

**Federal Register**, these rules will apply as of January 1, 2010.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1, 40, and 48

[REG-155087-05]

RIN 1545-BF17

#### **Alcohol Fuel and Biodiesel; Renewable Diesel; Alternative Fuel; Diesel-Water Fuel Emulsion; Taxable Fuel Definitions; Excise Tax Returns**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to credits and payments for alcohol mixtures, biodiesel mixtures, renewable diesel mixtures, alternative fuel mixtures, and alternative fuel sold for use or used as a fuel, as well as proposed regulations relating to the definition of gasoline and diesel fuel. These regulations reflect changes made by the American Jobs Creation Act of 2004, the Energy Policy Act of 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, and the Tax Technical Corrections Act of 2007. These regulations affect producers of alcohol, biodiesel, and renewable diesel; producers of alcohol, biodiesel, renewable diesel, and alternative fuel mixtures; sellers and users of alternative fuel; and certain persons liable for the tax on removals, entries, or sales of gasoline or diesel fuel.

**DATES:** Written or electronic comments and requests for a public hearing must be received by October 27, 2008.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG-155087-05), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-155087-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-155087-05).

#### **FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, Stephanie Bland, Taylor Cortright, or DeAnn Malone, all of whom can be reached at (202) 622-3130 (not a toll-free call); concerning the submission of comments or requests for a public hearing, Oluwafunmilayo Taylor at (202) 622-7180 (not a toll-free call).

#### **SUPPLEMENTARY INFORMATION:**

##### **Paperwork Reduction Act**

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent 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, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by September 29, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 48.6426-3(e), describing the certificate the biodiesel producer must give to the claimant of a biodiesel mixture credit or biodiesel credit; § 48.6426-3(f), describing the statement a biodiesel reseller must give to the claimant of a biodiesel mixture credit or biodiesel credit; § 48.6426-4(e), describing the certificate the renewable diesel producer must give to the claimant of a renewable diesel mixture credit or renewable diesel credit; § 48.6426-4(f), describing the statement a renewable diesel reseller

must give to the claimant of a renewable diesel mixture credit or renewable diesel credit; and § 48.6426-6(c), describing the statement given to a seller of liquefied natural gas. This information is required to obtain a tax benefit. This information will be used by the IRS to substantiate claims for the tax benefits. The likely recordkeepers are business or other for-profit institutions and small businesses or organizations.

Estimated total annual reporting burden: 17,710 hours.

Estimated average annual burden hours per respondent varies from 2.5 hours to 25 hours, depending on individual circumstances, with an estimated average of 22 hours.

Estimated number of respondents: 756.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### **Background**

The Internal Revenue Code (Code) provides incentives for certain renewable and alternative fuels. Before January 1, 2005, a reduced rate of tax applied to most alcohol-blended fuels. The American Jobs Creation Act of 2004 (Pub. L. 108-357) replaced the reduced rate of tax for alcohol-blended fuels with credits or payments for alcohol and alcohol mixtures that are sold for use or used as a fuel. The Act also added credits and payments for biodiesel and biodiesel mixtures sold for use or used as a fuel. Credit and payment provisions for renewable diesel, renewable diesel mixtures, alternative fuel, alternative fuel mixtures, and diesel-water fuel emulsions were added to the Code by the Energy Policy Act of 2005 (Pub. L. 109-58) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59) (SAFETEA). Technical corrections to SAFETEA were made by the Tax Technical Corrections Act of 2007 (Pub. L. 110-172).

The incentives include a credit under section 6426 for alcohol fuel mixtures, biodiesel mixtures, renewable diesel mixtures (incorporated into section

6426 by section 40A(f)), and alternative fuel mixtures sold for use or used as a fuel and alternative fuel sold for use or used as a fuel in a motor vehicle or motorboat. The credit under section 6426 is allowed against the claimant's fuel tax liability. The incentives for these fuels also include a payment under section 6427(e) and a refundable income tax credit under section 34. The amount allowed as a payment or credit under these provisions is reduced by the claimant's excise tax liability against which a credit is allowed under section 6426. Section 40 provides a nonrefundable income tax credit for alcohol fuel mixtures, alcohol that is sold for use or used as a fuel, and for the production of alcohol by certain small ethanol producers; section 40A provides similar rules relating to biodiesel and renewable diesel. The Code includes coordination rules that limit the maximum incentive that may be claimed for any particular gallon of alcohol, biodiesel, renewable diesel, and alternative fuel. Generally, for alcohol that is ethanol, the benefit is \$0.51 per gallon; for biodiesel, the incentive is \$0.50 per gallon (\$1.00 per gallon in the case of agri-biodiesel); for renewable diesel, the incentive is \$1.00 per gallon; and, for alternative fuel, the incentive is \$0.50 per gallon. In the case of small ethanol producers and small agri-biodiesel producers, however, the Code allows an additional income tax credit of \$0.10 per gallon.

