calculate the biodiesel distribution percentage for calendar years 2014 and 2015 using the method described in subparagraph 68.2(2)“b”(1). However, the best information available to the department indicates the biodiesel distribution percentage is not greater than 50 percent for calendar years 2014 and 2015. Therefore, for the period between July 1, 2015, and June 30, 2016, and for the period between July 1, 2016, and June 30, 2017, the rates for the excise tax on special fuel for diesel engines of motor vehicles are based on a biodiesel distribution percentage of 00/50%.

(3) Except as otherwise provided in this paragraph, for the period between March 1, 2015, and June 30, 2015, and for the period after June 30, 2020, an excise tax of 32.5 cents is imposed on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state.

c. *Legislative review.* The ethanol distribution percentage, the biodiesel distribution percentage, and the corresponding excise tax rates are subject to legislative review at least every six years. The review is based upon a fuel distribution percentage formula status report, which contains the recommendations of a legislative interim committee appointed to conduct a review of the fuel distribution percentage formulas. The report is prepared with the assistance of the Iowa department of revenue and the Iowa department of transportation. The report includes recommendations for changes or revisions to the fuel distribution percentage formulas based upon advances in technology, fuel use trends, and fuel price fluctuations observed during the preceding six-year interval; an analysis of the operation of the fuel distribution percentage formulas during the preceding six-year interval; and a summary of issues that have arisen since the previous review and potential approaches for resolution of those issues. The first report will be submitted to the general assembly no later than January 1, 2020, with subsequent reports developed and submitted by January 1 at least every sixth year thereafter.

ITEM 6. Amend subrule 68.2(4), introductory paragraph, as follows:

68.2(4) The department shall determine the actual tax paid for E-85 gasoline in the previous calendar year and compare this amount to the amount that would have been paid using the tax rate imposed in Iowa Code section 452A.3, subsection 1 or ~~1A~~ 2. If the difference is less than \$25,000, the tax rate for the tax period beginning the following July 1 shall be 17¢ per gallon. If the difference is \$25,000 or more, the tax rate shall be the rate in effect pursuant to Iowa Code section 452A.3, subsection 1 or ~~1A~~ 2.

ITEM 7. Amend rule 701—68.4(452A) as follows:

701—68.4(452A) Ethanol-blended gasoline Blended fuel taxation—nonterminal location.

68.4(1) Responsibilities of all blenders at nonterminal locations. A person who blends ethanol blended gasoline or biodiesel blended fuel at a nonterminal location must obtain a blender’s license. Blending ethanol with gasoline, or blending biodiesel with petrodiesel, may result in additional tax due or an allowable refund depending on the alcohol content of the mixture and the tax paid on its components. The blender must make payment to the department for the additional tax due. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product.

EXAMPLE 1. A blender blends three parts ethanol with 17 parts gasoline to create E-15. The E-15 is taxed as ethanol blended gasoline, and the blender may be due a refund for excess tax paid on the gasoline used.

EXAMPLE 2. A blender blends one part biodiesel with four parts petrodiesel to create B-20. The B-20 is taxed as B-11 or higher, and the blender may be due a refund for excess tax paid on the petrodiesel used.

EXAMPLE 3. A blender blends one part biodiesel with 19 parts petrodiesel to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the biodiesel used.

EXAMPLE 4. A blender blends one part B-20 with five parts B-2 to create B-5. The B-5 is taxed as diesel other than B-11 or higher, and the blender may owe additional tax to the department on the B-20 used.

68.4(2) Blenders of ethanol blended gasoline.

