TAXABLE FUEL

SOURCE: T.D. 8421, 57 FR 32424, July 22, 1992, unless otherwise noted.

§48.4081-1 Taxable fuel; definitions.

(a) *Overview.* This section provides definitions for purposes of the tax on taxable fuel imposed by section 4081.

(b) *Definitions.*

Approved terminal or refinery means a terminal or refinery that is operated, respectively, by a taxable fuel registrant that is a terminal operator, or by a taxable fuel registrant that is a refiner.

Aviation gasoline means all special grades of gasoline that are suitable for use in aviation reciprocating engines and covered by ASTM specification D 910 or military specification MIL-G-5572. For availability of ASTM and military specifications, see paragraph (d) of this section.

Blender means any person that produces blended taxable fuel.

Bulk transfer means any transfer of taxable fuel by pipeline or vessel.

Bulk transfer/terminal system means the taxable fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Thus, taxable fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Taxable fuel in the fuel supply tank of any engine, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

Bus means automobile bus.

Diesel-powered bus means any bus that is propelled by a diesel-powered engine.

Diesel-powered highway vehicle means a highway vehicle, as defined in §48.4061(a)-1(d), that is propelled by a diesel-powered engine.

Diesel-powered train means any diesel-powered equipment or machinery that rides on rails. Thus, for example, the term includes a locomotive, work train, switching engine, and track maintenance machine.

Enterer generally means the importer of record (under customs law) with respect to the taxable fuel, except that—

(1) If the importer of record is a customs broker engaged by the owner of the taxable fuel, the person for whom the broker is acting is the enterer; and

(2) If there is no importer of record for taxable fuel entered into the United States, the owner of the taxable fuel at the time it is brought into the United States is the enterer.

Entry of taxable fuel into the United States occurs when—

(1) The taxable fuel is brought into the United States and applicable customs law requires that the taxable fuel be entered into the United States for consumption, use, or warehousing; or

(2) The taxable fuel is brought into the United States from Puerto Rico and applicable customs law would require that the taxable fuel be entered into the United States for consumption, use, or warehousing if the taxable fuel were brought into the United States from somewhere other than Puerto Rico.

Excluded liquid means any liquid that—

(1) Contains less than four percent normal paraffins; or

(2) Has a—

(i) Distillation range of 125 °F. or less;

(ii) Sulfur content of 10 ppm or less; and

(iii) Minimum color of +27 Saybolt.

Finished gasoline means all products (including gasohol (as defined in §48.4081-6(b)(2))) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel, other than products that have an ASTM octane number of less than 75 as determined by the motor method.

Gasoline means finished gasoline and gasoline blendstocks.

Industrial user means any person that receives gasoline blendstocks by bulk transfer for its own use in the manufacture of any product other than finished gasoline.

Kerosene means any liquid that meets the specifications for kerosene or would meet those specifications but for the presence in the liquid of a dye of the type described in §48.4082-1(b). A liquid meets the specifications for kerosene if it is one of the two grades of kerosene (No. 1-K and No. 2-K) covered by ASTM specification D 3699, or kerosene-type jet fuel covered by ASTM specification D 1655 or military specification MIL-DTL-5624T (Grade JP-5) or MIL-DTL-83133E (Grade JP-8). For availability of ASTM and military specifications, see paragraph (d) of this section. However, the term does not include *excluded liquid.*

Position holder means, with respect to taxable fuel in a terminal, the person that holds the inventory position in the taxable fuel, as reflected on the records of the terminal operator. A person holds the inventory position in taxable fuel when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the taxable fuel. The term also includes a terminal operator that owns taxable fuel in its terminal.

Rack means a mechanism capable of delivering taxable fuel into a means of transport other than a pipeline or vessel.

Refiner means any person that owns, operates, or otherwise controls a refinery.

Refinery means a facility used to produce taxable fuel and from which taxable fuel may be removed by pipeline, by vessel, or at a rack. However, the term does not include a facility where only blended fuel or gasohol (as defined in §48.4081-6(b)(2)), and no other type of taxable fuel, is produced. For this purpose blended fuel is any mixture that, if produced outside the bulk transfer/terminal system, would be blended taxable fuel.

Removal means any physical transfer of taxable fuel, and any use of taxable fuel other than as a material in the production of taxable fuel or special fuels. However, taxable fuel is not removed when it evaporates or is otherwise lost or destroyed.

Sale means—

(1) The transfer of title to, or substantial incidents of ownership in, taxable fuel (other than taxable fuel in a terminal) to the buyer for a consideration, which may consist of money, services, or other property; or

(2) The transfer of the inventory position in the taxable fuel in a terminal if the transferee becomes the position holder with respect to the taxable fuel.

State includes any State, any political subdivision of a State, the District of Columbia, the American Red Cross, and, to the extent provided by section 7871, any Indian tribal government.

Taxable fuel means gasoline, diesel fuel, and kerosene.

Taxable fuel registrant means an enterer, industrial user, refiner, terminal operator, or throughputter that is registered as such under section 4101.

Terminal means a taxable fuel storage and distribution facility that is supplied by pipeline or vessel and from which taxable fuel may be removed at a rack. However, the term does not include any facility at which gasoline blendstocks are used in the manufacture of products other than finished gasoline and from which no gasoline is removed. Also, effective January 2, 1998, the term does not include any facility where finished gasoline, undyed diesel fuel, or undyed kerosene is stored if the facility is operated by a taxable fuel registrant and all such taxable fuel stored at the facility has been previously taxed under section 4081 upon removal from a refinery or terminal.

Terminal operator means any person that owns, operates, or otherwise controls a terminal.

Throughputter means any person that—

(1) Owns taxable fuel within the bulk transfer/terminal system (other than in a terminal); or

(2) Is a position holder.

Vessel means a waterborne taxable fuel transporting vessel.

(c) *Blended taxable fuel, diesel fuel, and gasoline blendstocks; definitions*—(1) *Blended taxable fuel*—(i) *In general.* Except as provided in paragraphs (c)(1)(ii) and (c)(1)(iii) of this section, *blended taxable fuel* means any taxable fuel that is produced outside the bulk transfer/terminal system by mixing—

(A) Taxable fuel with respect to which tax has been imposed under section 4041(a)(1) or 4081(a) (other than taxable fuel for which a credit or payment has been allowed); and

(B) Any other liquid on which tax has not been imposed under section 4081.

(ii) *Exclusion; minor blending.* A mixture described in paragraph (c)(1)(i) of this section is not blended taxable fuel if, during the calendar quarter in which the blender removes or sells the mixture, all such mixtures removed or sold by the blender contain, in the aggregate, less than 400 gallons of liquid described in paragraph (c)(1)(i)(B) of this section.

(iii) *Exclusion; gasohol.* Blended taxable fuel does not include any gasohol (as defined in §48.4081-6(b)(2)) if, disregarding the alcohol, the gasohol is not blended taxable fuel and contains, in addition to permitted amounts of liquids described in paragraph (c)(1)(i)(B) of this section, only gasoline with respect to which—

(A) Tax was imposed under section 4081(a) at a rate described in §48.4081-6(e) (relating to the gasohol production tax rate and the gasohol tax rate); or

(B) A valid claim is made under section 6427(f).

(2) *Diesel fuel*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, *diesel fuel* means any liquid that, without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle or diesel-powered train. A liquid is suitable for this use if the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train. A liquid may possess this practical and commercial fitness even though the specified use is not the liquid's predominant use. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train.

(ii) *Exclusion. Diesel fuel* does not include gasoline, kerosene, excluded liquid, No. 5 and No. 6 fuel oils covered by ASTM specification D 396, or F-76 (Fuel Naval Distillate) covered by military

specification MIL-F-16884. For availability of ASTM and military specifications, see paragraph (d) of this section.

(3) *Gasoline blendstocks*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, *gasoline blendstocks* means—

(A) Alkylate;

(B) Butane;

(C) Butene;

(D) Catalytically cracked gasoline;

(E) Coker gasoline;

(F) Ethyl tertiary butyl ether (ETBE);

(G) Hexane;

(H) Hydrocrackate;

(I) Isomerate;

(J) Methyl tertiary butyl ether (MTBE);

(K) Mixed xylene (not including any separated isomer of xylene);

(L) Natural gasoline;

(M) Pentane;

(N) Pentane mixture;

(O) Polymer gasoline;

(P) Raffinate;

(Q) Reformate;

(R) Straight-run gasoline;

(S) Straight-run naphtha;

(T) Tertiary amyl methyl ether (TAME);

(U) Tertiary butyl alcohol (gasoline grade) (TBA);

(V) Thermally cracked gasoline;

(W) Toluene; and

(X) Transmix containing gasoline.

(ii) *Exclusion. Gasoline blendstocks* does not include any product that cannot, without further processing, be used in the production of finished gasoline. For example, a mixed hydrocarbon stream that is produced in a natural gas processing plant is not a gasoline blendstock if the stream cannot be used to produce finished gasoline without further processing.

(d) *ASTM and military specifications.* ASTM specifications may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428. Military

specifications may be obtained from the Standardization Document Order Desk, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111.

(e) *Other definitions.* For other definitions relating to taxable fuel, see §§48.4081-6(b), 48.4082-5 (b), 48.4082-6(b), 48.4082-7(b), 48.4101-1(b), 48.6427-9(b), 48.6427-10(b), and 48.6427-11(b).

(f) *Effective date.* (1) Except as provided in paragraph (f)(2) of this section, this section is applicable after December 31, 1993.

(2) In paragraph (b) of this section the definition of *aviation gasoline* and the third sentence in the definition of *terminal* are applicable after January 1, 1998, the definition of *kerosene*, *excluded liquid*, and *taxable fuel* are applicable after June 30, 1998, and the definition of *enterer* is applicable to entries of taxable fuel after September 27, 2004. Paragraph (c)(2) of this section is applicable after December 31, 1997.

[T.D. 8659, 61 FR 10453, Mar. 14, 1996, as amended by T.D. 8748, 63 FR 25, Jan. 2, 1998; T.D. 8879, 65 FR 17155, Mar. 31, 2000; T.D. 9051, 68 FR 15940, Apr. 2, 2003; T.D. 9145, 69 FR 45588, July 30, 2004; T.D. 9346, 72 FR 41223, July 27, 2007]

§48.4081-2 Taxable fuel; tax on removal at a terminal rack.

(a) *Overview.* This section provides the general rule that all removals of taxable fuel at a terminal rack are subject to tax and the position holder with respect to the fuel is liable for the tax.

(b) *Imposition of tax.* Tax is imposed on the removal of taxable fuel from a terminal if the taxable fuel is removed at the rack.

(c) *Liability for tax*—(1) *In general.* The position holder with respect to the taxable fuel is liable for the tax imposed under paragraph (b) of this section.

(2) *Joint and several liability of terminal operator; unregistered position holder*—(i) *In general.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (b) of this section if—

(A) The position holder with respect to the taxable fuel is a person other than the terminal operator and is not a taxable fuel registrant; and

(B) The terminal operator has not met the conditions of paragraph (c)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under this paragraph (c)(2) if, at the time of the removal, the terminal operator—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (as described in §48.4081-5) from the position holder; and

(C) Has no reason to believe that any information in the notification certificate is false.

(3) *Joint and several liability of terminal operator; incorrect information provided.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (b) of this section if, in connection with the removal of diesel fuel or kerosene that is not dyed and marked in accordance with §48.4082-1, the terminal operator provides any person (including the position holder with respect to the fuel) with any bill of lading, shipping paper, record, or similar document indicating that the diesel fuel or kerosene is dyed and marked in accordance with §48.4082-1.

(4) *Example.* The following example illustrates this paragraph (c) and §48.4082-1:

Example. (i) TO is a terminal operator and PH is the position holder with respect to, and owner of, 8,000 gallons of diesel fuel stored in TO's terminal. TO and PH are taxable fuel registrants. When the fuel is removed from the terminal at the rack, the fuel is not dyed and marked in accordance with §48.4082-1, and TO does not

provide any person with any paperwork indicating that the fuel is dyed and marked. After the removal from the terminal, PH sells the fuel to individuals for use as heating oil, a nontaxable use.

(ii) Because PH is the position holder of the fuel at the time of the removal from the terminal, PH is liable for the tax imposed by section 4081. The removal is subject to tax because the fuel is not dyed and marked in accordance with §48.4082-1, and later use of the fuel in a nontaxable use does not make the removal from the terminal exempt from tax.

(iii) Because PH is a taxable fuel registrant and TO did not provide any person with any paperwork indicating that the fuel is dyed and marked, TO is not jointly and severally liable for tax under paragraph (c) (2) or (3) of this section.

(d) *Rate of tax.* For the rate of tax generally, see section 4081(a). For the rate of tax on gasohol and on gasoline removed for gasohol production, see §48.4081-6.

(e) *Exemptions.* For exemptions from the tax imposed under this section, see §§48.4081-4 (relating to gasoline blendstocks), 48.4082-1 (relating to dyed diesel fuel and dyed kerosene), 48.4082-5 (relating to diesel fuel and kerosene used in Alaska), 48.4082-6 (relating to aviation-grade kerosene), and 48.4082-7 (relating to kerosene used for a feedstock purpose).

(f) *Effective date.* This section is applicable after December 31, 1993.

[T.D. 8659, 61 FR 10455, Mar. 14, 1996, as amended by T.D. 8879, 65 FR 17156, Mar. 31, 2000]

§48.4081-3 Taxable fuel; taxable events other than removal at the terminal rack.

(a) *Overview.* Although tax is imposed when taxable fuel is removed from the terminal at the rack, tax also is imposed in certain other situations described in this section.

(b) *Tax on removal from a refinery*—(1) *Imposition of tax.* Tax is imposed on the following removals from a refinery:

(i) A removal of taxable fuel by bulk transfer if the refiner or the owner of the taxable fuel immediately before the removal is not a taxable fuel registrant.

(ii) A removal of taxable fuel at the rack.

(iii) After September 30, 1995, a removal of a batch of gasohol from an approved refinery by bulk transfer if the refiner treats itself with respect to the removal as a person that is not registered under section 4101. See §48.4101-1(a). For the rule providing that no deposit is required in the case of the tax imposed under this paragraph (b)(1)(iii), see §40.6302(c)-1(f)(4) of this chapter. For the rule allowing inspections of facilities where gasohol is produced, see section 4083.