Notice 2005-4 (2005-1 CB 289) describes the alcohol and biodiesel credits and payments and provides general guidance for these incentives. Comments received after the publication of Notice 2005-4 requested additional guidance with regard to the biodiesel producer certificates in the case of resale, commingled biodiesel, the definition of agri-biodiesel, and the definition of a biodiesel mixture. Guidance on these issues was provided in Notice 2005-62 (2005-2 CB 443). Notice 2005-80 (2005-2 CB 953) describes the registration requirements related to diesel-water fuel emulsions. Notice 2006-92, (2006-43 IRB. 774) describes the alternative fuel credits and payments. Notice 2007-37 (2007-17 IRB 1002) provides guidance on renewable diesel. Notice 2007-97 (2007-49 IRB 1092) provides guidance on liquid hydrocarbons for purposes of the definition of alternative fuel. Comments were received in response to these notices and have been considered in the development of this notice of proposed rulemaking.

#### *Renewable and Alternative Fuels; Currently Applicable Rules*

The IRS has received numerous inquiries about the proper steps that must be taken to comply with the tax laws and to take full advantage of the tax incentives for certain renewable and alternative fuels. The following are general rules that are currently applicable and would not be changed by these proposed regulations.

#### *Registration*

Registration by the IRS is required for each person that produces alcohol, biodiesel, renewable diesel, or blended taxable fuel or claims credits or payments with respect to alternative fuel.

Application for registration is made on Form 637, "Application for Registration (For Certain Excise Tax Activities)." A person generally may not engage in an activity for which registration is required until the IRS has approved the person's registration with respect to the activity.

#### *Imposition of Tax*

Tax is imposed on the removal of a biodiesel mixture that is diesel fuel from the terminal at the terminal rack. In the case of blended taxable fuel, tax is imposed on a blender's sale or removal of the fuel and the blender is liable for the tax. Blended taxable fuel includes diesel fuel or gasoline produced outside of the bulk transfer/terminal system by mixing an untaxed liquid, such as biodiesel or alcohol, with a taxable fuel, such as diesel fuel or gasoline, that has been previously taxed (even if only at the Leaking Underground Storage Tank Trust Fund financing rate). Thus, for example, if a person produces, outside the bulk transfer/terminal system, a biodiesel mixture that is diesel fuel, that person is liable for tax on its removal or sale of the mixture. Further, tax generally is imposed on the delivery of fuel that has not been taxed into the fuel supply tank of a motor vehicle or diesel-powered train and on the delivery of alternative fuel (liquid fuel other than gas oil, fuel oil, or taxable fuel) into the fuel supply tank of a motorboat unless the delivery of the fuel or alternative fuel is for a nontaxable purpose.

Liability for these excise taxes is reported on Form 720, "Quarterly Federal Excise Tax Return." Persons that are liable for excise taxes may also be required to make semi-monthly deposits. See Form 720 for more information on deposits.

#### *Tax Incentives for Mixtures*

The excise tax credits for mixtures containing alcohol, biodiesel, renewable

diesel, or alternative fuel must be claimed on Form 720, Schedule C. These credits are allowed to the extent of certain fuel tax liability. The credits are claimed by the person producing the mixture.

The mixture producer may also claim payments (or refundable income tax credits) for incentives that exceed tax liability; that is, for the amount by which the maximum incentive allowable for the mixture exceeds the credit allowed on the Form 720. Notice 2005-62 contains guidance on the computation of payment limitations. Claims for payment are made either on Form 8849, "Claim for Refund of Excise Taxes," or Schedule C, Form 720, "Quarterly Federal Excise Tax Return." (Thus, claims on Form 720 may be for both an excise tax credit and a payment.) Claims for the refundable income tax credit are made on Form 4136, "Credit for Federal Tax Paid on Fuel," which is attached to the claimant's income tax return.

