years'' and replacing it with ''pre-1954 years'' in each place that it appears.

The revised paragraphs read as follows:

§ 1.481–2 Limitation on tax.

(a) *Three-year allocation.* Section 481(b)(1) provides a limitation on the tax under chapter 1 of the Internal Revenue Code for the taxable year of change that is attributable to the adjustments required under section 481(a) and § 1.481–1 if the entire amount of the adjustments is taken into account in the year of change. If such adjustments increase the taxpayer's taxable income for the taxable year of the change by more than $3,000, then the tax for such taxable year that is attributable to the adjustments shall not exceed the lesser of the tax attributable to taking such adjustments into account in computing taxable income for the taxable year of the change under section 481(a) and § 1.481–1, or the aggregate of the increases in tax that would result if the adjustments were included ratably in the taxable year of the change and the two preceding taxable years. * * *

(b) *Allocation under new method of accounting.* Section 481(b)(2) provides a second alternative limitation on the tax for the taxable year of change under chapter 1 of the Internal Revenue Code that is attributable to the adjustments required under section 481(a) and § 1.481–1 where such adjustments increase taxable income for the taxable year of change by more than $3,000. * * *

(c) *Rules for computation of tax.* (1) The first step in determining whether either of the limitations described in section 481(b) (1) or (2) applies is to compute the increase in tax for the taxable year of the change that is attributable to the increase in taxable income for such year resulting solely from the adjustments required under section 481(a) and § 1.481–1.

* * * * *

(4) The tax for the taxable year of the change shall be the tax for such year, computed without taking any of the adjustments referred to in paragraph (c)(1) of this section into account, increased by the smallest of the following amounts—

(i) The amount of tax for the taxable year of the change attributable solely to taking into account the entire amount of the adjustments required by section 481(a) and § 1.481–1;

(ii) The sum of the increases in tax liability for the taxable year of the change and the two immediately preceding taxable years that would have resulted solely from taking into account one-third of the amount of such adjustments required for each of such years as though such amounts had been properly attributable to such years (computed in accordance with paragraph (c)(2) of this section); or

(iii) The net increase in tax attributable to allocating such adjustments under the new method of accounting (computed in accordance with paragraph (c)(3) of this section).

* * * * *

§ 1.481–3 [Amended]

Par. 5. Section 1.481–3 is amended as follows:

1. The language ''pre-1954 Code years'' is removed and the language ''pre-1954 years'' is added in its place in the section heading and the first, second and third sentences of the section.

2. Remove the last sentence of the section.

§ 1.481–4 [Removed]

Par. 6. Section 1.481–4 is removed.

§ 1.481–5 [Redesignated as § 1.481–4]

Par. 7. Section 1.481–5 is redesignated as § 1.481–4 and is revised to read as follows:

§ 1.481–4 Adjustments taken into account with consent.

(a) In addition to the terms and conditions prescribed by the Commissioner under § 1.446–1(e)(3) for effecting a change in method of accounting, including the taxable year or years in which the amount of the adjustments required by section 481(a) is to be taken into account, or the methods of allocation described in section 481(b), a taxpayer may request approval of an alternative method of allocating the amount of the adjustments under section 481. See section 481(c). Requests for approval of an alternative method of allocation shall set forth in detail the facts and circumstances upon which the taxpayer bases its request. Permission will be granted only if the taxpayer and the Commissioner agree to the terms and conditions under which the allocation is to be effected. See § 1.446–1(e) for the rules regarding how to secure the Commissioner's consent to a change in method of accounting.

(b) An agreement to the terms and conditions of a change in method of accounting under § 1.446–1(e)(3), including the taxable year or years prescribed by the Commissioner under that section (or an alternative method described in paragraph (a) of this section) for taking the amount of the adjustments under section 481(a) into account, shall be in writing and shall be signed by the Commissioner and the taxpayer. It shall set forth the items to be adjusted, the amount of the adjustments, the taxable year or years for which the adjustments are to be taken into account, and the amount of the adjustments allocable to each year. The agreement shall be binding on the parties except upon a showing of fraud, malfeasance, or misrepresentation of material fact.

Par. 8. Section 1.481–5 is added to read as follows:

§ 1.481–5 Effective dates.