68.4(1) a. Blenders A blender who own owns the alcohol (supplier) being used to blend with gasoline must purchase the gasoline from a supplier and pay the appropriate tax to the supplier (~~20¢ per gallon~~). The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of this subrule and subrules 68.4(2) and 68.4(3) the following example, the tax rate for gasoline is presumed to be ~~20¢~~ 30¢ per gallon and the tax rate for ethanol blended gasoline is presumed to be ~~19¢~~ 29¢ per gallon. The actual tax rate rates for the appropriate period is are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline ($7,200 \times .20.30$) =	\$1,440.00	<u>\$2,160.00</u>
Blender adds 800 gallons untaxed alcohol		\$.00
Total tax paid on products	\$1,440.00	<u>\$2,160.00</u>
Total tax due on 8,000 gallons <u>ethanol</u> blended product gasoline ($8,000 \times .19.29$) =	\$1,520.00	<u>\$2,320.00</u>
Additional Amount Due	\$ 80.00	<u>\$160.00</u>

68.4(2) b. Blenders A blender who purchase purchases alcohol and gasoline from a supplier must pay tax of ~~\$.19 per gallon~~ on both the alcohol purchased and ~~\$.20 per gallon~~ on the gasoline purchased. The blender must obtain a refund permit to receive a refund of the overpayment of tax on the blended product. For purposes of the following example, the tax rate for gasoline is presumed to be 30¢ per gallon and the tax rate for ethanol blended gasoline is presumed to be 29¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE:

Blender purchases 7,200 gallons tax-paid gasoline ($7,200 \times .20.30$) =	\$1,440.00	<u>\$2,160.00</u>
Blender purchases 800 gallons tax-paid alcohol ($800 \times .19.29$) =	152.00	<u>\$232.00</u>
Total tax paid on products	\$1,592.00	<u>\$2,392.00</u>
Total tax due on 8,000 gallons <u>ethanol</u> blended product gasoline ($8,000 \times .19.29$) =	\$1,520.00	<u>\$2,320.00</u>
Amount of Refund Allowable		<u>\$72.00</u>

68.4(3) c. Ethanol blended gasoline—blending errors. ~~For periods beginning July 1, 1978, to June 30, 2000.~~

Where a blending errors occur error occurs and an insufficient amount of alcohol has been blended with ~~motor fuel~~ gasoline so that the mixture fails to qualify as ethanol blended gasoline as defined in Iowa Code section ~~452A.2(6)~~ 452A.2, the tax shall be determined as follows:

a. (1) If the amount of the alcohol blended with ~~motor fuel~~ gasoline is short by five gallons or less per blend and the alcohol blended with the gasoline is short by 1.01 percent or less of such mixture, the alcohol and ~~motor fuel~~ gasoline blended product is ~~to be~~ considered ethanol blended gasoline and there ~~will be~~ is no penalty or assessment of additional tax.

b. (2) If the alcohol and ~~motor fuel~~ gasoline mixture is short of alcohol by more than five gallons but the alcohol blended with the ~~motor fuels~~ gasoline is short by 1.01 percent or less of such mixture, the motor fuel must be divided for tax purposes into ethanol blended gasoline and ~~motor fuel~~ gasoline containing no alcohol as follows.

That portion of alcohol must be added to ~~motor fuel~~ gasoline on the basis of one part alcohol to nine parts ~~motor fuel~~ gasoline to determine the portion which is considered ethanol blended gasoline and to

have a tax status as such. The portions of ~~motor fuel gasoline~~ remaining are to be considered taxable ~~motor fuel gasoline~~ subject to tax at the prevailing rate.

e. (3) If the amount of alcohol blended with ~~motor fuel gasoline~~ is short by more than 1.01 percent of the total blend, the total blend of ~~motor fuel gasoline~~ and alcohol is subject to tax as ~~motor fuel gasoline~~ at the prevailing rate of tax.