(2) *Exception for certain refineries.* The tax imposed under paragraph (b)(1)(ii) of this section does not apply to a removal of taxable fuel if—

(i) The taxable fuel is removed from an approved refinery that is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel;

(ii) The taxable fuel is received at a facility that is operated by a taxable fuel registrant and is located within the bulk transfer/terminal system;

(iii) The removal from the refinery is by—

(A) Rail car; or

(B) In the case of diesel fuel, a trailer or semi-trailer that is used exclusively for the transport service described in paragraphs (b)(2)(i) and (b)(2)(ii) of this section;

(iv) In the case of taxable fuel removed by rail car, the facility at which the fuel is received is operated by the same person that operates the refinery from which the fuel was removed; and

(v) In the case of diesel fuel removed by a trailer or semi-trailer, the facility at which the fuel is received is less than 20 miles from the refinery from which the diesel fuel was removed.

(3) *Liability for tax.* The refiner is liable for the tax imposed under paragraph (b)(1) of this section.

(c) *Tax on entry into the United States*—(1) *Imposition of tax.* Tax is imposed on the entry of taxable fuel into the United States if—

(i) The entry is by bulk transfer and the enterer is not a taxable fuel registrant; or

(ii) The entry is not by bulk transfer.

(2) *Liability for tax*—(i) *In general.* The enterer is liable for the tax imposed under paragraph (c)(1) of this section.

(ii) *Joint and several liability of the importer of record.* The importer of record with respect to the taxable fuel is jointly and severally liable with the enterer for the tax imposed under paragraph (c)(1) of this section if—

(A) The importer of record is not the enterer of the taxable fuel; and

(B) The enterer is not a taxable fuel registrant.

(iii) *Conditions for avoidance of liability.* The importer of record is not liable for the tax under paragraph (c)(2)(ii) of this section if, at the time of the entry, the importer of record—

(A) Has an unexpired notification certificate (as described in §48.4081-5) from the enterer; and

(B) Has no reason to believe that any information in the notification certificate is false.

(iv) *Customs bond.* The Customs bond posted with respect to the importation of the fuel will not be charged for the tax imposed on the entry of the fuel if the enterer is a taxable fuel registrant. A Customs bond will not be charged for the tax imposed on the entry of the fuel covered by the bond, if at the time of entry, the surety—

(A) Has an unexpired notification certificate (as described in §48.4081-5) from the enterer; and

(B) Has no reason to believe that any information in the notification certificate is false.

(d) *Tax on bulk transfers from a terminal by an unregistered position holder*—(1) *Imposition of tax.* Tax is imposed on the removal by bulk transfer of taxable fuel from a terminal if the position holder with respect to the taxable fuel is not a taxable fuel registrant.

(2) *Liability for tax*—(i) *In general.* The position holder with respect to the taxable fuel is liable for the tax imposed under paragraph (d)(1) of this section.

(ii) *Joint and several liability of terminal operator.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (d)(1) of this section if—

(A) The position holder with respect to the taxable fuel is a person other than the terminal operator; and

(B) The terminal operator has not met the conditions of paragraph (d)(2)(iii) of this section.

(iii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under this paragraph (d)(2) if, at the time of the bulk transfer, the terminal operator—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in §48.4081-5) from the position holder; and

(C) Has no reason to believe that any information in the notification certificate is false.

(e) *Tax on bulk transfers not received at an approved terminal or refinery*—(1) *Imposition of tax.* Tax on taxable fuel is imposed if—

(i) Taxable fuel is removed by bulk transfer from a refinery or terminal, or entered by bulk transfer into the United States;

(ii) No tax was imposed on such removal or entry under paragraph (b), (c), or (d) of this section; and

(iii) Upon removal from the pipeline or vessel, the taxable fuel is not received at an approved terminal or refinery (or at another pipeline or vessel).

(2) *Liability for tax*—(i) *In general.* The owner of the taxable fuel when it is removed from the pipeline or vessel is liable for the tax imposed under paragraph (e)(1) of this section if the owner has not met the conditions of paragraph (e)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* An owner of taxable fuel is not liable for tax under paragraph (e)(2)(i) of this section if, at the time the taxable fuel is removed from the pipeline or vessel, the owner of the taxable fuel—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in §48.4081-5) from the operator of the terminal or refinery where the taxable fuel is received; and

(C) Has no reason to believe that any information in the notification certificate is false.

(iii) *Liability of the operator of the facility where the taxable fuel is received.* The operator of the facility where the taxable fuel is received is liable for the tax imposed under paragraph (e)(1) of this section if the owner of the taxable fuel has met the conditions of paragraph (e)(2)(ii) of this section and is jointly and severally liable for the tax if the owner has not met such conditions.

(f) *Tax on sales within the bulk transfer/terminal system*—(1) *Imposition of tax.* Tax is imposed on the sale of taxable fuel located within the bulk transfer/terminal system if the sale is to a person that is not a taxable fuel registrant and tax has not been imposed on such taxable fuel under §48.4081-2, or paragraph (b), (c), (d), or (e) of this section.

(2) *Exception for certain sales of taxable fuel for export.* The tax imposed under paragraph (f)(1) of this section does not apply to a sale of taxable fuel if—

(i) The buyer's principal place of business is not within the United States;

(ii) The sale of the fuel occurs as the fuel is delivered into a transport vessel;

(iii) The vessel has a capacity of at least 20,000 barrels of fuel;

(iv) The seller is a taxable fuel registrant and the exporter of record of the fuel; and

(v) The fuel was exported in due course.

(3) *Liability for tax*—(i) *In general.* The seller of the taxable fuel is liable for the tax imposed under paragraph (f)(1) of this section if the seller has not met the conditions of paragraph (f)(3)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A seller is not liable for tax under paragraph (f)(3)(i) of this section if, at the time of the sale, the seller—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in §48.4081-5) from the buyer; and

(C) Has no reason to believe that any information in the certificate is false.

(iii) *Liability of the buyer.* The buyer of the taxable fuel is liable for the tax imposed under paragraph (f)(1) of this section if the seller of the taxable fuel has met the conditions of paragraph (f)(3)(ii) of this section and is jointly and severally liable for the tax if the seller has not met such conditions.

(4) *Example.* The following example illustrates this paragraph (f) and the definition of the term *sale* in §48.4081-1:

Example. PH owns one million gallons of untaxed gasoline that is stored in TO's terminal. PH also is the position holder with respect to the gasoline. While the gasoline remains stored in the terminal, PH transfers title to 200,000 gallons of the gasoline to A, a person that is not a taxable fuel registrant. PH continues to hold the inventory position on TO's records with respect to the one million gallons. Because PH continues as the position holder with respect to the gasoline, the transfer of title to the gasoline from PH to A is not a sale of gasoline. Because this transfer of title from PH to A is not a sale of gasoline, the tax imposed under paragraph (f) of this section does not apply to the transfer.

(g) *Tax on removal or sale of blended taxable fuel by the blender*—(1) *Imposition of tax.* A tax is imposed on the removal or sale of blended taxable fuel by the blender thereof. Tax is computed on the difference between the total number of gallons of blended taxable fuel removed or sold and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel. For this purpose, the alcohol in gasohol is treated as previously taxed taxable fuel.

(2) *Liability for tax*—(i) *Liability of the blender.* The blender is liable for the tax imposed under paragraph (g)(1) of this section.

(ii) *Liability of seller of untaxed liquid.* On and after April 2, 2003, a person that sells any liquid that is used to produce blended taxable fuel is jointly and severally liable for the tax imposed under paragraph (g)(1) of this section on the removal or sale of that blended taxable fuel if the liquid—

(A) Is described in §48.4081-1(c)(1)(i)(B) (relating to liquids on which tax has not been imposed under section 4081); and

(B) Is sold by that person as gasoline, diesel fuel, or kerosene that has been taxed under section 4081.

(3) *Examples.* The following examples illustrate the provisions of this paragraph (g) and the definitions of *blended taxable fuel* and *diesel fuel* in §48.4081-1(c):

Example 1. (i) *Facts.* W is a wholesale distributor of petroleum products and R is a retailer of petroleum products. W sells to R 1,000 gallons of an untaxed liquid (a liquid described in §48.4081-1(c)(1)(i)(B)) and delivers the liquid into a storage tank (tank) at R's retail facility. However, W's invoice to R states that the liquid is undyed diesel fuel. At the time of the delivery, the tank contains 4,000 gallons of undyed diesel fuel, a taxable fuel that has been taxed under section 4081. The resulting 5,000 gallon mixture is suitable for use as a fuel in a diesel-powered highway vehicle because it has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. The mixture does not satisfy the dyeing requirements of §48.4082-1. R sells the mixture from the tank to a construction company for off-highway business use.

(ii) *Analysis*—(A) *Production of blended taxable fuel.* R is a blender within the meaning of §48.4081-1 because R has produced blended taxable fuel, as defined in §48.4081-1, by mixing 1,000 gallons of a liquid that has not been taxed under section 4081 with 4,000 gallons of diesel fuel that has been taxed under section 4081. The mixing occurs outside of the bulk transfer/terminal system and the resulting product is diesel fuel because it is suitable for use as a fuel in a diesel-powered highway vehicle.

(B) *Imposition of tax.* Under paragraph (g)(1) of this section, tax is imposed on R's sale of the 5,000 gallons of blended taxable fuel to the construction company. Even though the blended taxable fuel is sold for off-highway business use, which is a nontaxable use as defined in section 4082(b), the sale is not exempt from tax because the blended taxable fuel does not satisfy the dyeing requirements of §48.4082-1. Tax is computed on 1,000 gallons, which is the difference between the number of gallons

of blended taxable fuel R sells (5,000) and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel (4,000).

(C) *Liability for tax.* R, as the blender, is liable for this tax under paragraph (g)(2)(i) of this section. W is jointly and severally liable for this tax under paragraph (g)(2)(ii) of this section because the blended taxable fuel is produced using an untaxed liquid that W sold as undyed diesel fuel (that is, as diesel fuel that was taxed under section 4081).

Example 2. (i) *Facts.* W, a wholesale distributor of petroleum products, buys 7,000 gallons of diesel fuel at a terminal rack. The diesel fuel is delivered into a tank trailer. Tax is imposed on the diesel fuel under §48.4081-2 when the diesel fuel is removed at the rack. W then goes to another location where X, the operator of a chemical plant, sells W 1,000 gallons of an untaxed liquid (a liquid described in §48.4081-1(c)(1)(i)(B)). However, X's invoice to W states that the liquid is undyed diesel fuel. This liquid is delivered into the tank trailer already containing the 7,000 gallons of diesel fuel. The resulting 8,000 gallon mixture is suitable for use as a fuel in a diesel-powered highway vehicle because it has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. The mixture does not satisfy the dyeing requirements of §48.4082-1. W sells the mixture to R, a retailer of petroleum products, and delivers the mixture into a storage tank at R's retail facility. R sells the mixture to its customers.

(ii) *Analysis*—(A) *Production of blended taxable fuel.* W is a blender within the meaning of §48.4081-1 because W has produced blended taxable fuel, as defined in §48.4081-1, by mixing 1,000 gallons of a liquid that has not been taxed under section 4081 with 7,000 gallons of diesel fuel that has been taxed under section 4081. The mixing occurs outside of the bulk transfer/terminal system and the resulting product is diesel fuel because it is suitable for use as a fuel in a diesel-powered highway vehicle. Thus, R has bought blended taxable fuel.

(B) *Imposition of tax.* Under paragraph (g)(1) of this section, tax is imposed on W's sale of the 8,000 gallons of blended taxable fuel to R. Tax is computed on 1,000 gallons, which is the difference between the number of gallons of blended taxable fuel W sells (8,000) and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel (7,000). No tax is imposed on R's subsequent sale of the blended taxable fuel because tax is imposed only with respect to a removal or sale by the blender.

(C) *Liability for tax.* W, as the blender, is liable for this tax under paragraph (g)(2)(i) of this section. X is jointly and severally liable for this tax under paragraph (g)(2)(ii) of this section because the blended taxable fuel is produced using an untaxed liquid that X sold as undyed diesel fuel (that is, as diesel fuel that was taxed under section 4081). R has no liability for tax because R is not a blender and did not sell any untaxed liquid as a taxed taxable fuel. R only sold taxed taxable fuel, the blended taxable fuel bought from W.

(h) *Rate of tax.* For the rate of tax generally imposed under this section, see section 4081(a). For the rate of tax on gasohol and on gasoline removed or entered for gasohol production, see §48.4081-6.

(i) *Exemptions.* For exemptions from the taxes imposed under this section, see §§48.4081-4 (relating to gasoline blendstocks), 48.4082-1 (relating to dyed diesel fuel and dyed kerosene), 48.4082-5 (relating to diesel fuel and kerosene used in Alaska), 48.4082-6 (relating to aviation-grade kerosene), and 48.4082-7 (relating to kerosene used for a feedstock purpose).

(j) *Effective/applicability date:* This section is applicable January 1, 1994, except that paragraphs (c)(2)(ii) through (iv) of this section are applicable to entries of taxable fuel after September 27, 2004.

[T.D. 8659, 61 FR 10455, Mar. 14, 1996, as amended by T.D. 8879, 65 FR 17156, Mar. 31, 2000; T.D. 9051, 68 FR 15941, Apr. 2, 2003; T.D. 9145, 69 FR 45588, July 30, 2004; T.D. 9346, 72 FR 41223, July 27, 2007]

§48.4081-4 Gasoline; special rules for gasoline blendstocks.

(a) *Overview.* This section provides rules exempting from tax certain removals, entries, and sales of gasoline blendstocks. Generally, under prescribed conditions, tax is not imposed on gasoline blendstocks that are not used to produce finished gasoline or that are received at an approved terminal or refinery.

(b) *Nonbulk removals and entries of gasoline blendstocks not used to produce gasoline*—(1) *Removals and entries not in connection with sales.* Tax is not imposed under §48.4081-2(b), §48.4081-3(b)(1)(ii), or §48.4081-3(c)(1)(ii) on the removal or entry of gasoline blendstocks not in connection with a sale if—

(i) The person otherwise liable for tax under §48.4081-2(c)(1) (the position holder), §48.4081-3(b)(3) (the refiner), or §48.4081-3(c)(2) (the enterer) is a taxable fuel registrant; and

(ii) Such person does not use the gasoline blendstocks to produce finished gasoline.