Sections 1.481–1, 1.481–2, 1.481–3, and 1.481–4 are effective for Consent Agreements signed on or after December 27, 1994. For Consent Agreements signed before December 27, 1994, see §§ 1.481–1, 1.481–2, 1.481–3, 1.481–4, and 1.481–5 (as contained in the 26 CFR part 1 edition revised as of April 1, 1995).

§ 1.481–6 [Removed]

Par. 9. Section 1.481–6 is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: July 26, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19283 Filed 8–4–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Parts 40, 48, and 602

[TD 8609]

RIN 1545–AS10

Gasohol; Compressed Natural Gas

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to gasohol blending and the tax on compressed natural gas (CNG). The regulations reflect and implement certain changes made by the Energy Policy Act of 1992 (the Energy Act) and the Omnibus Budget Reconciliation Act of 1993 (the 1993 Act). The regulations relating to gasohol blending affect certain blenders, enterers, refiners, and throughputters. The regulations relating to CNG affect persons that sell or buy CNG for use as a fuel in a motor vehicle or motorboat.

EFFECTIVE DATE: These regulations are effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1270. The estimated average annual reporting burden per respondent is .2 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On October 19, 1994, the IRS published in the **Federal Register** (59 FR 52735) proposed regulations (PS–66–93) that generally consolidate the rules relating to the gasoline tax and the diesel fuel tax into a single set of rules applicable to both fuels. These regulations also proposed rules relating to gasohol and CNG.

Written comments regarding these regulations were received and a public hearing was held on January 11, 1995. After consideration of the comments relating to gasohol and CNG, the proposed regulations on these topics are adopted as revised by this Treasury decision. Final regulations relating to the consolidation provisions contained in the proposed regulations will be issued later.

Explanation of Provisions

CNG; Treatment of Liquefied Natural Gas (LNG)

Section 4041(a)(2) imposes a special motor fuels tax on any liquid (other than kerosene, gas oil, fuel oil, gasoline, or diesel fuel) that is sold for use or used as a fuel in a motor vehicle or motorboat. The rate of this tax is 18.4 cents per gallon (18.3 cents per gallon in the case of liquefied petroleum gas).

Effective October 1, 1993, section 4041(a)(3) (as added by the 1993 Act) imposes a tax of 48.54 cents per MCF (thousand cubic feet) on CNG that is sold for use or used in a motor vehicle or motorboat.

CNG is a gas at the time it is delivered into the fuel supply tank of a motor vehicle or motorboat and when it is actually combusted in the engine. LNG, which is produced by compressing pipeline natural gas and cooling it to −260 degrees Fahrenheit, is a liquid when it is delivered into the fuel supply tank of a motor vehicle or motorboat, but is vaporized into a gas when it is actually combusted in the engine.

Several commentators suggested that the CNG rate, rather than the rate on special motor fuels, should apply to LNG because (1) Both products have the same chemical composition, (2) both products are gases when they are actually combusted in an engine, and (3) LNG would be at a competitive disadvantage if taxed at the liquid rate.

The final regulations do not adopt this suggestion. Before the 1993 Act, the section 4041 special fuels tax applied to liquids sold for use or used as a fuel in motor vehicles or motorboats. Thus, LNG was subject to tax at the special fuels rate of 18.4 cents per gallon when the 1993 Act imposed a tax at a lower rate on CNG. The 1993 Act contained no provision that would change the treatment of LNG, nor is there any suggestion in the legislative history that Congress intended to do so.

CNG; Gasoline Gallon Equivalent

The CNG industry has recently begun to sell CNG on the basis of CNG's Gasoline Gallon Equivalent (GGE). Generally, a GGE represents a particular fuel's energy content relative to the energy content of gasoline; thus, vehicles can travel approximately the same distance with a GGE of CNG as with a gallon of gasoline.

Several commentators suggested that the final regulations should express the CNG tax rate in terms of GGE instead of in terms of MCF as provided in the Code. The final regulations do not adopt this suggestion. However, there is no restriction on taxpayers engaging in sales on the basis of GGE provided that the tax is actually paid at the rate of 48.54 cents per MCF.

