

701—10.71 (452A) Penalty and enforcement provisions.**10.71(1) *Illegal use of dyed fuel.***

a. The illegal use of dyed fuel in the supply tank of a motor vehicle shall result in a civil penalty assessed against the owner or operator of the motor vehicle as follows:

- (1) A \$500 penalty for the first violation.
- (2) A \$1,000 penalty for a second violation within three years of the first violation.
- (3) A \$2,000 penalty for third and subsequent violations within three years of the first violation.

b. For the purposes of this subrule, if multiple vehicles are discovered to be in violation of this subrule during one inspection, each vehicle is considered a separate first violation. For example, if three vehicles are discovered to be in violation during one inspection, the result is three \$500 penalties or \$1,500. On the other hand, if three vehicles owned by the same taxpayer are discovered to be in violation during three separate inspections, the first inspection would result in a \$500 penalty, the second inspection would result in a \$1,000 penalty, and the third inspection would result in a \$2,000 penalty. If one vehicle is discovered to be in violation during the first inspection, resulting in a \$500 penalty, but two vehicles are discovered to be in violation in a second inspection, the result of the second inspection would be two \$1,000 penalties, or \$2,000 total.

10.71(2) *Illegal importation of untaxed fuel.* A person who illegally imports motor fuel or undyed special fuel without a valid importer's license or supplier's license shall be assessed a civil penalty as stated below. However, the owner or operator of the importing vehicle shall not be guilty of violating the illegal import provision if it is shown by the owner or operator that the owner or operator reasonably did not know or reasonably should not have known of the illegal importation.

a. For a first violation, the importing vehicle shall be detained and a penalty of \$4,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable for payment of the penalty.

b. For a second violation, the importing vehicle shall be detained and a penalty of \$10,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the penalty.

c. For third and subsequent violations, the importing vehicle and the fuel shall be seized and a penalty of \$20,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the penalty.

d. If the owner or operator of the importing vehicle or the owner of the fuel fails to pay the tax and penalty for a first or second offense, the importing vehicle and the fuel may be seized. The Iowa department of revenue, the Iowa department of transportation, or any peace officer, at the request of either department, may seize the vehicle and the fuel.

e. If the operator or owner of the importing vehicle or the owner of the fuel moves the vehicle or the fuel after the vehicle has been detained and a sticker has been placed on the vehicle stating that "this vehicle cannot be moved until the tax, penalty, and interest have been paid to the department of revenue," an additional penalty of \$10,000 shall be assessed against the operator or owner of the importing vehicle or the owner of the fuel.

10.71(3) *Improper receipt of fuel credit or refund.* If a person files an incorrect refund claim, in addition to the amount of the excess claim, a penalty of 10 percent shall be added to the amount by which the amount claimed and refunded exceeds the amount actually due and shall be paid to the department. If a person knowingly files a fraudulent refund claim with the intent to evade the tax, the penalty shall be 75 percent in lieu of the 10 percent. The person shall also pay interest on the excess refunded at the rate per month specified in Iowa Code section 421.7, counting each fraction of a month as an entire month, computed from the date the refund was issued to the date the excess refund is repaid to the state.

10.71(4) *Illegal heating of fuel.* The deliberate heating of taxable motor fuel or special fuel by dealers prior to consumer sale is a simple misdemeanor.

10.71(5) *Prevention of inspection.* The Iowa department of revenue or the Iowa department of transportation may conduct inspections for coloration, markers, and shipping papers at any place where

taxable fuel is or may be loaded into transport vehicles, produced, or stored. Any attempts by a person to prevent, stop, or delay an inspection of fuel or shipping papers by authorized personnel shall be subject to a civil penalty of not more than \$2,000 per occurrence. Any law enforcement officer requested by the Iowa department of revenue or Iowa department of transportation may physically inspect, examine, or otherwise search any tank, fuel supply tank of a vehicle, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel.

10.71(6) *Failure to conspicuously label a fuel pump.* A retailer who does not conspicuously label a pump or other delivery facility as required by the Internal Revenue Service, that dispenses dyed diesel fuel so as to notify customers that it contains dyed fuel, shall pay to the department of revenue a penalty of \$100 per occurrence.

10.71(7) *False or fraudulent return.* Any person, including an officer of a corporation or a manager of a limited liability company, who is required to make, render, sign, or verify any report or return required by this chapter and who makes a false or fraudulent report, or who fails to file a report or return with the intent to evade the tax, shall be guilty of a fraudulent practice. Any person who aids, abets, or assists another person in making any false or fraudulent return or false statement in any return with the intent to evade payment of tax shall be guilty of a fraudulent practice.

10.71(8) *Violation of a distributor's and dealer's right to blend conventional blendstock for oxygenate blending, gasoline, or diesel fuel and biofuel.* A refiner, supplier, terminal operator, or terminal owner, as defined in Iowa Code section 452A.2, who violates a distributor's or dealer's right to blend conventional blendstock for oxygenate blending, gasoline, or diesel fuel and biofuel, as described in Iowa Code section 452A.6A, is subject to a civil penalty.

a. Suspected violations should be reported to the motor fuel examination section of the department. Supporting documentation should be provided.

b. The department will investigate to determine whether a violation has occurred.

c. If the department determines that a violation has occurred, a civil penalty of \$10,000 per violation will be assessed against the violator. Each day that a violation continues is a separate violation.

For more information on the blending rights of distributors and dealers, see 701—68.19(452A).

This rule is intended to implement Iowa Code sections 452A.2, 452A.6A and 452A.74A.