(2) *Removals and entries in connection with sales.* Tax is not imposed under §48.4081-2(b), §48.4081-3(b)(1)(ii), or §48.4081-3(c)(1)(ii) on the removal or entry of gasoline blendstocks in connection with a sale if—

(i) The person otherwise liable for tax under §48.4081-2(c)(1) (the position holder), §48.4081-3(b)(3) (the refiner), or §48.4081-3(c)(2) (the enterer) is a taxable fuel registrant; and

(ii) At the time of the sale, such person has an unexpired certificate (described in paragraph (e) of this section) from the buyer and has no reason to believe any information in the certificate is false.

(3) *Tax on sales after certain nonbulk removals or entries*—(i) *In general.* If paragraph (b)(1) or (2) of this section applies to the removal or entry of gasoline blendstocks, tax is imposed on any sale of such blendstocks unless, at the time of the sale, the seller—

(A) Has an unexpired certificate (described in paragraph (e) of this section) from its buyer; and

(B) Has no reason to believe any information in the certificate is false.

(ii) *Liability for tax.* The seller is liable for the tax imposed under this paragraph (b)(3).

(iii) *Rate of tax.* For the rate of tax, see section 4081.

(c) *Nonbulk removals and entries of gasoline blendstocks received at an approved terminal or refinery.* Tax is not imposed under §48.4081-2(b), §48.4081-3(b)(1)(ii), or §48.4081-3(c)(1)(ii) on the removal or entry of gasoline blendstocks that are received at a terminal or refinery if the person otherwise liable for tax under §48.4081-2(c)(1) (the position holder), §48.4081-3(b)(3) (the refiner), or §48.4081-3(c)(2) (the enterer)—

(1) Is a taxable fuel registrant;

(2) Has an unexpired notification certificate (described in §48.4081-5) from the operator of the terminal or refinery where the gasoline blendstocks are received; and

(3) Has no reason to believe that any information in the certificate is false.

(d) *Bulk transfer to a registered industrial user.* Tax is not imposed under §48.4081-3(e)(1) if, upon the removal of gasoline blendstocks from a pipeline or vessel, the gasoline blendstocks are received by a taxable fuel registrant that is an industrial user.

(e) *Certificate*—(1) *In general.* The certificate to be provided by a buyer of gasoline blendstocks consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (e)(3) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(i) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(ii) The date a new certificate is provided to the seller.

(iii) The date the seller is notified by the Internal Revenue Service or the buyer that the buyer's right to provide a certificate has been withdrawn.

(2) *Withdrawal of right to provide certificate.* The Internal Revenue Service may withdraw the right of a buyer of gasoline blendstocks to provide a certificate under this paragraph (e) if such buyer uses gasoline blendstocks to which a certificate applies in the production of finished gasoline or resells the gasoline blendstocks without obtaining a certificate from its buyer. The Internal Revenue Service may notify any seller to whom the buyer has provided a certificate that the buyer's right to provide a certificate has been withdrawn.

(3) *Model certificate.*

CERTIFICATE OF PERSON BUYING GASOLINE BLENDSTOCKS FOR USE OTHER THAN IN THE PRODUCTION OF FINISHED GASOLINE

(To support tax-free sales under section 4081 of the Internal Revenue Code)

Name, address, and employer identification number of seller

The undersigned buyer (“Buyer”) hereby certifies the following under penalties of perjury:

The gasoline blendstocks to which this certificate relates will not be used to produce finished gasoline.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here ___ and enter:

1. Invoice or delivery ticket number ___

2. ___ (number of gallons) of ___ (type of gasoline blendstocks)

If this is a certificate covering all purchases under a specified account or order number, check here ___ and enter:

1. Effective date ___

2. Expiration date ___

(period not to exceed 1 year after the effective date)

3. Type (or types) of gasoline blendstocks ___

4. Buyer account or order number ___

Buyer will not claim a credit or refund under section 6427(h) of the Internal Revenue Code for any gasoline blendstocks covered by this certificate.

Buyer will provide a new certificate to the seller if any information in this certificate changes.

If Buyer resells the gasoline blendstocks to which this certificate relates, Buyer will be liable for tax unless Buyer obtains a certificate from the purchaser stating that the gasoline blendstocks will not be used to produce finished gasoline and otherwise complies with the conditions of §48.4081-4(b)(3) of the Manufacturers and Retailers Excise Tax Regulations.

Buyer understands that if Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn. In addition, the Internal Revenue Service has not notified Buyer that the right to provide a certificate has been withdrawn from a purchaser to which Buyer sells gasoline blendstocks tax free.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Signature and date signed

Printed or typed name of person signing

Title of person signing

Name of Buyer

Employer identification number

Address of Buyer

(f) *Effective date.* This section is effective January 1, 1994.

[T.D. 8421, 57 FR 32424, July 22, 1992; 57 FR 39421, Aug. 31, 1992, as amended by T.D. 8659, 61 FR 10457, Mar. 14, 1996]

§48.4081-5 Taxable fuel; notification certificate of taxable fuel registrant.

(a) *Overview.* This section sets forth requirements for the notification certificate under §§48.4081-2(c)(2)(ii), 48.4081-3(c)(2)(iii) and (iv), 48.4081-3(d)(2)(iii), 48.4081-3(e)(2)(iii), 48.4081-3(f)(2)(ii), and 48.4081-4(c) to notify another person of the taxable fuel registrant's registration status.

(b) *Certificate*—(1) *In general.* The certificate to be provided by a taxable fuel registrant consists of a statement that is signed under penalties of perjury by a person with authority to bind the registrant, is in substantially the same form as the model provided in paragraph (b)(2) of this section, and contains all information necessary to complete such model. A new certificate must be given if any information in the most recently provided certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earlier of the following dates:

(i) The date the registrant provides a new certificate.

(ii) The date the recipient of the certificate is notified by either the Internal Revenue Service or the registrant that the registrant's registration has been revoked or suspended.

(2) *Model certificate.*

NOTIFICATION CERTIFICATE OF TAXABLE FUEL REGISTRANT

Name, address, and employer identification number of person receiving certificate

The undersigned taxable fuel registrant (“Registrant”) hereby certifies under penalties of perjury that Registrant is registered by the Internal Revenue Service with registration number ___ and that Registrant's registration has not been revoked or suspended by the Internal Revenue Service.

Registrant understands that the fraudulent use of this certificate may subject Registrant and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the cost of prosecution.

Signature and date signed

Printed or typed name of person signing

Title of person signing

Name of registrant

Employer identification number

Address of registrant

(3) *Use of Form 637 or letter of registration as a notification certificate prohibited.* A copy of the certificate of registry (Form 637) or letter of registration issued to a registrant by the Internal Revenue Service is not a notification certificate described in paragraph (b)(2) of this section.

(c) *Effective date.* This section is effective January 1, 1994.

[T.D. 8421, 57 FR 32424, July 22, 1992; 57 FR 39422, Aug. 31, 1992, as amended by T.D. 8659, 61 FR 10457, Mar. 14, 1996; T.D. 9145, 69 FR 45588, July 30, 2004; T.D. 9346, 72 FR 41224, July 27, 2007]

§48.4081-6 Gasoline; gasohol.

(a) *Overview.* This section provides rules for determining the applicability of reduced rates of tax on a removal or entry of gasohol or of gasoline used to produce gasohol. Rules are also provided for the imposition of tax on the separation of gasoline from gasohol and the failure to use gasoline that has been taxed at a reduced rate to produce gasohol.

(b) *Explanation of terms*—(1) *Alcohol*—(i) *In general; source of the alcohol.* Except as provided in paragraph (b)(1)(ii) of this section, alcohol means any alcohol that is not a derivative product of petroleum, natural gas, or coal (including peat). Thus, the term includes methanol and ethanol that are not derived from petroleum, natural gas, or coal (including peat). The term also includes alcohol produced either within or outside the United States.

(ii) *Proof and denaturants.* Alcohol does not include alcohol with a proof of less than 190 degrees (determined without regard to added denaturants). If the alcohol added to a fuel/alcohol mixture (the added alcohol) includes impurities or denaturants, the volume of alcohol in the mixture is determined under the following rules:

(A) The volume of alcohol in the mixture includes the volume of any impurities (other than added denaturants and any fuel with which the alcohol is mixed) that reduce the purity of the added alcohol to not less than 190 proof (determined without regard to added denaturants).

(B) The volume of alcohol in the mixture includes the volume of any approved denaturants that reduce the purity of the added alcohol, but only to the extent that the volume of the approved denaturants does not exceed five percent of the volume of the added alcohol (including the approved denaturants). If the volume of the approved denaturants exceeds five percent of the volume of the added alcohol, the excess over five percent is considered part of the nonalcohol content of the mixture.

(C) For purposes of this paragraph (b)(1)(ii), approved denaturants are any denaturants (including gasoline and nonalcohol fuel denaturants) that reduce the purity of the added alcohol and are added to such alcohol under a formula approved by the Secretary.

(iii) *Products derived from alcohol.* If alcohol described in paragraphs (b)(1)(i) and (ii) of this section has been chemically transformed in producing another product (that is, the alcohol is no longer present as a separate chemical in the other product) and there is no significant loss in the energy content of the alcohol, any mixture containing the product includes the volume of alcohol used to produce the product. Thus, for example, a mixture of gasoline and ethyl tertiary butyl ether (ETBE), or of gasoline and methyl tertiary butyl ether (MTBE), includes any alcohol described in paragraphs (b)(1)(i) and (ii) of this section that is used to produce the ETBE or MTBE, respectively, in a chemical reaction in which there is no significant loss in the energy content of the alcohol.

(2) *Gasohol*—(i) *In general*—(A) Gasohol is a mixture of gasoline and alcohol that is 10 percent gasohol, 7.7 percent gasohol, or 5.7 percent gasohol. The determination of whether a particular mixture is 10 percent gasohol, 7.7 percent gasohol, or 5.7 percent gasohol is made on a batch-by-batch basis. A batch of gasohol is a discrete mixture of gasoline and alcohol.

(B) If a particular mixture is produced within the bulk transfer/terminal system (for example, at a refinery), the determination of whether the mixture is gasohol is made at the time of the taxable removal or entry of the mixture.

(C) If a particular mixture is produced outside of the bulk transfer/terminal system (for example, by splash blending after the gasoline has been removed from the terminal at the rack), the determination of whether the mixture is gasohol is made immediately after the mixture is produced. In such a case, the contents of the batch typically correspond to a gasoline meter delivery ticket and an alcohol meter delivery ticket, each of which shows the number of gallons of liquid delivered into the mixture. The volume of each component in a batch (without adjustment for temperature) ordinarily is determined by the number of metered gallons shown on the delivery tickets for the gasoline and alcohol delivered. However, if metered gallons of gasoline and alcohol are added to a tank already containing more than a minor amount of liquid, the determination of whether a batch satisfies the alcohol-content requirement will be made by taking into account the amount of alcohol and non-alcohol fuel contained in the liquid already in the tank. Ordinarily, any amount in excess of 0.5 percent of the capacity of the tank will not be considered minor.

(ii) *10 percent gasohol*—(A) *In general.* A batch of gasoline/alcohol mixture is 10 percent gasohol if it contains at least 9.8 percent alcohol by volume, without rounding.

(B) *Batches containing less than 10 percent but at least 9.8 percent alcohol.* If a batch of mixture contains less than 10 percent alcohol but at least 9.8 percent alcohol, without rounding, only a portion of the batch is considered to be 10 percent gasohol. That portion equals the number of gallons of alcohol in the batch multiplied by 10. Any remaining liquid in the mixture is excess liquid.

(iii) *7.7 percent gasohol*—(A) *In general.* A batch of gasoline/alcohol mixture is 7.7 percent gasohol if it contains less than 9.8 percent alcohol but at least 7.55 percent alcohol by volume, without rounding.

(B) *Batches containing less than 7.7 percent but at least 7.55 percent alcohol.* If a batch of mixture contains less than 7.7 percent alcohol but at least 7.55 percent alcohol, without rounding, only a portion of the batch is considered to be 7.7 percent gasohol. That portion equals the number of gallons of alcohol in the batch multiplied by 12.987. Any remaining liquid in the mixture is excess liquid.

(iv) *5.7 percent gasohol*—(A) *In general.* A batch of gasoline/alcohol mixture is 5.7 percent gasohol if it contains less than 7.55 percent alcohol but at least 5.59 percent alcohol by volume, without rounding.

(B) *Batches containing less than 5.7 percent but at least 5.59 percent alcohol.* If a batch of mixture contains less than 5.7 percent alcohol but at least 5.59 percent alcohol, without rounding, only a portion of the batch is considered to be 5.7 percent gasohol. That portion equals the number of gallons of alcohol in the batch multiplied by 17.544. Any remaining liquid in the mixture is excess liquid.

(v) *Tax on excess liquid.* If tax was imposed on the excess liquid in any gasohol at the gasohol production tax rate (as defined in paragraph (e)(1) of this section), the excess liquid in the batch is considered to be gasoline with respect to which there is a failure to blend into gasohol for purposes of paragraph (f) of this section. If tax was imposed on the excess liquid at the rate of tax described in section 4081(a), a credit or refund under section 6427(f) is not allowed with respect to the excess liquid.

(vi) *Examples.* The following examples illustrate this paragraph (b)(2). In these examples, a gasohol blender creates a gasoline/alcohol mixture by pumping a specified amount of gasoline into an empty tank and then adding a specified amount of alcohol.

Example 1. Mixtures containing exactly 10 percent alcohol. The applicable delivery tickets show that the mixture is made with 7200 metered gallons of gasoline and 800 metered gallons of alcohol. Accordingly, the mixture contains 10 percent alcohol (as determined based on the delivery tickets provided to the blender) and qualifies as 10 percent gasohol.