Gasohol; Tolerance Rule

The gasoline tax rate on most removals and entries is 18.4 cents per gallon (the regular tax rate). However, a reduction from the regular tax rate is allowed for gasohol (a gasoline/alcohol mixture containing a specified amount of alcohol) and gasoline removed or entered for the production of gasohol.

Prior to its amendment by the Energy Act, section 4081(c) treated a mixture of gasoline and alcohol as gasohol only if at least 10 percent of the mixture was alcohol. Regulations allow a tolerance for mixtures that contain less than 10 percent alcohol but at least 9.8 percent alcohol. Under the tolerance rule, a portion of the mixture equal to the number of gallons of alcohol in the mixture multiplied by 10 is considered to be gasohol. Any excess liquid in the mixture is taxed at the regular rate.

This tolerance rule accommodates operational problems associated with the blending of gasohol. For example, blenders may fail to attain the required 10-percent alcohol level because the device used to meter the amount of gasoline or alcohol delivered into a tank truck is imprecise or because the high-speed gasoline or alcohol pump used does not shut off at the proper moment. As noted in the preamble to an earlier regulation relating to gasohol tolerances (published in the **Federal Register** on August 21, 1987 (52 FR 31614)), this 2 percent tolerance is based upon a standard industry tolerance specification for wholesale measuring devices.

Effective January 1, 1993, section 4081(c) was amended to allow a reduction from the regular rate for mixtures containing at least 5.7 percent alcohol but less than 7.7 percent alcohol (5.7 percent gasohol) and mixtures containing at least 7.7 percent alcohol but less than 10 percent alcohol (7.7 percent gasohol).

The proposed regulations did not extend the tolerance rule to mixtures that contain less than 7.7 or 5.7 percent alcohol. Several commentators suggested that the tolerance rule be so extended. They noted that the same operational problems that occur with the blending of 10 percent gasohol also occur with the blending of 7.7 or 5.7 percent gasohol.

The final regulations adopt this suggestion and allow a tolerance for 7.7 and 5.7 percent gasohol in approximately the same percentage as that allowed for 10 percent gasohol. Any excess liquid in a mixture that qualifies as 5.7 percent gasohol or 7.7 percent gasohol because of the tolerance rule is taxed at the regular rate.

Gasohol; Alcohol-Based Ethers

The proposed regulations provide that alcohol (that is, alcohol that is not produced from petroleum, natural gas, or coal (including peat)) used to produce ethers such as ethyl tertiary butyl ether (ETBE) or methyl tertiary butyl ether (MTBE) is treated as alcohol for purposes of the reduced tax rates for gasohol. Some commentators suggested that, with respect to gasohol produced by blending gasoline made with alcohol-based ether at a refinery, the regulations should also provide (1) An allocation rule and (2) guidance regarding the application of the income tax credit allowable by section 40.

Allocation rule. Traditionally, gasohol has been produced by delivering the requisite amount of alcohol into a

transport trailer that contains gasoline while the trailer is at a terminal rack. The two components are blended together by the motion of the trailer as it moves on the highway.

Now, however, gasohol may be produced at the refinery with alcohol-based ether. This type of gasohol does not absorb water, which means it can be transported through a pipeline. However, after shipment from the refinery and before its removal at the terminal rack, much of this gasohol may have been diluted with non-qualifying blends because of the use of common-carrier pipelines, barges, and non-segregated storage facilities. As a result, the blend removed at the terminal rack may not qualify for the reduction from the regular rate due to commingling between the refinery and terminal rack. To address this issue, several commentators suggested an allocation system for gasohol that is produced before it reaches the terminal that would not depend on the actual existence of a qualified mixture at the taxing point. For example, a refiner that removes one million gallons of gasohol from its refinery for bulk shipment to a terminal could designate any one million gallons of gasoline that is removed at the terminal rack as gasohol, regardless of the actual alcohol-based ether content of the gasoline.

Other commentators, by contrast, opposed expanding the benefit for gasohol made with ether-based alcohol by allowing such an allocation rule. Rather, these commentators argued that a batch of mixture should not be taxed at the reduced rate unless the mixture actually contains the requisite amount of alcohol at the taxing point.