(4) The following ~~formula will be~~ formulas are used to compute blending errors:

$$\text{Actual gasoline} + \text{actual alcohol} = \text{total gallons of blended product}$$

$$\text{Motor fuel} \text{ Actual gasoline} \div 9 = \text{required alcohol}$$

$$\text{Actual alcohol} \times 9 = \text{required gasoline}$$

$$\text{Misblended ethanol Total gallons of blended gasoline product} \times .0101 = \text{gallons of alcohol tolerance}$$

$$\text{Required alcohol} - \text{actual alcohol} = \text{gallons short of alcohol}$$

$$\text{Required alcohol} - \text{actual alcohol is less than or equal to gallons of alcohol short}$$

$$\text{Actual alcohol} \times 9 = \text{motor fuel portion of ethanol blended gasoline}$$

$$\text{Motor fuel portion of ethanol blended gasoline} + \text{actual alcohol} = \text{ethanol blended gasoline}$$

$$\text{Actual motor fuel} - \text{motor fuel portion of ethanol blended gasoline} = \text{motor fuel}$$

(5) If the gallons short of alcohol is less than or equal to the alcohol tolerance, subparagraph (1) or (2) of this paragraph applies. If the gallons short of alcohol is more than the alcohol tolerance, subparagraph (3) of this paragraph applies.

(6) Examples. The following factors are assumed for all examples:

Figures are rounded to the nearest whole gallons gallon; ethanol blended gasoline is taxed at ~~\$.19~~ \$.29 per gallon; ~~motor fuel gasoline~~ is taxed at ~~\$.20~~ \$.30 per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1.

<u>Total blended product</u>	=	<u>8,884 gal.</u>
<u>Actual gasoline</u>	=	<u>8,000 gal.</u>
<u>Actual alcohol</u>	=	<u>884 gal.</u>
<u>8,000 ÷ 9</u>	=	<u>889 gal. required alcohol</u>
<u>8,884 × .0101</u>	=	<u>90 gal. alcohol tolerance</u>
<u>889 - 884</u>	=	<u>5 gal. short of alcohol</u>

The gallons short of alcohol is five gallons or less, and the gallons short of alcohol (5) is less than the gallons of alcohol tolerance (90). Thus, the tax is applied according to subparagraph 68.4(2) "c"(1) as follows:

$$\text{8,884 gal. of blended product} \times \text{\$.29} = \text{\$2,576.36 tax on ethanol blended gasoline}$$

EXAMPLE 2.

<u>Total blended product</u>	=	<u>439 gal.</u>
<u>Actual gasoline</u>	=	<u>400 gal.</u>
<u>Actual alcohol</u>	=	<u>39 gal.</u>
<u>400 ÷ 9</u>	=	<u>44 gal. required alcohol</u>
<u>439 × .0101</u>	=	<u>4 gal. alcohol tolerance</u>
<u>44 - 39</u>	=	<u>5 gal. short of alcohol</u>

The gallons short of alcohol is five gallons or less, but the gallons short of alcohol (5) is greater than the gallons of alcohol tolerance (4). Thus, the tax is applied according to subparagraph 68.4(2) "c"(3) as follows:

$$\underline{439 \text{ gal. of blended product}} \times \underline{\$.30} = \underline{\$131.70 \text{ tax on gasoline}}$$

EXAMPLE 1. 3.

<u>Total blended product</u>	=	<u>8,800 gal.</u>
Motor fuel <u>Actual gasoline</u>	=	8,000 gal.
Alcohol <u>Actual alcohol</u>	=	800 gal.
8,000 ÷ 9	=	889 gal. required alcohol
8,800 × .0101	=	89 gal. alcohol tolerance
889 – 800	=	89 gal. short of alcohol

~~89~~ The gallons short of alcohol (89) is equal to ~~89~~ the gallons of alcohol tolerance (89), which means that the tax is applied according to ~~paragraph "b" above~~ subparagraph 68.4(2) "c"(2) as follows:

800 × 9	=	7,200 gal. motor fuel <u>gasoline</u> portion of ethanol blended gasoline
7,200 + 800	=	8,000 gal. of ethanol blended gasoline
8,000 <u>8,800 – 7,200</u> 8,000	=	800 gal. of motor fuel <u>gasoline</u> subject to tax
8,000 gal. of alcohol <u>ethanol</u> blended gasoline × \$.19 <u>\$.29</u>	=	\$1520 <u>\$2,320</u> tax on ethanol blended gasoline
800 gal. of motor fuel <u>gasoline</u> × \$.20 <u>\$.30</u>	=	\$160 <u>\$240</u> tax on gasoline
TOTAL		\$1680 <u>\$2,560</u> (\$1520 <u>\$2,320</u> + \$160 <u>\$240</u>)

EXAMPLE 2. 4.