Example 2. Mixtures containing less than 10 percent alcohol but at least 9.8 percent alcohol. The applicable delivery tickets show that the mixture is made with 7205 metered gallons of gasoline and 795 metered gallons of alcohol. Because the mixture contains less than 10 percent alcohol, but more than 9.8 percent alcohol (as determined based on the delivery tickets provided to the blender), 7950 gallons of the mixture qualify as 10 percent gasohol. If tax was imposed on the gasoline in the mixture at the gasohol production rate applicable to 10 percent gasohol, the remaining 50 gallons of the mixture (the excess liquid) are treated as gasoline with respect to which there was a failure to blend into gasohol for purposes of paragraph (f) of this section. If tax was imposed on the gasoline in the mixture at the rate of tax described in section 4081(a), a credit or refund under section 6427(f) is allowed only with respect to 7155 gallons of gasoline.

Example 3. Mixtures containing less than 5.59 percent alcohol. The applicable delivery tickets show that the mixture is made with 7568 metered gallons of gasoline and 436 metered gallons of alcohol. Because the mixture contains only 5.45 percent alcohol (as determined based on the delivery tickets provided to the blender), the mixture does not qualify as gasohol.

(3) *Gasohol blender.* Gasohol blender means any person that regularly produces gasohol outside of the bulk transfer/terminal system for sale or use in its trade or business.

(4) *Registered gasohol blender. Registered gasohol blender* means a person that is registered under section 4101 as a gasohol blender.

(c) *Rate of tax on gasoline removed or entered for gasohol production*—(1) *In general.* The rate of tax imposed on gasoline under §48.4081-2(b) (relating to tax imposed at the terminal rack), §48.4081-3 (b)(1) (relating to tax imposed at the refinery), or §48.4081-3(c)(1) (relating to tax imposed on entries) is the gasohol production tax rate if—

(i) The person liable for tax under §48.4081-2(c)(1) (the position holder), §48.4081-3(b)(3) (the refiner), or §48.4081-3(c)(2) (the enterer) is a taxable fuel registrant and a registered gasohol blender, and such person produces gasohol with the gasoline within 24 hours after removing or entering the gasoline; or

(ii) The gasoline is sold in connection with the removal or entry, the person liable for tax under §48.4081-2(c)(1) (the position holder), §48.4081-3(b)(3) (the refiner), or §48.4081-3(c)(2) (the enterer) is a taxable fuel registrant and the person, at the time of the sale,—

(A) Has an unexpired certificate (as described in paragraph (c)(2) of this section) from the buyer; and

(B) Has no reason to believe that any information in the certificate is false.

(2) *Certificate*—(i) *In general.* The certificate referred to in paragraph (c)(1)(ii)(A) of this section is a statement that is to be provided by a registered gasohol blender that is signed under penalties of perjury by a person with authority to bind the registered gasohol blender, is in substantially the same form as the model certificate provided in paragraph (c)(2)(ii) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(A) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(B) The date the registered gasohol blender provides a new certificate to the seller.

(C) The date the seller is notified by the Internal Revenue Service or the gasohol blender that the gasohol blender's registration has been revoked or suspended.

(ii) *Model certificate.*

CERTIFICATE OF REGISTERED GASOHOL BLENDER

(To support sales of gasoline at the gasohol production tax rate under section 4081(c) of the Internal Revenue Code)

Name, address, and employer identification number of seller

_____ (Buyer) certifies the following under penalties of perjury:

Buyer is registered as a gasohol blender with registration number _____. Buyer's registration has not been suspended or revoked by the Internal Revenue Service.

The gasoline bought under this certificate will be used by Buyer to produce gasohol (as defined in §48.4081-6 (b) of the Manufacturers and Retailers Excise Tax Regulations) within 24 hours after buying the gasoline.

Type of gasohol Buyer will produce (check one only):

___ 10% gasohol

___ 7.7% gasohol

___ 5.7% gasohol

If the gasohol the Buyer will produce will contain ethanol, check here: ___

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here ___ and enter:

1. Account number _____

2. Number of gallons _____

If this is a certificate covering all purchases under a specified account or order number, check here ___ and enter:

1. Effective date _____

2. Expiration date _____ (period not to exceed 1 year after the effective date)

3. Buyer account or order number _____

Buyer will not claim a credit or refund under section 6427(f) of the Internal Revenue Code for any gasoline covered by this certificate.

Buyer agrees to provide seller with a new certificate if any information on this certificate changes.

Buyer understands that Buyer's registration may be revoked if the gasoline covered by this certificate is resold or is used other than in Buyer's production of the type of gasohol identified above.

Buyer will reduce any alcohol mixture credit under section 40(b) by an amount equal to the benefit of the gasohol production tax rate under section 4081(c) for the gasohol to which this certificate relates.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing

Title of person signing

Employer identification number

Address of Buyer

Signature and date signed

(iii) *Use of Form 637 or letter of registration as a gasohol blender's certificate prohibited.* A copy of the certificate of registry (Form 637) or letter of registration issued to a gasohol blender by the Internal Revenue Service is not a gasohol blender's certificate described in paragraph (c)(2)(ii) of this section.

(d) *Rate of tax on gasohol removed or entered.* The rate of tax imposed on removals or entries of any gasohol under §§48.4081-2(b), 48.4081-3(b)(1), and 48.4081-3(c)(1) is the gasohol tax rate. The rate of tax imposed on removals and entries of excess liquid described in paragraph (b)(2) of this section is the rate of tax applicable to gasoline under section 4081(a).

(e) *Tax rates*—(1) *Gasohol production tax rate.* The gasohol production tax rate is the applicable rate of tax determined under section 4081(c)(2)(A).

(2) *Gasohol tax rate.* The gasohol tax rate is the applicable alcohol mixture rate determined under section 4081(c)(4)(A).

(f) *Later separation and failure to blend*—(1) *Later separation*—(i) *Imposition of tax.* A tax is imposed on the removal or sale of gasoline separated from gasohol with respect to which tax was imposed at a rate described in paragraph (e) of this section or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1).

(ii) *Liability for tax.* The person that owns the gasohol at the time gasoline is separated from the gasohol is liable for the tax imposed under paragraph (f)(1)(i) of this section.

(iii) *Rate of tax.* The rate of tax imposed under paragraph (f)(1)(i) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the applicable gasohol production tax rate.

(2) *Failure to blend*—(i) *Imposition of tax.* Tax is imposed on the entry, removal, or sale of gasoline (including excess liquid described in paragraph (b)(2) of this section) with respect to which tax was imposed at a gasohol production tax rate if—

(A) The gasoline was not blended into gasohol; or

(B) The gasoline was blended into gasohol but the gasohol production tax rate applicable to the type of gasohol produced is greater than the rate of tax originally imposed on the gasoline.

(ii) *Liability for tax.* (A) In the case of gasoline with respect to which tax was imposed at the gasohol production tax rate under paragraph (c)(1)(i) of this section, the person liable for the tax imposed by paragraph (f)(2)(i) of this section is the person that was liable for tax on the entry or removal.

(B) In the case of gasoline with respect to which tax was imposed at the gasohol production tax rate under paragraph (c)(1)(ii) of this section, the person that bought the gasoline in connection with the entry or removal is liable for the tax imposed under paragraph (f)(2)(i) of this section.

(iii) *Rate of tax.* The rate of tax imposed on gasoline described in paragraph (f)(2)(i)(A) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the rate of tax previously imposed on the gasoline. The rate of tax imposed on gasoline described in paragraph (f)(2)(i)(B) of this section is the difference between the gasohol production tax rate applicable to the type of gasohol produced and the rate of tax previously imposed on the gasoline.

(iv) *Example.* The following example illustrates this paragraph (f)(2):

Example. (i) A registered gasohol blender bought gasoline in connection with a removal described in paragraph (c)(1)(ii) of this section. Based on the blender's certification (described in paragraph (c)(2) of this section) that the blender would produce 10 percent gasohol with the gasoline, tax at the gasohol production tax rate applicable to 10 percent gasohol was imposed on the removal.

(ii) The blender then produced a mixture by splash blending in a tank holding approximately 8000 gallons of mixture. The applicable delivery tickets show that the mixture was blended by first pumping 7220 metered gallons of gasoline into the empty tank, and then pumping 780 metered gallons of alcohol into the tank. Because the mixture contains 9.75 percent alcohol (as determined based on the delivery tickets provided to the blender) the entire mixture qualifies as 7.7 percent gasohol, rather than 10 percent gasohol.

(iii) Because the 7220 gallons of gasoline were taxed at the gasohol production tax rate applicable to 10 percent gasohol but the gasoline was blended into 7.7 percent gasohol, a failure to blend has occurred with respect to the gasoline. As the person that bought the gasoline in connection with the taxable removal, the blender is liable for the tax imposed under paragraph (f)(2)(i) of this section. The amount of tax imposed is the difference between—

(A) 7220 gallons times the gasohol production tax rate applicable to 7.7 percent gasohol; and (B) 7220 gallons times the gasohol production tax rate applicable to 10 percent gasohol. (iv) Because the gasohol does not contain exactly 7.7 percent alcohol, the benefit of the gasohol production tax rate with respect to the alcohol is less than the amount of the alcohol mixture credit under section 40(b) (determined before the application of section 40(c)). Accordingly, the blender may be entitled to claim an alcohol mixture credit for the alcohol used in the gasohol. Under section 40(c), however, the amount of the alcohol mixture credit must be reduced to take into account the benefit provided with respect to the alcohol by the gasohol production tax rate.

(g) *Effective date.* This section is effective August 7, 1995.

[T.D. 8609, 60 FR 40082, Aug. 7, 1995, as amended by T.D. 8659, 61 FR 10457, Mar. 14, 1996; T.D. 8879, 65 FR 17157, Mar. 31, 2000]

§48.4081-7 Taxable fuel; conditions for refunds of taxable fuel tax under section 4081(e).

(a) *Overview.* This section provides reporting requirements and other conditions that a person paying tax to the government under section 4081 must satisfy to receive a refund (but not a credit) under section 4081(e) with respect to taxable fuel on which a prior tax was paid to the government under section 4081. No credit against any tax imposed under the Internal Revenue Code is allowed under this section.

(b) *Conditions to allowance of refund.* A claim for refund of tax imposed by section 4081 with respect to taxable fuel is allowed under section 4081(e) and this section only if—

(1) A tax imposed by section 4081 with respect to the taxable fuel was paid to the government and not credited or refunded (the “first tax”);

(2) After imposition of the first tax, another tax was imposed by section 4081 with respect to the same taxable fuel and was also paid to the government (the “second tax”);

(3) The person that paid the second tax to the government has filed a timely claim for refund that contains the information required under paragraph (d) of this section; and

(4) The person that paid the first tax to the government has met the reporting requirements of paragraph (c) of this section.

(c) *Reporting requirements*—(1) *Reporting by persons paying the first tax.* Except as provided in paragraph (c)(3) of this section, the person that paid the first tax under §48.4081-3 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in paragraph (c)(2) of this section (or such other model report as the Commissioner may prescribe) and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be filed with the return to which the report relates (or at such other time, or in such other manner, as prescribed by the Commissioner).

(2) *Model first taxpayer's report.*

FIRST TAXPAYER'S REPORT

1. _____

_____

First Taxpayer's name, address, and employer identification number

2. _____

_____

Name, address, and employer identification number of the buyer of the taxable fuel subject to tax

3. _____

Date and location of removal, entry, or sale

4. _____

Volume and type of taxable fuel removed, entered, or sold

5. Check type of taxable event:

_____ Removal from refinery

_____ Entry into United States

_____ Bulk transfer from terminal by unregistered position holder

_____ Bulk transfer not received at an approved terminal

_____ Sale within the bulk transfer/terminal system

_____ Removal at the terminal rack

_____ Removal or sale by the blender

6. _____

Amount of Federal excise tax paid on account of the removal, entry, or sale

The undersigned taxpayer (the "Taxpayer") has not received, and will not claim, a credit with respect to, or a refund of, the tax on the taxable fuel to which this form relates.

Under penalties of perjury, the Taxpayer declares that Taxpayer has examined this statement, including any accompanying schedules and statements, and, to the best of Taxpayer's knowledge and belief, they are true, correct and complete.

_____

Signature and date signed

_____

Printed or typed name of person signing this report

_____

Title

(3) *Optional reporting for certain taxable events.* Paragraph (c)(1) of this section does not apply with respect to a tax imposed under §48.4081-2 (removal at a terminal rack), §48.4081-3(c)(1)(ii) (nonbulk entries into the United States), or §48.4081-3(g) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under section 4081 with respect to the taxable fuel, that person should (but is not required to) file a first taxpayer's report.

(4) *Information provided to subsequent owners, etc.*—(i) *By person required to file first taxpayer's report.* A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to—

(A) The person to whom the first taxpayer sells (within the meaning of §48.4081-1)) the taxable fuel within the bulk transfer/terminal system; or

(B) The owner of the taxable fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(ii) *By person filing optional first taxpayer's report.* A first taxpayer filing a first taxpayer's report under paragraph (c)(3) of this section should (but is not required to) give a copy of the report to—

(A) The person to whom the first taxpayer sells the taxable fuel; or

(B) The owner of the taxable fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

(iii) *By person receiving first taxpayer's report.* A person that receives a copy of the first taxpayer's report and subsequently sells (within the meaning of §48.4081-1)) the taxable fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(4)(iv) of this section to the buyer. A person that receives a copy of the first taxpayer's report and subsequently sells the taxable fuel outside the bulk transfer/terminal system should (but is not required to) give the copy and a statement that satisfies the requirements of paragraph (c)(4)(iv) of

this section to the buyer, if that person expects that another tax will be imposed under section 4081 with respect to the taxable fuel.

(iv) *Form of statement*—(A) *In general.* A statement satisfies the requirements of this paragraph (c)(4)(iv) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in paragraph (c)(4)(iv)(B) of this section (or such other model statement as the Commissioner may prescribe) but need not be in the same format.

(B) *Model statement describing subsequent sale.*

STATEMENT OF SUBSEQUENT SELLER

1. _____

_____

Name, address, and employer identification number of seller in subsequent sale

2. _____

_____

Name, address, and employer identification number of buyer in subsequent sale

3. _____

Date and location of subsequent sale

4. _____

Volume and type of taxable fuel sold

The undersigned seller (the “Seller”) has received the copy of the first taxpayer's report provided with this statement in connection with Seller's purchase of the taxable fuel described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, they are true, correct and complete.