The final regulations do not adopt the suggested allocation rule. Under section 4081(c), a reduction from the regular tax rate is allowable in the case of a taxable removal or entry of gasohol. Thus, a taxable removal or entry of gasoline that does not contain the requisite amount of alcohol at the time of the taxable removal or entry is not a removal of gasohol and is subject to tax at the regular rate.

However, the final regulations do address concerns arising from this relatively recent development of producing gasohol at the refinery rather than at the terminal rack. Specifically, section 4101 provides that every person required to be registered with respect to the gasoline tax must register at such time, in such form and manner, and subject to such terms and conditions as the Secretary may prescribe by regulations. Pursuant to that provision, the final regulations provide that a refiner registered by the IRS that produces a batch of gasohol may treat itself as not registered with respect to a bulk removal of that gasohol. If the refiner treats itself in this manner, the removal would not be exempt from the tax under section 4081(a)(1)(B), which provides that the bulk removal by a registered refiner for delivery to a terminal operated by a registered terminal operator is not subject to the tax. However, because the mixture would qualify as gasohol at the time of removal from the refinery, it would be subject to tax at the reduced rate. The final regulations also provide that the refiner is not required to deposit this tax before filing the return relating to that tax.

If a refiner chooses this option, tax also will be imposed under § 48.4081–2(b) at the full rate when the fuel is removed at the terminal rack, but a refund of this second tax may then be allowable to the position holder under section 4081(e).

Application of section 40. Section 40 allows an income tax credit to the producer of certain mixtures of alcohol and gasoline. Under section 40(c), the amount of this credit with respect to any alcohol is reduced to take into account any benefit provided with respect to such alcohol solely by reason of the application of section 4081(c).

One commentator suggested that the final regulations provide that a refiner that produces a mixture of gasoline with an alcohol-based ether always is eligible for the section 40 credit, without reduction under section 40(c).

The final regulations do not adopt this suggestion because it is inconsistent with section 40(c), which requires a reduction in the credit whenever a mixture is taxed at a reduced rate for gasohol under section 4081(c).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 40 and 48

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 40, 48, and 602 are amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 40.6302(c)–0 [Removed]

Par. 2. Section 40.6302(c)–0 is removed.

Par. 3. In § 40.6302(c)–1, paragraph (e)(4) is added to read as follows:

§ 40.6302(c)–1 Use of Government depositaries.

* * * * *

(e) * * *

(4) *Taxes excluded; certain removals of gasohol from refineries.* No deposit is required in the case of the tax imposed under § 48.4081–3(b)(1)(iii) of this chapter.

* * * * *

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 4. The authority citation for part 48 is amended by removing the entries for Sections 48.4041.21 and 48.4081–2 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 5. In § 48.4041–8, paragraph (f) is amended by:

1. Revising the introductory text of paragraph (f)(1).
2. Revising paragraph (f)(1)(i).
3. Redesignating paragraph (f)(1)(ii) as paragraph (f)(1)(iii) and adding a new paragraph (f)(1)(ii).
4. Removing from paragraph (f)(2) the language ''diesel fuel or''.

The revisions and additions read as follows:

§ 48.4041–8 Definitions.

* * * * *

(f) *Special motor fuel.* (1) Except as provided in paragraph (f)(2) of this section, *special motor fuel* means any liquid fuel, including—

(i) Any liquefied petroleum gas (such as propane, butane, pentane, or mixtures of the same);

(ii) Liquefied natural gas; or

* * * * *

Par. 6. Section 48.4041–21 is revised to read as follows:

§ 48.4041–21 Compressed natural gas (CNG).

(a) *Delivery of CNG into the fuel supply tank of a motor vehicle or motorboat*—(1) *Imposition of tax.* Tax is imposed on the delivery of compressed natural gas (CNG) into the fuel supply tank of the propulsion engine of a motor vehicle or motorboat unless tax was previously imposed on the CNG under paragraph (b) of this section.

(2) *Liability for tax.* If the delivery of the CNG is in connection with a sale, the seller of the CNG is liable for the tax imposed under paragraph (a)(1) of this section. If the delivery of the CNG is not in connection with a sale, the operator of the motor vehicle or motorboat, as the case may be, is liable for the tax imposed under paragraph (a)(1) of this section.

