

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

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§ 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 certifi-

cate 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. _____