<u>Total blended product</u>	=	<u>8,795 gal.</u>
Motor fuel <u>Actual gasoline</u>	=	8,000 gal.
Alcohol <u>Actual alcohol</u>	=	795 gal.
8,000 ÷ 9	=	889 gal. required alcohol
8,795 × .0101	=	89 gal. alcohol tolerance
889 – 795	=	94 gal. short of alcohol

~~94~~ The gallons short of alcohol (94) is greater than ~~89~~ the gallons of alcohol tolerance (89), which means that the entire blend is considered ~~motor fuel~~ gasoline and the tax is applied according to ~~paragraph "e" above~~ subparagraph 68.4(2) "c"(3) as follows:

$$8,795 \times \underline{\$.20 \$.30} = \underline{\$1759.00 \$2,638.50}$$

EXAMPLE 3.

Motor fuel	=	8,000 gal.
Alcohol	=	885 gal.
$8,000 \div 9$	=	889 gal. required alcohol
$889 \text{ gal.} - 885 \text{ gal.}$	=	4 gal. short of alcohol

This total blend is considered ethanol blended gasoline because the blend is short by less than 5 gallons. The tax would be as follows:

$$8,885 \text{ gal.} \times \$.19 = \$1688.15$$

68.4(3) Blenders of biodiesel blended fuel.

a. A blender who owns the biodiesel (supplier) being used to blend with diesel must purchase the diesel from a supplier and pay the appropriate tax to the supplier. The blender must obtain a blender's license and compute the tax due on the total gallons of blended product and make payment to the department for the additional amount due. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be 29¢ per gallon and the tax rate for diesel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE 1.

<u>Blender purchases 7,120 gallons tax-paid petrodiesel (7,120 × .325) =</u>	<u>\$2,314.00</u>
<u>Blender adds 880 gallons untaxed biodiesel =</u>	<u>\$.00</u>
<u>Total tax paid on products =</u>	<u>\$2,314.00</u>

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

<u>Total tax due on 8,000 gallons blended B-11 or higher (8,000 × .29) =</u>	<u>\$2,320.00</u>
<u>Additional Amount Due =</u>	<u>\$6.00</u>

EXAMPLE 2.

<u>Blender purchases 7,600 gallons tax-paid petrodiesel (7,600 × .325) =</u>	<u>\$2,470.00</u>
<u>Blender adds 400 gallons untaxed biodiesel =</u>	<u>\$.00</u>
<u>Total tax paid on products =</u>	<u>\$2,470.00</u>

The blended product is 8,000 gallons of diesel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

<u>Total tax due on 8,000 gallons diesel other than B-11 or higher (8,000 × .325) =</u>	<u>\$2,600.00</u>
<u>Additional Amount Due =</u>	<u>\$130.00</u>

EXAMPLE 3.

<u>Blender purchases 7,750 gallons tax-paid B-2 (7,750 × .325) =</u>	<u>\$2,518.75</u>
<u>Blender adds 250 gallons untaxed biodiesel =</u>	<u>\$.00</u>
<u>Total tax paid on products =</u>	<u>\$2,518.75</u>

7,750 gallons of B-2 contains 155 gallons (2%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 405 gallons (155 + 250, or 5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

<u>Total tax due on 8,000 gallons diesel other than B-11 or higher (8,000 × .325) =</u>	<u>\$2,600.00</u>
<u>Additional Amount Due =</u>	<u>\$81.25</u>

b. A blender who purchases diesel products from a supplier must pay the appropriate tax on all diesel products purchased. The blender must obtain a blender’s license and compute the tax due on the total gallons of blended product and make payment to the department for any additional amount due. The blender must also obtain a refund permit to receive a refund of any overpayment of tax on the blended product. For purposes of the following examples, the tax rate for B-11 or higher is presumed to be 29¢ per gallon and the tax rate for diesel fuel other than B-11 or higher is presumed to be 32.5¢ per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1).