(b) *Bulk sales of CNG*—(1) *In general.* Tax is imposed on the sale of CNG that is not in connection with the delivery of the CNG into the fuel supply tank of the propulsion engine of a motor vehicle or motorboat if, by the time of the sale—

(i) The buyer has given the seller a written statement stating that the entire quantity of the CNG covered by the statement is for use as a fuel in a motor vehicle or motorboat; and

(ii) The seller has given the buyer a written acknowledgement of receipt of the statement described in paragraph (b)(1)(i) of this section.

(2) *Liability for tax.* The seller of the CNG is liable for the tax imposed under this paragraph (b).

(c) *Exemptions*—(1) *In general.* The taxes imposed under this section do not apply to a delivery or sale of CNG for a use described in § 48.4082–4T(c)(1) through (5)(A) or (c)(6) through (11). However, if the person otherwise liable for tax under this section is the seller of the CNG, the exemption under this section applies only if, by the time of sale, the seller receives an unexpired certificate (as described in this paragraph (c)) from the buyer and has no reason to believe any information in the certificate is false.

(2) *Certificate; in general.* The certificate to be provided by a buyer of CNG is to consist of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, should be in substantially the same form as the model certificate provided in paragraph (c)(4) of this section, and should contain all information necessary to complete the 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.

(3) *Withdrawal of the right to provide a certificate.* The Internal Revenue Service may withdraw the right of a buyer of CNG to provide a certificate under this paragraph (c) if the buyer uses CNG to which a certificate applies in a taxable use. 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.

(4) *Model certificate.*

Certificate of Person Buying Compressed Natural Gas (CNG) for a Nontaxable Use

(To support tax-free sales of CNG under section 4041 of the Internal Revenue Code.)

_____

_____

Name, address, and employer identification number of seller

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

The CNG to which this certificate relates will be used in a nontaxable use.

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 MCFs) _____

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 of the Internal Revenue Code for any CNG to which this certificate relates.

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

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 CNG tax free.

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

(d) *Rate of tax.* The rate of the tax imposed under this section is the rate prescribed by section 4041(a)(3).

(e) *Effective date.* This section is effective October 1, 1995.

§ 48.4081–0 [Removed]

Par. 7. Section 48.4081–0 is removed.

Par. 8. In § 48.4081–3, paragraph (b)(1) is revised to read as follows:

§ 48.4081–3 Gasoline tax; taxable events other than removal at the terminal rack.

* * * * *

(b) * * * (1) *In general.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks) and paragraph (b)(2) of this section (relating to an exception for certain refineries), tax is imposed on the following removals of gasoline from a refinery:

(i) The removal is by bulk transfer and the refiner or the owner of the gasoline immediately before the removal is not a gasoline registrant.

(ii) The removal is at the rack.

(iii) After September 30, 1995, the removal is of a batch of gasohol from an approved refinery by bulk transfer and the refiner treats itself with respect to the removal as a person that is not registered under section 4101. See § 48.4101–3. 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(e)(4) of this chapter. For the rule allowing inspections of facilities where gasohol is produced, see section 4083.

Par. 9. Section 48.4081–6 is revised to read as follows:

§ 48.4081–6 Gasoline tax; 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 buys gasoline and alcohol and produces gasohol for use in its trade or business or for resale.

(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.

Par. 10. Section 48.4081–7 is amended as follows:

1. The heading for § 48.4081–7 is revised.

2. In paragraphs (a) and (b), the language ''gasoline'' is removed each place it appears and ''taxable fuel'' is added in its place.

3. Paragraphs (b)(4) and (c)(1) are revised.

4. In paragraph (c)(2), the language ''gasoline'' is removed each place it appears and ''taxable fuel'' is added in its place.

5. Paragraph (c)(3) is revised.

6. In paragraphs (c)(4)(i)(A) and (B), (ii)(A) and (B), and (iii), the language ''gasoline'' is removed each place it appears and ''taxable fuel'' is added in its place.

7. In paragraph (c)(4)(iv)(A), the language ''(or such other model statement as the Commissioner may prescribe)'' is added immediately after ''paragraph (c)(4)(iv)(B) of this section''.

8. In paragraph (c)(4)(iv)(B):

a. The description of line 4 is revised to read: ''Volume and type of taxable fuel sold''.

b. In the first paragraph following line 4 the language ''gasoline'' is removed and ''taxable fuel'' is added in its place.