_____

Signature and date signed

_____

Printed or typed name of person signing this statement

_____

Title

(v) *Sale to multiple buyers.* If the first taxpayer's report relates to taxable fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the taxable fuel is divided and each buyer must be given a copy of the report.

(d) *Form and content of claim*—(1) *In general.* The following rules apply to claims for refund under section 4081(e):

(i) The claim must be made by the person that paid the second tax to the government and must include all the information described in paragraph (d)(2) of this section.

(ii) The claim must be made on Form 8849 (or such other form as the Commissioner may designate) in accordance with the instructions on the form. The form should be marked *Section 4081(e) Claim* at the top. Section 4081(e) claims must not be included with a claim for a refund under any other provision of the Internal Revenue Code.

(2) *Information to be included in the claim.* Each claim for a refund under section 4081(e) must contain the following information with respect to the taxable fuel covered by the claim:

(i) Volume and type of taxable fuel.

(ii) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).

(iii) Amount of second tax that claimant paid to the government and a statement that claimant has not included the amount of this tax in the sales price of the taxable fuel to which this claim relates and has not collected that amount from the person that bought the taxable fuel from claimant.

(iv) Name, address, and employer identification number of the person that paid the first tax to the government.

(v) A copy of the first taxpayer's report that relates to the taxable fuel covered by the claim.

(vi) If the taxable fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that taxable fuel.

(e) *Time for filing claim.* A claim for refund under section 4081(e) may be filed any time after the claimant has filed the return of the second tax and before the end of the period prescribed by section 6511 for the filing of a claim for a refund.

(f) *Examples.* The following examples illustrate the provisions of this section.

Example 1. (i) A is a taxable fuel registrant that owns 10,000 gallons of gasoline, and on April 5, 1996, is transporting the gasoline by barge on a waterway in the United States. That day, A sells the gasoline to B, a person that is not a taxable fuel registrant. A is liable for tax on the sale under §48.4081-3(f). A pays this tax to the government and attaches to its return of the gasoline tax for the 2nd quarter of 1996 the first taxpayer's report described in paragraph (c) of this section. A also gives a copy of this report to B.

(ii) On April 9, 1996, B sells the gasoline to C, a taxable fuel registrant. B also gives C a copy of the first taxpayer's report and the statement of subsequent seller (required under paragraph (c)(4) of this section). On April 14, 1996, the gasoline is removed from a terminal at the rack. C is the position holder of the gasoline at the time of the removal and thus is liable for tax on the removal under §48.4081-2(c)(1). C pays this tax to the government.

(iii) After C has filed a return of the second tax and before the end of the period prescribed by section 6511 for filing a claim for a refund, C files a claim for a refund of the second tax. The claim is in the form prescribed in paragraph (d)(2) of this section. C includes with its claim a copy of the first taxpayer's report and statement of subsequent seller. Because the conditions to allowance of a refund under paragraph (b) of this section have been met, C is allowed a refund of the second tax.

Example 2. The facts are the same as in *Example 1* except that A does not pay the tax to the government. Because the first tax was not paid to the government as required by paragraph (b)(1) of this section, the conditions to allowance of a refund under paragraph (b) of this section have not been met. Therefore, C is not allowed a refund of the second tax.

(g) *Effective date.* This section is effective in the case of taxable fuel with respect to which the first tax is imposed after September 30, 1995.

[T.D. 8421, 57 FR 32424, July 22, 1992, as amended by T.D. 8609, 60 FR 40086, Aug. 7, 1995; T.D. 8659, 61 FR 10457, Mar. 14, 1996; T.D. 8879, 65 FR 17157, Mar. 31, 2000]

§48.4081-8 Taxable fuel; measurement.

(a) *In general.* Volumes of taxable fuel may be measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit.

(b) *Effective date.* This section is applicable January 1, 1994.

[66 FR 27597, May 18, 2001]

§48.4082-1 Diesel fuel and kerosene; exemption for dyed fuel.

(a) *Exemption.* Tax is not imposed by section 4081 on the removal, entry, or sale of any diesel fuel or kerosene if—

(1) The person otherwise liable for tax is a taxable fuel registrant;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3) The diesel fuel or kerosene satisfies the dyeing and marking requirements of paragraphs (b), (c), and (d) of this section.

(b) *Dyeing requirements.* Diesel fuel or kerosene satisfies the dyeing requirement of this paragraph (b) only if the diesel fuel or kerosene contains—

(1) The dye Solvent Red 164 (and no other dye) at a concentration spectrally equivalent to at least 3.9 pounds of the solid dye standard Solvent Red 26 per thousand barrels of diesel fuel or kerosene; or

(2) Any dye of a type and in a concentration that has been approved by the Commissioner.

(c) *Marking requirements.* [Reserved]

(d) [Reserved]. For further guidance, see §48.4082-1T(d).

(e) *Effective date*—(1) Except as provided in paragraph (e)(2) of this section, this section is applicable March 14, 1996.

(2) [Reserved] For further guidance, see §48.4082-1T(e)(2).

[T.D. 8659, 61 FR 10457, Mar. 14, 1996, as amended by T.D. 8879, 65 FR 17157, Mar. 31, 2000; T.D. 9199, 70 FR 21333, Apr. 26, 2005]

§48.4082-1T Diesel fuel and kerosene; exemption for dyed fuel (temporary).

(a) through (c) [Reserved]. For further guidance, see §48.4082-1(a) through (c).

(d) *Time and method for adding dye*—(1) *In general.* Except as provided by paragraph (d)(6) of this section, diesel fuel or kerosene satisfies the dyeing requirements of this paragraph (d) only if the dye required by §48.4082-1(b) is combined with the diesel fuel or kerosene by means of a mechanical injection system that is approved by the Commissioner for use at the facility where the dyeing occurs. Application for approval must be made in the form and manner required by the Commissioner. Rules similar to the rules of §48.4101-1(g) apply to the Commissioner's action on the applications.

(2) *Mechanical injection system; requirements.* The Commissioner will approve a mechanical injection system only if—

(i) The system has features that automatically inject an amount of dye that satisfies the concentration requirements of §48.4082-1(b) into diesel fuel or kerosene as the diesel fuel or kerosene is delivered from the bulk transfer/terminal system into the transport compartment of a truck, trailer, railroad car, or other means of nonbulk transfer;

(ii) The system has calibrated devices that accurately measure and record the amount of dye and the amount of diesel fuel and kerosene that is dispensed for each removal;

(iii) The system has automatic shut-off devices that prevent the removal of more than 100 gallons of undyed diesel fuel or kerosene in the case of a system malfunction;

(iv) The system is secured by either—

(A) Unbroken seals that are issued, installed, and maintained by the terminal operator and secure the measurement devices, shut-off devices, and other access points to the injection system; or

(B) A secured container that controls access to the measurement devices, shut-off devices, and other access points and is secured by an unbroken seal issued, installed, and maintained by the terminal operator;

(v) Each seal securing the system bears a unique identifying number or code and is produced in a manner that provides adequate assurance against duplication; and

(vi) The operator of the facility has written procedures in place for complying with its duty, described in paragraph (d)(4) of this section, to maintain the system's security standards.

(3) *Mechanical injection system; basis for approval.* In determining whether to approve a mechanical injection system, the Commissioner will take into account the individual circumstances of each facility, including local fire and safety codes, to ensure that the cost of acquiring and maintaining the appropriate levels of security are reasonable for that facility.

(4) *Mechanical injection system; duty of the operator of a mechanical injection system to maintain the system's security standards.* Each operator of a mechanical injection system must—

(i) Maintain a record for each seal, including its identifying number or code, the location of the seal, the date(s) on which the seal was issued and installed, and the reason for the installation;

(ii) Visually inspect each installed seal not less than once during every 24 hour period to ascertain that each seal and lock mechanism, if applicable, has not been physically altered;

(iii) Check the identifying number or code for each seal against the records maintained by the terminal operator no less frequently than once during each seven day period and record each inspection and verification;

(iv) Promptly notify the Commissioner if inspection of a seal reveals any inconsistency in the records pertaining to that seal, or if the seal has been damaged or removed (other than a removal authorized by the operator for testing or maintenance);

(v) Maintain a record of each seal that has been replaced to include the seal number or code, the date the seal was issued, the location of the seal, the date the seal was replaced, and the reason the seal was replaced;

(vi) Promptly destroy and replace seals that have been removed from the system;

(vii) Restrict access to unused seal inventory to individuals specifically designated by the operator and maintain a record of such individuals;

(viii) Maintain a record of each installation, inspection, and destruction described in this paragraph (d)(4), including the name of the individual who conducts the installation, inspection, or destruction;

(ix) Make available for the Commissioner's immediate inspection the seals and records described in this paragraph (d)(4); and

(x) Promptly notify the Commissioner if, and when, the dye injection system is placed out of service.

(5) *Mechanical injection system; revocation or suspension of approval.* The Commissioner may revoke or suspend its approval of a dye injection system if the Commissioner determines that the system does not meet the standards of paragraph (d)(2) of this section or if the operator of the system has not complied with the requirements of paragraph (d)(4) of this section.

(6) *Sales and entries.* For purposes of determining whether tax is imposed by section 4081 on a sale or entry of diesel fuel or kerosene, such fuel satisfies the dyeing requirements of this paragraph (d) only if the dye required by §48.4082-1(b) is combined with the fuel before the sale or entry and the seller or enterer has in its records evidence (such as a certificate from the terminal operator providing the fuel) establishing that the dye was combined with the fuel by means of a mechanical injection system. Thus, for example, diesel fuel or kerosene that is entered into the United States by means of nonbulk transfer (such as a railroad car) does not satisfy the requirements of this paragraph (d) if the required dye and marker are combined with diesel fuel or kerosene after the diesel fuel or kerosene has been entered into the United States.

(7) *Cross reference.* For the penalty relating to mechanical dye injection systems, see section 6715A.

(e) and (e)(1) [Reserved]. For further guidance, see §48.4082-1(e) and (e)(1).

(2) This section is applicable on October 24, 2005.

[T.D. 9199, 70 FR 21333, Apr. 26, 2005]

§48.4082-2 Diesel fuel and kerosene; notice required for dyed fuel.

(a) *In general.* A legible and conspicuous notice stating *"DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE"* must be posted by a seller on any retail pump or other delivery facility where it sells dyed diesel fuel for use by its buyer. A legible and conspicuous notice stating *"DYED KEROSENE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE"* must be posted by a seller on any retail pump or other delivery facility where it sells dyed kerosene for use by its buyer. Any seller that fails to post the required notice on any retail pump or other delivery facility where it sells dyed fuel is, for purposes of the penalty imposed by section 6715, presumed to know that the fuel will not be used for a nontaxable use.

(b) *Cross reference; terminal operators.* For the requirement that terminal operators provide a notice with respect to dyed fuel, see §48.4101-1(h)(3) (relating to terms and conditions of registration for terminal operators).

(c) *Effective date.* This section is applicable with respect to diesel fuel after December 31, 1993, and with respect to kerosene after June 30, 1998.

[T.D. 8879, 65 FR 17157, Mar. 31, 2000]

§48.4082-3 Diesel fuel and kerosene; visual inspection devices. [Reserved]

§48.4082-4 Diesel fuel and kerosene; back-up tax.

(a) *Imposition of tax*—(1) *In general.* Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered highway vehicle (other than a diesel-powered bus) of—

(i) Any diesel fuel or kerosene on which tax has not been imposed by section 4081;

(ii) Any diesel fuel or kerosene for which a credit or payment has been allowed under section 6427; or

(iii) Any liquid (other than taxable fuel) for use as fuel.

(2) *Liability for tax*—(i) *In general.* The operator of the highway vehicle into which the fuel is delivered is liable for the tax imposed under paragraph (a)(1) of this section.

(ii) *Joint and several liability of the seller.* The seller of the fuel is jointly and severally liable for the tax imposed under paragraph (a)(1) of this section if the seller knows or has reason to know that the fuel will not be used in a nontaxable use.

(3) *Rate of tax.* The rate of tax is the rate imposed on diesel fuel by section 4081(a).

(b) *Tax on diesel fuel and kerosene; buses and trains*—(1) *In general.* Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered bus or a diesel-powered train of—

(i) Any diesel fuel or kerosene on which tax has not been imposed by section 4081;

(ii) Any diesel fuel or kerosene for which a credit or payment has been allowed under section 6427; or

(iii) Any liquid (other than taxable fuel) for use as fuel.

(2) *Liability for tax*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, the operator of the bus or train into which the fuel is delivered is liable for the tax imposed under paragraph (b)(1) of this section.

(ii) *Special rule for certain train operators.* The person that delivers the fuel into the fuel supply tank of a train, rather than the train operator, is liable for the tax imposed under paragraph (b)(1) of this section if, at the time of the delivery—

(A) The deliverer of the fuel and the operator of the train are both registered as train operators under §48.4101-1; and

(B) A written agreement between the deliverer of the fuel and the operator requires the deliverer to pay the tax imposed under paragraph (b)(1) of this section.

(3) *Rate of tax*—(i) *Buses*—(A) *In general.* The rate of tax under paragraph (b)(1) of this section is the sum of the rates described in sections 4041(a)(1)(C)(iii)(I) and 4041(d)(1) (the bus rate) if the bus is used to furnish (for compensation) passenger land transportation available to the general public and either such transportation is scheduled and along regular routes or the seating capacity of the bus is at least 20 adults (not including the driver). A bus is available to the general public if the bus is available for hire to more than a limited number of persons, groups, or organizations.

(B) *Other uses.* The rate of tax under paragraph (b)(1) of this section is the rate of tax imposed on diesel fuel by section 4081(a) if the bus is used for a purpose other than that described in paragraph (b)(3)(i)(A) of this section.

(ii) *Trains.* The rate of tax under paragraph (b)(1) of this section is the rate prescribed in section 4041 for diesel fuel sold for use in a train (the train rate).

(4) *Cross reference.* For the registration requirement relating to certain bus and train operators, see §48.4101-1(c)(2).