EXAMPLE 1.

<u>Blender purchases 7,120 gallons tax-paid petrodiesel (7,120 × .325) =</u>	<u>\$2,314.00</u>
<u>Blender purchases 880 gallons tax-paid biodiesel (880 × .29) =</u>	<u>\$255.20</u>
<u>Total tax paid on products =</u>	<u>\$2,569.20</u>

The blended product is 8,000 gallons of diesel, which includes 880 gallons (11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

<u>Total tax due on 8,000 gallons blended B-11 or higher (8,000 × .29) =</u>	<u>\$2,320.00</u>
<u>Amount of Refund Allowable =</u>	<u>\$249.20</u>

EXAMPLE 2.

<u>Blender purchases 7,600 gallons tax-paid petrodiesel (7,600 × .325) =</u>	<u>\$2,470.00</u>
<u>Blender purchases 400 gallons tax-paid biodiesel (400 × .29) =</u>	<u>\$116.00</u>
<u>Total tax paid on products =</u>	<u>\$2,586.00</u>

The blended product is 8,000 gallons of biodiesel blended fuel, which includes 400 gallons (5% by volume) of biodiesel. Thus, the product is taxed as diesel other than B-11 or higher.

<u>Total tax due on 8,000 gallons blended B-5 (8,000 × .325) =</u>	<u>\$2,600.00</u>
<u>Additional Amount Due =</u>	<u>\$14.00</u>

EXAMPLE 3.

<u>Blender purchases 4,000 gallons tax-paid B-2 (4,000 × .325) =</u>	<u>\$1,300.00</u>
<u>Blender purchases 4,000 gallons tax-paid B-20 (4,000 × .29) =</u>	<u>\$1,160.00</u>
<u>Total tax paid on products =</u>	<u>\$2,460.00</u>

4,000 gallons of B-2 contains 80 gallons (2%) of biodiesel, and 4,000 gallons of B-20 contains 800 gallons (20%) of biodiesel. The blended product is 8,000 gallons of diesel, which includes 880 gallons (80 + 800, or 11% by volume) of biodiesel. Thus, the product is taxed as B-11 or higher.

<u>Total tax due on 8,000 gallons B-11 or higher (8,000 × .29) =</u>	<u>\$2,320.00</u>
<u>Amount of Refund Allowable =</u>	<u>\$140.00</u>

c. Blending errors. Where a blending error occurs and an insufficient amount of biodiesel has been blended so that the mixture fails to qualify as B-11 or higher as defined in rule 701—67.1(452A), the tax shall be determined as described in this subparagraph:

(1) If the amount of the biodiesel in the mixture is short by five gallons or less per blend and the amount of biodiesel is short by 1.01 percent or less of such mixture, the mixture is considered B-11 or higher and there is no penalty or assessment of additional tax.

(2) If the amount of biodiesel in the mixture is short by more than five gallons but the amount of biodiesel is short by 1.01 percent or less of such mixture, the mixture must be divided for tax purposes into B-11 or higher and diesel other than B-11 or higher as follows.

That portion of biodiesel must be added on the basis of 11 parts biodiesel to 89 parts petrodiesel to determine the portion which is considered B-11 and to have a tax status as such. The portions of petrodiesel remaining are considered taxable diesel other than B-11 or higher and subject to tax at the prevailing rate.

(3) If the amount of biodiesel blended in the mixture is short by more than 1.01 percent of the total blend, the entire mixture is considered taxable diesel other than B-11 or higher and subject to tax at the prevailing rate.