9. Paragraph (c)(5) is removed.

10. Paragraph (d) is revised.

11. Paragraph (f), *Example 1*, paragraph (i), is amended by:

a. Removing the language ''1993'' in the first and fourth sentences and adding ''1996'' in its place.

b. Removing the language ''paragraph (c)(2)'' and adding ''paragraph (c)'' in its place.

12. Paragraph (f), *Example 1*, paragraph (ii), is amended by removing the language ''1993'' in the first and second sentences and adding ''1996'' in its place.

13. Paragraph (g) is revised.

The revisions read as follows:

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

* * * * *

(b) * * *

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

(c) * * * (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).

* * * * *

(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.

* * * * *

(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.

* * * * *

(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.

Par. 11. Section 48.4101–3 is added to read as follows:

§ 48.4101–3 Registration.

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

(b) This section is effective October 1, 1995.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 12. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 13. In § 602.101, paragraph (c) is amended by removing the entry for 48.4041–21 from the table and adding the entry ''48.4041–21.....1545–1270'' in numerical order to the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: July 25, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19284 Filed 8–4–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 301

[TD 8610]

RIN 1545–AP98

Taxable Mortgage Pools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to taxable mortgage pools. This action is necessary because of changes made to the law by the Tax Reform Act of 1986. The final regulations provide guidance to entities for determining whether they are subject to the taxable mortgage pool rules.

EFFECTIVE DATE: These regulations are effective September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Arnold P. Golub or Marshall D. Feiring, (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking (FI–55–91) under section 7701(i) of the Internal Revenue Code was published in the **Federal Register** on December 23, 1992 (57 FR 61029). Written comments relating to this notice were received, but no public hearing was requested or held. After consideration of the comments, the proposed regulations under section 7701(i) are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 301.7701(i)–1(c)(1)—Basis Used To Determine the Composition of an Entity's Assets

Among other requirements, to be classified as a taxable mortgage pool, substantially all of an entity's assets must consist of debt obligations, and more than 50 percent of those debt obligations must consist of real estate mortgages (or interests therein). Under the proposed regulations, an entity must apply these tests using the tax bases of its assets. One commentator, however, suggested that the entity should have the choice of using either the tax bases of its assets or the fair market value of its assets. The IRS and Treasury believe that using fair market value for the asset composition tests creates uncertainty and administrative difficulties. The final regulations, therefore, retain the rule in the proposed regulations.

Section 301.7701(i)–1(c)(5)—Seriously Impaired Real Estate Mortgages Not Treated as Debt Obligations

Under the proposed regulations, real estate mortgages that are seriously impaired are not treated as debt obligations for purposes of the asset composition tests. Whether real estate mortgages are seriously impaired generally depends on all the facts and circumstances. The proposed regulations, however, provide two safe harbors. Under those provisions, whether mortgages are seriously impaired depends only on the number of days the payments on the mortgages are delinquent (more than 89 days for single family residential real estate mortgages and more than 59 days for multi-family residential and commercial real estate mortgages). The safe harbors are not available, however, if an entity is receiving or anticipates receiving certain payments on the mortgages such as payments of principal and interest that are substantial and relatively certain as to amount.

Several commentators have asked for additional safe harbors based on factors other than the number of days a mortgage is delinquent. For example, one suggested a safe harbor for mortgages having excessively high loan to value ratios. Others suggested a safe harbor for mortgages that are purchased at a substantial discount.

The final regulations retain, unchanged, the safe harbors of the proposed regulations. The IRS and Treasury believe that no single factor is as clear an indication that a mortgage is seriously impaired as days delinquent. For example, a mortgage may be purchased at a discount for a variety of reasons, some of which bear no relation to the quality of the mortgage. To provide further guidance, however, the final regulations list some of the facts and circumstances that should be considered in determining whether a mortgage is seriously impaired.

Another commentator has criticized the safe harbors because they are unavailable if an entity anticipates receiving certain payments on a delinquent mortgage. The commentator is concerned that a test based on whether an entity anticipates receiving payments on a mortgage is both subjective and open-ended. To address this concern, the final regulations create a new rule, under which if an entity makes reasonable efforts to resolve a