#### *Tax Incentives for Neat Fuels*

A nonrefundable general business tax credit may be claimed for alcohol, biodiesel, and renewable diesel fuels that are not in a mixture and are used as a fuel. This is the only credit or payment allowed with respect to the use of these neat fuels as a fuel. Claims for the credit are made by the person using the renewable fuel in a trade or business or by the person that sold the fuel at retail and delivered it into a vehicle. The small ethanol producer credit and the small agri-biodiesel producer credit are also nonrefundable general business credits. Claims for nonrefundable general business credits are made on Form 6478, "Credit for Alcohol Used as Fuel," and Form 8864, "Biodiesel and Renewable Diesel Fuels Credit," attached to the claimant's income tax return.

An excise tax credit may be claimed for alternative fuel that is not in a mixture and is used as a fuel. The excise tax credit is claimed on Form 720, Schedule C. The credit is allowed to the extent of certain fuel excise tax liability. The credit is claimed by the alternative fueler (unmixed fuel). If the incentive for unmixed alternative fuel exceeds the applicable excise tax liability the excess may be claimed as a payment on Form 8849 or as a refundable income tax credit on Form 4136.

#### **Explanation of Provisions**

The proposed regulations add provisions relating to registration requirements and excise tax credits or payments for alcohol, biodiesel, renewable diesel and alternative fuel

mixtures and for alternative fuel and diesel-water fuel emulsions. The regulations provide definitions and prescribe rules for claiming a credit or payment. Specifically, the regulations prescribe the conditions to allowance of a credit or payment, the content of claims for credit or payment, and the form of applicable certificates. The proposed regulations also remove obsolete regulations relating to gasohol and other alcohol fuels.

The proposed regulations generally adopt the rules of Notices 2005-4, 2005-62, 2005-80, 2006-92, 2007-37, and 2007-97. Differences between the notices and the proposed regulations are described in this preamble.

#### *Biodiesel Mixtures and Liability for Tax*

Notice 2005-62 provides that *biodiesel mixture* means a mixture of biodiesel and diesel fuel that contains at least 0.1 percent (by volume) of diesel fuel. That rule is unchanged by these proposed regulations.

Under existing regulations, diesel fuel does not include "excluded liquid"; biodiesel mixtures with a high concentration of biodiesel typically are classified as an excluded liquid. The definition of "excluded liquid" predates the biodiesel incentives and was intended to ensure that the diesel fuel tax was not imposed on certain liquids typically not used as fuel. The proposed regulations revise the definition of "excluded liquid" so that all biodiesel mixtures, which are generally used as a substitute for diesel fuel, will be classified as diesel fuel for tax purposes. As a result, under the proposed regulations, tax is imposed on a biodiesel mixture when it is removed from the bulk transfer/terminal system. If a biodiesel mixture is produced outside the bulk transfer/terminal system, tax is imposed on the sale or removal of the mixture by the mixture producer. The mixture producer is liable for the tax and must be registered as a blender of taxable fuel. The tax incentive for the biodiesel mixture generally must be taken as a credit against the producer's fuel tax liability and any excess over the fuel tax liability is allowable as either a payment or an income tax credit.

Also, the de minimis exception to the definition of "blended taxable fuel" is removed. Under this exception, a mixture is not blended fuel if the person creating the mixture adds less than 400 gallons of untaxed liquid to previously taxed fuel during the quarter and the operator of the vehicle using the mixture is liable for the tax on the untaxed liquid. Thus, in cases in which the untaxed liquid is alcohol, biodiesel,

or alternative fuel, the exception prevents the credit for which the mixture producer is eligible from being used to offset the tax. With the removal of this exception, the same person (the producer of the mixture) will be liable for the tax and eligible for the credit that can be used to offset the tax.

#### *Biodiesel and EPA Registration Requirements*

The Code defines *biodiesel* as monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet (1) the registration requirements of the Environmental Protection Agency (EPA) for fuel and fuel additives and, (2) ASTM D6751. Under the proposed regulations, a product meets the EPA registration requirements if the EPA does not require the product to be registered. Thus, for example, if a biodiesel mixture is to be sold only at a marina for use in boats, the biodiesel in the mixture meets the EPA registration requirement because EPA registration requirements do not apply to fuels or fuel additives sold for use in boats.

#### *Biodiesel Certificates*

The Code provides that a claim relating to a biodiesel mixture is not allowed unless, among other conditions, the claimant obtains the prescribed certificate from the biodiesel producer. Under existing rules, as well as the proposed regulations, this certificate must be attached to the claim that is filed with the IRS. However, the proposed regulations do not require a separate certificate to accompany the claim filed by a mixture producer that is also the producer of the biodiesel in the mixture. Further, the proposed regulations require, as a condition to allowance of an excise tax credit or a payment, that the claimant obtain the certificate from a registered biodiesel producer. If the claim is for a nonrefundable general business credit, the certificate may be from the registered producer or importer.