(4) The following formulas are used to compute blending errors:

Actual biodiesel + actual petrodiesel = total gallons of blended product

(Actual biodiesel × 89) ÷ 11 = required petrodiesel

(Actual petrodiesel × 11) ÷ 89 = required biodiesel

Total gallons of blended product × .0101 = gallons of biodiesel tolerance

Required biodiesel – actual biodiesel = gallons short of biodiesel

(5) If the gallons short of biodiesel is less than or equal to the biodiesel tolerance, subparagraph (1) or (2) of this paragraph applies. If the gallons short of biodiesel is more than the biodiesel tolerance, subparagraph (3) of this paragraph applies.

(6) Examples. The following factors are assumed for all examples:

Figures are rounded to the nearest whole gallon; B-11 or higher is taxed at \$.29 per gallon; diesel other than B-11 or higher is taxed at \$.325 per gallon. The actual tax rates for the appropriate period are shown in subrule 68.2(1). Penalty and interest charges are not computed in the examples.

EXAMPLE 1.

<u>Total blended product</u>	<u>≡</u>	<u>8,984 gal.</u>
<u>Actual petrodiesel</u>	<u>≡</u>	<u>8,000 gal.</u>
<u>Actual biodiesel</u>	<u>≡</u>	<u>984 gal.</u>
<u>(8,000 × 11) ÷ 89</u>	<u>≡</u>	<u>989 gal. required biodiesel</u>
<u>8,984 × .0101</u>	<u>≡</u>	<u>91 gal. biodiesel tolerance</u>
<u>989 – 984</u>	<u>≡</u>	<u>5 gal. short of biodiesel</u>

The gallons short of biodiesel is five gallons or less, and the gallons short of biodiesel (5) is less than the gallons of biodiesel tolerance (91). Thus, the tax is applied according to subparagraph 68.4(3) “c”(1) as follows:

$$\underline{8,984 \text{ gal. of B-11} \times \$.29} \quad \underline{=} \quad \underline{\$2,605.36 \text{ tax on the blended product}}$$

EXAMPLE 2.

<u>Total blended product</u>	=	<u>444 gal.</u>
<u>Actual petrodiesel</u>	=	<u>400 gal.</u>
<u>Actual biodiesel</u>	=	<u>44 gal.</u>
<u>(400 × 11) ÷ 89</u>	=	<u>49 gal. required biodiesel</u>
<u>444 × .0101</u>	=	<u>4 gal. biodiesel tolerance</u>
<u>49 – 44</u>	=	<u>5 gal. short of biodiesel</u>

The gallons short of biodiesel is five gallons or less, but the gallons short of biodiesel (5) is greater than the gallons of biodiesel tolerance (4). Thus, the tax is applied according to subparagraph 68.4(3) "c"(3) as follows:

$$\frac{444 \text{ gal. of diesel other than B-11 or higher} \times \$.325}{\$144.30 \text{ tax on the blended product}}$$

EXAMPLE 3.

<u>Total blended product</u>	=	<u>8,899 gal.</u>
<u>Actual petrodiesel</u>	=	<u>8,000 gal.</u>
<u>Actual biodiesel</u>	=	<u>899 gal.</u>
<u>(8,000 × 11) ÷ 89</u>	=	<u>989 gal. required biodiesel</u>
<u>8,899 × .0101</u>	=	<u>90 gal. biodiesel tolerance</u>
<u>989 – 899</u>	=	<u>90 gal. short of biodiesel</u>

The gallons short of biodiesel (90) is equal to the gallons of biodiesel tolerance (90), which means that the tax is applied according to subparagraph 68.4(3) "c"(2) as follows:

<u>(899 × 89) ÷ 11</u>	=	<u>7,274 gal. petrodiesel portion of B-11</u>
<u>7,274 + 899</u>	=	<u>8,173 gal. of B-11</u>
<u>8,899 – 8,173</u>	=	<u>726 gal. of petrodiesel</u>
<u>8,173 gal. of B-11 × \$.29</u>	=	<u>\$2,370.17 tax on B-11 or higher</u>
<u>726 gal. of petrodiesel × \$.325</u>	=	<u>\$235.95 tax on diesel other than B-11 or higher</u>
<u>TOTAL</u>	=	<u>\$2,606.12 (\$2,370.17 + \$235.95)</u>

EXAMPLE 4.