(c) *Exemptions.* The taxes imposed under paragraphs (a) and (b) of this section do not apply to a delivery of any liquid for—

(1) Use on a farm for farming purposes as that term and related terms are defined in §48.6420-4 (a) through (g);

(2) The exclusive use of a State;

(3) Use described in section 4041(h) (relating to use in a vehicle owned by an aircraft museum);

(4) Use in a bus while the bus is engaged in the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C));

(5) Use in a qualified local bus (as defined in section 6427(b)(2)(D)) while the bus is engaged in furnishing (for compensation) intracity passenger land transportation that is available to the general public and is scheduled and along regular routes;

(6) Use in a highway vehicle that—

(i) Is not registered (and is not required to be registered) for highway use under the laws of any State or foreign country; and

(ii) Is used in the operator's trade or business or in an activity of the operator described in section 212 (relating to the production of income);

(7) The exclusive use of a nonprofit educational organization, as defined in §48.4221-6(b); or

(8) Use in a highway vehicle that is owned by the United States and is not used on the highway.

(d) *Effective date.* This section is applicable after December 31, 1993, except that references to kerosene are applicable after June 30, 1998.

[T.D. 8659, 61 FR 10458, Mar. 14, 1996, as amended by T.D. 8879, 65 FR 17157, Mar. 31, 2000]

§48.4082-5 Diesel fuel and kerosene; Alaska.

(a) *Application.* This section applies to diesel fuel or kerosene removed, entered, or sold in Alaska for ultimate sale or use in an exempt area of Alaska.

(b) *Definitions.*

Exempt area of Alaska means the area of Alaska in which the sulfur content requirements for diesel fuel (see section 211(i) of the Clean Air Act (42 U.S.C. 7545(i))) do not apply because the Administrator of the Environmental Protection Agency has granted an exemption under section 211(i)(4) of that Act.

Nontaxable use means a use described in section 4082(b).

Qualified dealer means any person that holds a qualified dealer license from the state of Alaska or has been registered by the district director as a qualified retailer. The district director will register a person as a qualified retailer only if the district director—

(1) Determines that the person, in the course of its trade or business, regularly sells diesel fuel or kerosene for use by its buyer in a nontaxable use; and

(2) Is satisfied with the filing, deposit, payment, and claim history for all federal taxes of the person and any related person.

(c) *Tax-free removals and entries.* Notwithstanding §48.4082-1, tax is not imposed by section 4081 on the removal or entry of any diesel fuel or kerosene in an exempt area of Alaska if—

(1) The person that would be liable for tax under §48.4081-2 or 48.4081-3 is a taxable fuel registrant and satisfies the requirements of paragraph (e) of this section;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3) The owner of the diesel fuel or kerosene immediately after the removal or entry holds the fuel for its own use in a nontaxable use or is a qualified dealer.

(d) *Sales after removals and entries*—(1) *In general.* Paragraph (c) of this section does not apply with respect to diesel fuel or kerosene that is subsequently sold by a qualified dealer unless—

(i) The fuel is sold in an exempt area of Alaska;

(ii) The buyer purchases the fuel for its own use in a nontaxable use or is a qualified dealer; and

(iii) The seller satisfies the requirements of paragraph (e) of this section.

(2) *Tax imposed at time of sale; liability for tax.* Notwithstanding §§48.4081-2 and 48.4081-3, in any case in which paragraph (c) of this section does not apply with respect to diesel fuel or kerosene because of a subsequent sale by a qualified dealer, the tax with respect to that fuel is imposed at the time of the subsequent sale and the qualified dealer is liable for the tax.

(3) *Rate of tax.* For the rate of tax, see section 4081.

(e) *Evidence of tax-free transactions.* The requirements of section 4082(c)(2) (relating to certification) and this paragraph (e) are satisfied if the person otherwise liable for tax is able to show the district director satisfactory evidence of the exempt nature of the transaction and has no reason to believe that the evidence is false. Satisfactory evidence may include copies of qualified dealer licenses or exemption certificates obtained for state tax purposes.

(f) *Registration.* With respect to each person that has been registered as a qualified retailer by the district director, the rules of §48.4101-1(g), (h), and (i) apply.

(g) *Cross reference.* For the tax on previously untaxed diesel fuel or kerosene that is used for a taxable purpose, see §48.4082-4.

(h) *Effective date.* This section is applicable with respect to diesel fuel removed or entered after December 31, 1996, and with respect to kerosene removed or entered after June 30, 1998. A person registered by the district director as a qualified retailer before April 2, 1998 may be treated, to the extent the district director determines appropriate, as a qualified dealer for the period before that date.

[T.D. 8693, 61 FR 66216, Dec. 17, 1996. Redesignated and amended by T.D. 8748, 63 FR 25, Jan. 2, 1998; T.D. 8879, 65 FR 17157, Mar. 31, 2000]

§48.4082-6 Kerosene; exemption for aviation-grade kerosene.

(a) *Overview.* This section prescribes the conditions under which tax does not apply to the removal or entry of aviation-grade kerosene that is destined for use as a fuel in an aircraft.

(b) *Definition.* For purposes of this section, *aviation-grade kerosene* means kerosene-type jet fuel covered by ASTM specification D 1655 or military specification MIL-DTL-5624T (Grade JP-5) or MIL-DTL-83133E (Grade JP-8). For availability of ASTM and military specifications, see §48.4081-1(d).

(c) *Exemption for certain removals and entries.* Tax is not imposed under §48.4081-2(b), 48.4081-3 (b)(1)(ii), or 48.4081-3(c)(1)(ii) on the removal or entry of aviation-grade kerosene if—

(1) The person otherwise liable for tax is a taxable fuel registrant;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3)(i) The person otherwise liable for tax delivers the kerosene into the fuel supply tank of an aircraft and this delivery is not in connection with a sale; or

(ii) The kerosene is sold for use as a fuel in an aircraft and, at the time of the sale, the person otherwise liable for tax has an unexpired certificate (described in paragraph (e) of this section) from the buyer and has no reason to believe any information in the certificate is false.

(d) *Certain later sales*—(1) *In general.* Paragraph (c) of this section does not apply with respect to kerosene that is sold as described in paragraph (c)(3)(ii) of this section if there is a later disqualifying sale of the kerosene. A later disqualifying sale is any later sale other than a later sale—

(i) By a person that, at the time of the sale, has an unexpired certificate (described in paragraph (e) of this section) from the buyer and has no reason to believe that any information in the certificate is false; or

(ii) In connection with the delivery of the kerosene into the fuel supply tank of an aircraft.

(2) *Imposition of tax; liability for tax.* Notwithstanding §§48.4081-2 and 48.4081-3, in any case in which paragraph (d)(1) of this section applies, tax is imposed with respect to that kerosene at the time of the first later disqualifying sale and the seller in that sale is liable for the tax.

(3) *Rate of tax.* For the rate of tax, see section 4081.

(e) *Certificate*—(1) *In general.* The certificate described in this paragraph (e) is a statement by a buyer that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (e)(3) of this section, and contains all information necessary to complete the model certificate. A new certificate or notice that the current certificate is invalid must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(i) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(ii) The date the buyer provides the seller a new certificate or notice that the current certificate is invalid.

(iii) The date the Internal Revenue Service or the buyer notifies the seller that the buyer's right to provide a certificate has been withdrawn.

(2) *Withdrawal of the right to provide a certificate.* The Internal Revenue Service may withdraw the right of a buyer of aviation-grade kerosene to provide a certificate under this section if the buyer uses the aviation-grade kerosene to which a certificate relates other than as a fuel in an aircraft or sells the kerosene without first obtaining a certificate from its buyer. The Internal Revenue Service may notify any seller to whom the buyer has provided a certificate that the buyer's right to provide a certificate has been withdrawn.

(3) *Model certificate.*

CERTIFICATE OF PERSON BUYING AVIATION-GRADE KEROSENE FOR USE AS A FUEL IN AN AIRCRAFT

(To support tax-free removals and entries of aviation-grade kerosene under section 4082 of the Internal Revenue Code.)

_____(Buyer) certifies the following

Name of Buyer

under penalties of perjury:

The aviation-grade kerosene to which this certificate applies will be used by Buyer as a fuel in an aircraft or resold by Buyer for that use.

This certificate applies to ____ percent of Buyer's purchases from _____ (name, address, and employer identification number of seller) as follows (complete as applicable):

1. A single purchase on invoice or delivery ticket number _____.

2. All purchases between _____ (effective date) and _____ (expiration date) (period not to exceed one year after the effective date) under account or order number(s) _____. If this certificate applies only to Buyer's purchases for certain locations, check here ____ and list the locations.

Buyer is buying the kerosene for (check either or both as applicable): __ Buyer's use as a fuel in an aircraft. __ Resale for use as a fuel in an aircraft.

Buyer will provide a new certificate to the seller if any information in this certificate changes.

If Buyer sells the aviation-grade kerosene to which this certificate relates and does not deliver it into the fuel supply tank of an aircraft, Buyer will be liable for tax unless Buyer obtains a certificate from its buyer stating that the aviation-grade kerosene will be used as a fuel in an aircraft.

If Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

The fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing

Title of person signing

Employer identification number

Address of Buyer

Signature and date signed

(f) *Effective date.* This section is applicable after March 30, 2000, except that paragraph (d) of this section is applicable after June 30, 2000.

[T.D. 8879, 65 FR 17158, Mar. 31, 2000]

§48.4082-7 Kerosene; exemption for feedstock purposes.

(a) *Overview.* This section prescribes the conditions under which tax does not apply to the removal or entry of kerosene for use for a feedstock purpose.

(b) *Definitions.* The following definitions apply to this section:

Feedstock purpose means the use of kerosene for nonfuel purposes in the manufacture or production of any substance other than gasoline, diesel fuel, or special fuels referred to in section 4041. Thus, for example, kerosene is used for a feedstock purpose when it is used as an ingredient in the production of paint and is not used for a feedstock purpose when it is used to power machinery at a factory where paint is produced.

Feedstock user means a person that uses kerosene for a feedstock purpose.

Registered feedstock user means a feedstock user that is—

(1) Registered under section 4101 as a feedstock user; or

(2) With respect to removals and entries before October 1, 2000, a taxable fuel registrant.

(c) *Exemption for removals and entries.* Tax is not imposed on the removal or entry of kerosene if—

(1) The person otherwise liable for tax is a taxable fuel registrant;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3)(i) The person otherwise liable for tax uses the kerosene for a feedstock purpose; or

(ii) The kerosene is sold for use by the buyer for a feedstock purpose and, at the time of the sale, the person otherwise liable for tax has an unexpired certificate (described in paragraph (e) of this section) from the buyer and has no reason to believe any information in the certificate is false.

(d) *Later sale*—(1) *In general.* Paragraph (c) of this section does not apply with respect to kerosene that is sold as described in paragraph (c)(3)(ii) of this section if the buyer in that sale (the certifying buyer) sells the kerosene.

(2) *Imposition of tax; liability for tax.* Notwithstanding §§48.4081-2 and 48.4081-3, in any case in which paragraph (d)(1) of this section applies, tax with respect to that kerosene is imposed at the time of the sale by the certifying buyer and the certifying buyer is liable for the tax.

(3) *Rate of tax.* For the rate of tax, see section 4081.

(e) *Certificate*—(1) *In general.* The certificate described in this paragraph (e) is a statement by a buyer that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (e)(2) of this section, and contains all information necessary to complete the model certificate. A new certificate or notice that the current certificate is invalid must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(i) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(ii) The date the buyer provides the seller a new certificate or notice that the current certificate is invalid.

(iii) The date the seller is notified by the Internal Revenue Service or the buyer that the buyer's registration has been revoked or suspended.

(2) *Model certificate.*

CERTIFICATE OF REGISTERED FEEDSTOCK USER

(To support tax-free removals and entries of kerosene under section 4082 of the Internal Revenue Code.)

_____(Buyer) certifies the following

Name of Buyer

under penalties of perjury:

Buyer is a registered feedstock user with registration number ____. Buyer's registration has not been revoked or suspended.

The kerosene to which this certificate applies will be used by Buyer for a feedstock purpose.

This certificate applies to ____ percent of Buyer's purchases from _____ (name, address, and employer identification number of seller as follows (complete as applicable):

1. A single purchase on invoice or delivery ticket number _____.

2. All purchases between _____ (effective date) and _____ (expiration date) (period not to exceed one year after the effective date) under account or order number(s) _____. If this certificate applies only to Buyer's purchases for certain locations, check here ____ and list the locations.

If Buyer sells the kerosene to which this certificate relates, Buyer will be liable for tax on that sale.

Buyer will provide a new certificate to the seller if any information in this certificate changes.

If Buyer violates the terms of this certificate, the Internal Revenue Service may revoke Buyer's registration.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

Printed or typed name of person signing

Title of person signing

Employer identification number

Address of Buyer

Signature and date signed

(f) *Effective date.* This section is applicable after March 30, 2000, except that paragraph (d) of this section is applicable after June 30, 2000.

[T.D. 8879, 65 FR 17158, Mar. 31, 2000]

§48.4083-1 Taxable fuel; administrative authority.

(a) *In general*—(1) *Authority to inspect.* Officers or employees of the IRS designated by the Commissioner, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized to enter any place and to conduct inspections in accordance with paragraphs (a) through (c) of this section.

(2) *Reasonableness.* Inspections will be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.

(b) *Place of inspection*—(1) *In general.* Inspections may be at any place at which taxable fuel is (or may be) produced or stored or at any inspection site where evidence of activities described in section 6715(a) may be discovered. These places may include, but are not limited to—

(i) Any terminal;

(ii) Any fuel storage facility that is not a terminal;

(iii) Any retail fuel facility; or

(iv) Any designated inspection site.

(2) *Designated inspection sites.* A designated inspection site is any State highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Commissioner to be used as a fuel inspection site. A designated inspection site will be identified as a fuel inspection site.

(c) *Scope of inspection*—(1) *Inspection.* Officers or employees may physically inspect, examine or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of fuel, fuel dyes, or fuel markers. Inspection may also be made of any equipment used for, or in connection with, production, storage, or transportation of fuel, fuel dyes, or fuel markers. This includes any equipment used for the dyeing or marking of fuel. This also includes books and records, if any, that are maintained at the place of inspection and are kept to determine excise tax liability under section 4081.

(2) *Detainment.* Officers or employees may detain any vehicle or train for the purpose of inspecting its fuel tanks and storage tanks. Detainment will be either on the premises under inspection or at a designated inspection site. Detainment may continue for such reasonable period of time as is necessary to determine the amount and composition of the fuel.

(3) *Removal of samples.* Officers or employees may take and remove samples of fuel in such quantities as are reasonably necessary to determine the composition of the fuel.

(d) *Refusal to submit to inspection.* For the penalty for any refusal to permit an entry or inspection authorized by this section, see section 4083(c)(3). This penalty is in addition to any tax that may be imposed by section 4041 or 4081 and any penalty that may be imposed by section 6715.

(e) *Effective date.* This section is effective January 1, 1994.

[T.D. 8659, 61 FR 10458, Mar. 14, 1996, as amended by T.D. 8685, 61 FR 58007, Nov. 12, 1996; T.D. 8879, 65 FR 17159, Mar. 31, 2000]

§48.4091-3 Aviation fuel; conditions to allowance of refunds of aviation fuel tax under section 4091(d).

(a) *Overview.* This section provides the conditions under which a refund of tax imposed by section 4091 is allowable with respect to taxed aviation fuel that is held by a registered aviation fuel producer. No credit against any tax imposed by the Internal Revenue Code is allowed under section 4091(d).

(b) *Conditions to allowance of refund.* A claim for refund of tax imposed by section 4091 with respect to aviation fuel is allowed under section 4091(d) and this section only if—

(1) A tax imposed by section 4091 with respect to the aviation fuel was paid to the government by an importer or producer (the first producer) and the tax has not been otherwise credited or refunded;

(2) After imposition of the tax, the aviation fuel is acquired by a person that is a registered aviation fuel producer (the second producer);

(3) The second producer has filed a timely claim for refund that contains the information required under paragraph (d) of this section; and

(4) The first producer and any person that owns the fuel after its sale by the first producer and before its purchase by the second producer (a subsequent seller) have met the reporting requirements of paragraph (c) of this section.

(c) *Reporting requirements*—(1) *In general.* The reporting requirements of this paragraph (c)(1) are met if the first producer files a report (the first producer's report) that—

(i) Is in substantially the same form as the model report provided in paragraph (c)(2) of this section (or such other model report as the Commissioner may prescribe);

(ii) Contains all information necessary to complete such model report; and

(iii) Is filed at the time and in the manner prescribed by the Commissioner.

(2) *Model first producer's report.*

FIRST PRODUCER'S REPORT

First Producer's name, address, and employer identification number

Buyer's name, address, and employer identification number

Date and location of taxable sale

Volume and type of aviation fuel sold

Amount of federal excise tax paid on account of the sale

Under penalties of perjury, First Producer declares that First Producer has examined this statement, including any accompanying schedules and statements, and, to the best of First Producer's knowledge and belief, it is true, correct and complete.

Printed or typed name of the person signing

Title of person signing

Signature and date signed

(3) *Information provided to buyers.* The reporting requirements of this paragraph (c)(3) are met if a first producer that filed a first producer's report under paragraph (c)(1) of this section gives a copy of the report to the person to whom the first producer sells the aviation fuel.

(4) *Statement of subsequent seller*—(i) *In general.* The reporting requirements of this paragraph (c)(4) are met if—

(ii)(A) Each subsequent seller gives to its buyer a copy of a statement that provides all information (whether or not in the same format) necessary to complete the model statement prescribed in paragraph (c)(4)(ii) of this section (or such other model statement as the Commissioner may prescribe); and

(B) The statement is provided at the bottom or on the back of the copy of the first producer's report (or in an attached document).

(iii) *Model statement describing subsequent sale.*

STATEMENT OF SUBSEQUENT SELLER (AVIATION FUEL)

Name, address, and employer identification number of seller in subsequent sale

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Name, address, and employer identification number of buyer in subsequent sale

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Date and location of subsequent sale

Volume and type of aviation fuel sold

The undersigned seller (the Seller) has received the copy of the first producer's report provided with this statement in connection with Seller's purchase of the aviation fuel described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, it is true, correct and complete.

Printed or typed name of person signing

Title of person signing

Signature and date signed

(5) *Sale to multiple buyers.* If a first producer's report relates to aviation fuel that is divided among more than one buyer, multiple copies of the first producer's report should be made at the stage that the aviation fuel is divided and a copy given to each buyer. The reporting requirements of this paragraph (c) will be met only with respect to the fuel purchased by buyers that are given a copy of the report including any statement required under paragraph (c)(4) of this section.

(d) *Form and content of claim*—(1) *In general.* The following rules apply to claims for refund under section 4091(d):

(i) The claim must be made by the second producer and must include all the information described in paragraph (d)(2) of this section.

(ii) The claim must be made on Form 8849 (or such other form as the Commissioner may designate) in accordance with the instructions on the form. The form should be marked *Section 4091(d) Claim* at the top. Section 4091(d) claims must not be included with a claim for a refund under any other provision of the Internal Revenue Code.

(2) *Information to be included in the claim.* Each claim for a refund under section 4091(d) must contain the following information with respect to the aviation fuel covered by the claim:

(i) Volume and type of aviation fuel.

(ii) Date on which the second producer acquired the aviation fuel to which the claim relates.

(iii) Amount of tax that the first producer paid to the government and a statement that the second producer has not included the amount of that tax in the sales price of the aviation fuel to which the claim relates and has not collected that amount from the person that bought the aviation fuel from the second producer, if any.

(iv) Name, address, and employer identification number of the first producer that paid the tax to the government.

(v) A copy of the first producer's report that relates to the aviation fuel covered by the claim.

(vi) A copy of any statement of a subsequent seller that the second producer received with respect to that aviation fuel.

(e) *Time for filing claim.* A claim for refund under section 4091(d) may be filed any time after the first producer has filed the return of the tax to which the claim relates and before the end of the period prescribed by section 6511 for the filing of a claim for refund of that tax.

(f) *Effective date.* This section is applicable with respect to refunds of tax imposed by section 4091 after December 31, 1998.

[T.D. 8774, 63 FR 35802, July 1, 1998. Redesignated by T.D. 8879, 65 FR 17159, Mar. 31, 2000]

§48.4101-1 Taxable fuel; registration.

(a) *In general.* (1) This section provides rules relating to registration under section 4101 for purposes of the federal excise tax on taxable fuel imposed by sections 4041(a)(1) and 4081 and the credit or payment allowed to certain ultimate vendors of diesel fuel and kerosene under section 6427.

(2) A person is registered under section 4101 only if the district director has issued a registration letter to the person and the registration has not been revoked or suspended. However, the United States is treated as registered under section 4101.

(3) A refiner that is registered under section 4101 may, with respect to the bulk removal of any batch of gasohol from its refinery, treat itself as a person that is not registered. See §48.4081-3(b)(1)(iii).

(4) Each business unit that has, or is required to have, a separate employer identification number is treated as a separate person. Thus, two business units (for example, a parent corporation and a subsidiary corporation, or a proprietorship and a related partnership), each of which has a different employer identification number, are two persons.

(5) A registration in effect on December 31, 1993, with respect to the tax on gasoline or diesel fuel is subject to the district director's review, and to revocation or suspension, under the standards set forth in this section, but remains in effect until the earlier of—

(i) The effective date of a registration issued under paragraph (g)(3) of this section; or

(ii) The effective date of the revocation or suspension of the registration under paragraph (i) of this section.

(6)(i) A person is treated as a taxable fuel registrant if on June 30, 1998, the person—

(A) Is an enterer, refiner, terminal operator, or throughputter with respect to kerosene and is registered under section 4101 as a producer or importer of aviation fuel;

(B) Operates one or more terminals that store kerosene (and no other type of taxable fuel); or

(C) Is a commercial airline, an operator of aircraft in noncommercial aviation, or a fixed base operator and is also a position holder with respect to kerosene.

(ii) A person treated as registered under paragraph (a)(6)(i) of this section is treated as registered from July 1, 1998, until the earlier of—

(A) The date of a subsequent denial of an application for registration under paragraph (g)(2) of this section;

(B) The effective date of a subsequent registration issued under paragraph (g)(3) of this section;

(C) The effective date of a subsequent revocation or suspension of registration under paragraph (i) of this section; or

(D) July 1, 1999.

(b) *Definitions*—(1) *Applicant.* An *applicant* is a person that has applied for registration under paragraph (e) of this section.

(2) *Bonded registrant.* A *bonded registrant* is a person that has given a bond to the district director under paragraph (j) of this section as a condition of registration.

(3) *Gasohol bonding amount.* The *gasohol bonding amount* is the product of—

(i) The rate of tax applicable to later separation, as described in §48.4081-6(f)(1)(iii); and

(ii) The total number of gallons of gasoline expected to be bought at the gasohol production tax rate by the gasohol blender during a representative 6-month period (as determined by the district director).

(4) *Penalized for a wrongful act.* A person has been *penalized for a wrongful act* if the person has—

(i) Been assessed any penalty under chapter 68 of the Internal Revenue Code (or similar provision of the law of any State) for fraudulently failing to file any return or pay any tax, and the penalty has not been wholly abated, refunded, or credited;

(ii) Been assessed any penalty under chapter 68 of the Internal Revenue Code, such penalty has not been wholly abated, refunded, or credited, and the district director determines that the conduct resulting in the penalty is part of a consistent pattern of failing to deposit, pay, or pay over a substantial amount of tax;

(iii) Been convicted of a crime under chapter 75 of the Internal Revenue Code (or similar provision of the law of any State), or of conspiracy to commit such a crime, and the conviction has not been wholly reversed by a court of competent jurisdiction;

(iv) Been convicted, under the laws of the United States or any State, of a felony for which an element of the offense is theft, fraud, or the making of false statements, and the conviction has not been wholly reversed by a court of competent jurisdiction;

(v) Been assessed any tax under section 4103 and the tax has not been wholly abated, refunded, or credited; or

(vi) Had its registration under section 4101 or 4222 revoked.

(5) *Related person.* A *related person* is a person that—

(i) Directly or indirectly exercises control over an activity of the applicant if the activity is described in paragraph (c)(1) or (d) of this section;

(ii) Owns, directly or indirectly, five percent or more of the applicant;

(iii) Is under a duty to assure the payment of a tax for which the applicant is responsible;

(iv) Is a member, with the applicant, of a group of organizations (as defined in §1.52-1(b) of this chapter) that would be treated as a group of trades or businesses under common control for purposes of §1.52-1 of this chapter; or

(v) Distributed or transferred assets to the applicant in a transaction in which the applicant's basis in the assets is determined by reference to the basis of the assets in the hands of the distributor or transferor.

(6) *Registrant.* A *registrant* is a person that the district director has, in accordance with paragraph (g)(3) of this section, registered under section 4101 and whose registration has not been revoked or suspended.

(7) *Pipeline operator.* A *pipeline operator* is any person that operates a pipeline within the bulk transfer/terminal system.

(8) *Vessel operator.* A *vessel operator* is any person that operates a vessel within the bulk transfer/terminal system. However, for purposes of this definition, *vessel* does not include a deep draft ocean-going vessel (as defined in §48.4042-3(a)).

(9) *Other definitions.* For other definitions relating to taxable fuel, see §§48.4081-1, 48.4081-6(b), 48.4082-5(b), 48.4082-6(b), 48.4082-7(b), 48.6427-9(b), 48.6427-10(b), and 48.6427-11(b).

(c) *Persons required to be registered*—(1) *In general.* A person is required to be registered under section 4101 if the person is—

(i) A blender;

(ii) An enterer;

(iii) A pipeline operator;

(iv) A position holder;

(v) A refiner;

(vi) A terminal operator; or

(vii) A vessel operator.

(2) *Bus and train operators.* Every operator of a bus or train is required to be registered under section 4101 at any time it incurs any liability for tax under section 4041 at the bus rate (as described in §48.4082-4(b)(3)(i)) or the train rate (as described in §48.4082-4(b)(3)(ii)).

(3) *Consequences of failing to register.* For the criminal penalty imposed for failure to register, see section 7232. For the civil penalty imposed for failure to register, see section 7272.

(d) *Persons that may, but are not required to, be registered.* A person may, but is not required to, be registered under section 4101 if the person is—

(1) A feedstock user;

(2) A gasohol blender;

(3) An industrial user;

(4) A throughputter that is not a position holder;

(5) An ultimate vendor; or

(6) An ultimate vendor (blocked pump).

(e) *Application instructions.* Application for registration under section 4101 must be made in accordance with the instructions for Form 637 (or such other form as the Commissioner may designate).

(f) *Registration tests*—(1) *In general*—(i) *Persons other than ultimate vendors, pipeline operators, and vessel operators.* Except as provided in paragraph (f)(1)(ii) of this section, the district director will register an applicant only if the district director determines that the applicant meets the following three tests (collectively, the registration tests):

(A) The activity test of paragraph (f)(2) of this section.

(B) The acceptable risk test of paragraph (f)(3) of this section.

(C) The adequate security test of paragraph (f)(4) of this section.

(ii) *Ultimate vendors, pipeline operators, and vessel operators.* The district director will register an applicant as an ultimate vendor, ultimate vendor (blocked pump), pipeline operator, or vessel operator only if the district director—

(A) Determines that the applicant meets the activity test of paragraph (f)(2) of this section; and

(B) Is satisfied with the filing, deposit, payment, and claim history for all federal taxes of the applicant and any related person.

(2) *The activity test.* An applicant meets the activity test of this paragraph (f)(2) only if the district director determines that the applicant—

(i) Is, in the course of its trade or business, regularly engaged as an operator of a bus or train or in the characteristic activity of a person described in paragraph (c)(1) or (d) of this section; or

(ii) Is likely to be (because of such factors as the applicant's business experience, financial standing, or trade connections), in the course of its trade or business, regularly engaged as an operator of a bus or train or in the characteristic activity of a person described in paragraph (c)(1) or (d) of this section within a reasonable time after becoming registered under section 4101.

(3) *Acceptable risk test*—(i) *In general.* An applicant meets the acceptable risk test of this paragraph (f)(3) only if—

(A) Neither the applicant nor a related person has been penalized for a wrongful act; or

(B) Even though the applicant or a related person has been penalized for a wrongful act, the district director determines, after review of evidence offered by the applicant, that the registration of the applicant does not create a significant risk of nonpayment or late payment of the tax imposed by sections 4041(a)(1) and 4081.