<u>Total blended product</u>	=	<u>8,894 gal.</u>
<u>Actual petrodiesel</u>	=	<u>8,000 gal.</u>
<u>Actual biodiesel</u>	=	<u>894 gal.</u>
<u>(8,000 × 11) ÷ 89</u>	=	<u>989 gal. required biodiesel</u>
<u>8,894 × .0101</u>	=	<u>90 gal. biodiesel tolerance</u>
<u>989 – 894</u>	=	<u>95 gal. short of biodiesel</u>

The gallons short of biodiesel (95) is greater than the gallons of biodiesel tolerance (90), which means that the entire mixture is considered diesel other than B-11 or higher and the tax is applied according to subparagraph 68.4(3) "c"(3) as follows:

$$8,894 \times \$.325 = \$2,890.55$$

EXAMPLE 5.

<u>Total blended product</u>	=	<u>9,000 gal.</u>
<u>B-2 used</u>	=	<u>5,000 gal.</u>
<u>B-20 used</u>	=	<u>4,000 gal.</u>

5,000 gallons of B-2 contains 100 gallons (2%) of biodiesel, and 4,000 gallons of B-20 contains 800 gallons (20%) of biodiesel. Thus, the blended product includes 900 gallons (100 + 800) of biodiesel and 8,100 gallons (9,000 – 900) of petrodiesel.

<u>Actual petrodiesel</u>	=	<u>8,100 gal.</u>
<u>Actual biodiesel</u>	=	<u>900 gal.</u>
<u>(8,100 × 11) ÷ 89</u>	=	<u>1,001 gal. required biodiesel</u>
<u>9,000 × .0101</u>	=	<u>91 gal. biodiesel tolerance</u>
<u>1,001 – 900</u>	=	<u>101 gal. short of biodiesel</u>

The gallons short of biodiesel (101) is greater than the gallons of biodiesel tolerance (91), which means that the entire blend is considered diesel other than B-11 or higher and the tax is applied according to subparagraph 68.4(3)“c”(3) as follows:

$$\underline{9,000 \times \$.325} \quad = \quad \underline{\$2,925.00}$$

This rule is intended to implement Iowa Code section 452A.8 as amended by ~~1995 Iowa Acts, chapter 155~~ 2015 Iowa Acts, Senate File 257.

ITEM 8. Amend rule 701—68.13(452A) as follows:

701—68.13(452A) Reduction of refund—sales and use tax. Under Iowa Code section ~~422.45(11)~~ ~~423.3(56)~~, the ~~gross receipts~~ sales price from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid, and no refund has been or will be allowed, ~~are~~ is exempt from Iowa sales and use tax. Therefore, unless the fuel is used for some other exempt purpose under Iowa Code section ~~422.42(3) or 422.45~~ ~~423.3~~ (e.g., used for processing, used for agricultural purposes, used by an exempt government entity, used by a private nonprofit educational institution), or the fuel is lost through a casualty, the refund of taxes on motor fuel or special fuel will be reduced by the applicable sales and use tax. See sales tax rule 701—18.37(422,423). The ~~sale base~~ sales price upon which the sales and use tax will be applied shall include all federal excise taxes, but will not include the Iowa motor vehicle fuel tax. *W. M. Gurley v. Army Rhoden*, 421 U.S. 200, 44 L.Ed. 110, 95 S.Ct. 1605 (1975).

This rule is intended to implement Iowa Code section 452A.17 as amended by ~~1995 Iowa Acts, chapter 155~~.