(ii) *Significant risk of nonpayment or late payment of tax.* In making the determination described in paragraph (f)(3)(i)(B) of this section, the district director may consider factors such as the following:

(A) The time elapsed since the applicant or related person was penalized for a wrongful act.

(B) The present relationship between the applicant and any related person that was penalized for any wrongful act.

(C) The degree of rehabilitation of the person penalized for any wrongful act.

(D) The amount of bond given by the applicant. In this regard, the district director may accept a bond under paragraph (j) of this section, without regard to the limits on the amount of the bond set by paragraph (j)(2) of this section.

(4) *Adequate security test*—(i) *In general.* An applicant meets the adequate security test of this paragraph (f)(4) only if the district director determines that the applicant has both adequate financial resources and a satisfactory tax history, or the applicant gives the district director a bond (under the provisions of paragraph (j) of this section).

(ii) *Adequate financial resources*—(A) *In general.* An applicant has adequate financial resources only if the district director determines that the applicant is financially capable of paying—

(*1*) Its expected tax liability under sections 4041(a)(1) and 4081 for a representative 6-month period (as determined by the district director);

(*2*) In the case of a terminal operator, the expected tax liability under section 4081 of persons other than the terminal operator with respect to taxable fuel removed at the racks of its terminals during a representative 1-month period (as determined by the district director); and

(*3*) In the case of a gasohol blender, the gasohol bonding amount.

(B) *Basis for determination.* The determination under §48.4101-1(f)(4)(ii) must be based on all information relevant to the applicant's financial status.

(iii) *Satisfactory tax history.* An applicant has a satisfactory tax history only if the district director is satisfied with the filing, deposit, and payment history for all federal taxes of the applicant and any related person.

(g) *Action on the application by the district director*—(1) *Review of application.* The district director may investigate the accuracy and completeness of any representations made by an applicant, request any additional relevant information from the applicant, and inspect the applicant's premises during normal business hours without advance notice.

(2) *Denial.* If the district director determines that an applicant does not meet all of the applicable registration tests described in paragraph (f) of this section, the district director must notify the applicant, in writing, that its application for registration is denied and state the basis for the denial.

(3) *Approval.* If the district director determines that an applicant meets all of the applicable registration tests described in paragraph (f) of this section, the district director must register the applicant under section 4101 and issue the applicant a letter of registration containing the effective date of the registration. The effective date of the registration must be no earlier than the date on which the district director signs the letter of registration. A copy of an application for registration (Form 637) is not a letter of registration.

(h) *Terms and conditions of registration*—(1) *Affirmative duties.* Each registrant must—

(i) Make deposits, file returns, and pay taxes required by the Internal Revenue Code and the regulations;

(ii) Keep records sufficient to show the registrant's tax liability under sections 4041(a)(1) and 4081 and payments or deposits of such liability;

(iii) Make all information reports required under section 4101(d);

(iv) Make available for inspection on demand by the Internal Revenue Service during normal business hours records relevant to a determination of tax liability under sections 4041(a)(1) and 4081; and

(v) Notify the district director of any change (such as a change in ownership) in the information the registrant submitted in connection with its application for registration, or previously submitted under this paragraph (h)(1)(v), within 10 days after the change occurs.

(2) *Prohibited actions.* A registrant may not—

(i) Sell, lease or otherwise allow another person to use its registration;

(ii) Make any false statement to the district director in connection with a submission under paragraph (h)(1) or (h)(3) of this section;

(iii) Make any false statement on, or violate the terms of, any certificate given to another person to support an exemption from, or a reduced rate of, the tax imposed by section 4081; or

(iv) In the case of an ultimate vendor (blocked pump), deliver kerosene (or allow kerosene to be delivered) into the fuel supply tank of a diesel-powered highway vehicle or diesel-powered train from a blocked pump.

(3) *Additional terms and conditions for terminal operators*—(i) *Notice required with respect to dyed diesel fuel and dyed kerosene.* A legible and conspicuous notice stating "*DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE*" must be provided by each terminal operator to any person that receives dyed diesel fuel at a terminal rack of that operator. A legible and conspicuous notice stating "*DYED KEROSENE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE*" must be provided by each terminal operator to any person that receives dyed kerosene at a terminal rack of that operator. These notices must be provided by the time of the removal and must appear on all shipping papers, bills of lading, and similar documents that are provided by the terminal operator to accompany the removal of the fuel.

(ii) *Records to be maintained relating to removals of diesel fuel or kerosene.* Each terminal operator must keep the following information with respect to each rack removal of diesel fuel or kerosene at each terminal it operates:

(A) The bill of lading or other shipping document.

(B) The record of whether the fuel was dyed and marked in accordance with §48.4082-1.

(C) The volume and date of the removal.

(D) The identity of the person, such as a common carrier, that physically received the fuel.

(E) Any other information required by the Commissioner.

(iii) *Records to be maintained relating to dye.* With respect to each of its terminals, a terminal operator must keep records relating to dye inventories and usage.

(iv) [Reserved]. For further guidance, see §48.4101-1T(h)(3)(iv).

(v) *Prohibition on providing incorrect information.* In connection with the removal of diesel fuel or kerosene that is not dyed and marked in accordance with §48.4082-1, a terminal operator may not provide any person (including the position holder with respect to the fuel) with any bill of lading, shipping

paper, or similar document indicating that the diesel fuel or kerosene is dyed and marked in accordance with §48.4082-1.

(i) *Adverse actions by the district director against a registrant*—(1) *Mandatory revocation or suspension.* The district director must revoke or suspend the registration of any registrant if the district director determines that the registrant, at any time—

(i) Does not meet one or more of the applicable registration tests under paragraph (f) of this section and has not corrected the deficiency within a reasonable period of time after notification by the district director;

(ii) Has used its registration to evade, or attempt to evade, the payment of any tax imposed by section 4041(a)(1) or 4081, or to postpone or in any manner to interfere with the collection of any such tax, or to make a fraudulent claim for a credit or payment;

(iii) Has aided or abetted another person in evading, or attempting to evade, payment of any tax imposed by section 4041(a)(1) or 4081, or in making a fraudulent claim for a credit or payment; or

(iv) Has sold, leased, or otherwise allowed another person to use its registration.

(2) *Remedial action permitted in other cases.* If the district director determines that a registrant has, at any time, failed to comply with the terms and conditions of registration under paragraph (h) of this section, made a false statement to the district director in connection with its application for registration or retention of registration, or otherwise used its registration in a manner that creates a significant risk of nonpayment or late payment of tax, then the district director may—

(i) Revoke or suspend the registrant's registration;

(ii) In the case of a registrant other than an ultimate vendor or an ultimate vendor (blocked pump), require the registrant to give a bond under the provisions of paragraph (j) of this section as a condition of retaining its registration; and

(iii) In the case of a registrant other than an ultimate vendor or an ultimate vendor (blocked pump), require the registrant to file monthly or semimonthly returns under §40.6011(a)-1(b) of this chapter as a condition of retaining its registration.

(3) *Action by the district director to revoke or suspend a registration.* If the district director revokes or suspends a registration, the district director must so notify the registrant in writing and state the basis for the revocation or suspension. The effective date of the revocation or suspension may not be earlier than the date on which the district director notifies the registrant.

(j) *Bonds*—(1) *Form.* Each bond given to the district director as a condition of registration under paragraph (f)(4)(i) or (i)(2)(ii) of this section must be executed in the form prescribed by the district director. Each bond must be—

(i) A public debt obligation of the United States Government;

(ii) An obligation the principal and interest of which are unconditionally guaranteed by the United States Government;

(iii) A bond executed by a surety company listed in Department of the Treasury Circular 570 as an acceptable surety or reinsurer of federal bonds (a surety bond); or

(iv) Any other bond with security (including liens under section 4101(b)(1)(B)) considered acceptable by the district director.

(2) *Amount of bond.* A bond given under this paragraph (j) must be in an amount that the district director determines will ensure timely collection of the taxes imposed by sections 4041(a)(1) and 4081, taking into account the applicant's financial capabilities, tax history, and expected liability under sections 4041(a)(1) and 4081. The district director may increase or decrease the amount of the required bond to take into account changes in the applicant's financial capabilities, tax history, and expected liability

under sections 4041(a)(1) and 4081. However, in no case may the amount of the bond be greater than the amount that the district director determines is equal to—

(i) The applicant's expected tax liability under sections 4041(a)(1) and 4081 for a representative 6-month period (as determined by the district director);

(ii) In the case of a terminal operator, the expected tax liability of persons other than the terminal operator under section 4081 with respect to taxable fuel removed at the racks of its terminals (determined as if all removals of taxable fuel were taxable) during a representative 1-month period (as determined by the district director); and

(iii) In the case of a gasohol blender, the gasohol bonding amount.

(3) *Collection of taxes from a bond.* If a bonded registrant does not pay the amount of tax it incurs under section 4041(a)(1) or 4081 by the time prescribed in section 6151 for paying that tax, the district director may collect the amount of the unpaid tax (including penalties and interest with respect to that tax) from the bonded registrant's bond.

(4) *Termination of bonds*—(i) *Surety bonds.* A surety on a bond may give written notice to the district director and the bonded registrant that the surety desires to be relieved of liability under the bond after a certain date, which date must be at least 60 days after the receipt of the notice by the district director. The surety will be relieved of any liability that the bonded registrant incurs after the date named in the notice. However, the surety remains liable for the amount of tax that the bonded registrant incurred under sections 4041(a)(1) and 4081 during the term of the bond and for penalties and interest with respect to that tax.

(ii) *Other bonds.* A bond (other than a surety bond) given to the district director may be returned to the bonded registrant only after the earlier of—

(A) The district director's determination that the bonded registrant has paid all taxes that the bonded registrant incurred under sections 4041(a)(1) and 4081 during the period covered by the bond and any penalties and interest with respect to the taxes;

(B) The expiration of the period for assessment of the taxes that the bonded registrant incurred under sections 4041(a)(1) and 4081 taxes during the period covered by the bond, as determined under the provisions of subchapter A of chapter 66 of the Internal Revenue Code; or

(C) The date that the district director receives from the registrant a substitute bond given under this paragraph (j).

(5) *Determination that bond is no longer required.* If the district director determines that the bonded registrant meets the adequate security test of paragraph (f)(4) of this section without a bond, the registrant is to be released from the obligation to give a bond as a condition of registration under section 4101.

(k) *Cross references.* For a rule relating to the filing of monthly and semimonthly returns by certain persons that are registered under section 4101, see §40.6011(a)-1(b)(2) of this chapter. For rules relating to the tax on taxable fuel, see §§48.4081-1 through 48.4083-1. For rules relating to claims by registered ultimate vendors, see §48.6427-9. For rules relating to claims by registered ultimate vendors (blocked pump), see §48.6427-10.

(l) *Effective dates.* (1) Except as otherwise provided in this paragraph (l), this section is applicable as of January 1, 1994.

(2) Paragraph (c)(1) of this section (relating to persons required to be registered) is applicable as of January 1, 1995, except that paragraphs (c)(1)(iii) and (c)(1)(vii) of this section are applicable after March 31, 2001.

(3) Paragraph (h)(3)(iii) of this section (relating to certain recordkeeping requirements) is applicable as of July 1, 1996.

(4) References in this section to kerosene are applicable after June 30, 1998.

(5) *Applicability date.* Paragraph (f)(4)(ii)(B) of this section applies on and after July 6, 2011.

[T.D. 8659, 61 FR 10459, Mar. 14, 1996; 61 FR 28053, June 4, 1996, as amended by T.D. 8879, 65 FR 17159, Mar. 31, 2000; 65 FR 26488, May 8, 2000; T.D. 9199, 70 FR 21334, Apr. 26, 2005; T.D. 9533, 76 FR 39283, July 6, 2011; 78 FR 9637, 78 FR 54761, Sept. 6, 2013]

§48.4101-2 Information reporting.

(a) *In general.* Each information report under section 4101(d) must be—

(1) Made in the form required by the Commissioner;

(2) Made for a period of one calendar month; and

(3) Filed by the last day of the first month following the month for which the report is made, except that a report relating to any month during 2000 must be filed by February 28, 2001.

(b) *Effective date.* This section is applicable after March 30, 2000.

[T.D. 8879, 65 FR 17160, Mar. 31, 2000]

§48.4102-1 Inspection of records by State or local tax officers.

(a) *Inspection of records maintained by taxpayer.* The records that a taxpayer is required to keep with respect to the taxes imposed by section 4081 or 4091 must be open to inspection by any officer of any State or political subdivision thereof, or of the District of Columbia, who is charged with the enforcement or collection of any tax on taxable fuel or aviation fuel.

(b) *Inspection of records maintained by Internal Revenue Service*—(1) *In general.* The records maintained by the Internal Revenue Service with respect to the taxes imposed by sections 4081 and 4091 shall, upon the request of an officer (described in paragraph (b)(2) of this section) of a State or political subdivision thereof, or of the District of Columbia, be open to inspection by the officer for purposes of collection or enforcement.

(2) *Requests for inspection.* Requests for inspection under this paragraph shall be made in writing, signed by any officer of a State, political subdivision, or the District of Columbia, who is charged with the enforcement or collection of any tax on taxable fuel or aviation fuel imposed by the State, political subdivision, or the District of Columbia, and shall be addressed to the director of the Internal Revenue Service Center having custody of the records which it is desired to inspect. Each such request shall state (i) the kind of records (whether pertaining to taxable fuel or aviation fuel) it is desired to inspect, (ii) the period or periods covered by the records involved, (iii) the name of the officer by whom the inspection is to be made, (iv) the name of the representative of the officer who has been designated to make the inspection, (v) by specific reference, the law of the State, political subdivision, or the District of Columbia imposing the tax which the officer is charged with collecting or enforcing, and the law under which the officer is so charged, and (vi) the purpose for which the inspection is to be made. The service center director will notify the person making the request upon approval or disapproval of the request.

(3) *Time and place for inspection.* In any case where a request for inspection under this paragraph (b) is approved, the inspection shall be made in the office of the service center director having custody of the records which it is desired to inspect, but only in the presence of an internal revenue officer or employee and during the regular hours of business of the office.

[T.D. 7908, 48 FR 40222, Sept. 6, 1983, as amended by T.D. 8659, 61 FR 10462, Mar. 14, 1996]