#### *Erroneous Biodiesel Certificates*

Under the Code, a claim relating to a biodiesel mixture is not allowed if the mixture does not actually contain biodiesel. Guidance was requested on whether a claim would be allowed if the claimant attached a certificate for biodiesel and the information on the certificate proved to be incorrect. The proposed regulations make clear that such a claim is not allowed even if the claim is based on a biodiesel certificate that the claimant accepted in good faith. In such a case, however, the proposed regulations generally provide that

reliance on the certificate will be treated as reasonable cause for purposes of the penalties imposed by sections 6651 (relating to failure to pay) and 6675 (relating to excessive claims).

#### *Alternative Fuel*

The Code allows a credit or payment for alternative fuel that is not in a mixture if the alternative fuel is sold for use or used as a fuel in a motor vehicle or motorboat. If the claim is based on a sale, the claimant must deliver the fuel into the fuel supply tank of the motor vehicle or motorboat or, in the case of a bulk sale, obtain the statement described in § 48.4041-5(a)(2), § 48.4041-21(b), or proposed § 48.6426-6(c).

#### *Registration of Alternative Fuellers*

A person must be registered by the IRS before claiming the alternative fuel or alternative fuel mixture credit or payment. Section 34 allows a refundable income tax credit with respect to alternative fuel or an alternative fuel mixture. This credit is claimed on Form 4136 filed with the claimant's Federal income tax return. Because partnerships do not file Federal income tax returns, the refundable income tax credit allowable with respect to a partnership's sale or use of alternative fuel is made by its partners. The partners may file Form 4136 with their income tax returns to claim a credit based on the information provided them on the partnership's Schedule K-1.

The proposed regulations provide that a partner in a partnership is treated as a registered alternative fueler for purposes of claims on Form 4136 if the partnership is registered for purposes of claims for an excise tax credit or payment. A partner that is treated as registered under this rule is to provide the partnership's registration number on Form 4136. These rules also apply for purposes of ultimate vendor claims by partners in partnerships that are ultimate vendors of diesel fuel or kerosene.

#### *Small Ethanol Producer Credit*

Section 40(a)(3) provides an income tax credit for ethanol produced by eligible small ethanol producers. The amount of ethanol that is eligible for the credit during any taxable year cannot exceed 15,000,000 gallons for any producer. A small ethanol producer generally means a person whose productive capacity for all alcohol, including alcohol for which a credit is not allowable under section 40, does not exceed 60,000,000 gallons at any time during the taxable year. Section 40(g)(5) authorizes the Secretary to prescribe

regulations to prevent the credit from benefiting a person that directly or indirectly has a productive capacity for alcohol in excess of 60,000,000 gallons and to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year. Section 40A provides similar rules with respect to the small agri-biodiesel producer credit.

The proposed regulations provide that *producer* means the person that has title to the ethanol immediately after the ethanol is created. Also, the producer must use a feedstock other than ethanol to produce the ethanol. The proposed regulations do not allow the credit for ethanol produced at the facilities of a contract manufacturer if the contract manufacturer has a direct or indirect productive capacity of more than 60,000,000 gallons of alcohol during the taxable year. Similarly, if the manufacturer does not have a productive capacity of more than 60,000,000 gallons but more than 15,000,000 gallons of ethanol is produced at the manufacturer's facilities during the taxable year, the proposed regulations allow the credit with respect to only the first 15,000,000 gallons of ethanol produced at the facilities during the taxable year. These rules apply to small agri-biodiesel producers also.

#### *Gasoline and Gasoline Blends*

The Code defines gasoline as including gasoline blends. The proposed regulations generally define a gasoline blend as any liquid that contains at least 0.1 percent (by volume) of finished gasoline and that is suitable for use as a fuel in a motor vehicle or motorboat. Thus, for example, E-85 (a mixture of 85 percent ethanol made from corn or other agricultural products and 15 percent gasoline) is treated as a gasoline blend. Tax is imposed on the gasoline blend when it is removed from the bulk transfer/terminal system or, if it is blended taxable fuel, when it is sold or removed by the blender. The proposed regulations also classify leaded gasoline as gasoline. Thus, for example, gasoline products that are sold as "racing gasoline" generally are treated as gasoline even though their lead content make them unsuitable for highway use.

#### *Excise Tax Returns*

The privilege to file consolidated returns under section 1501 applies only to income tax returns and not to excise tax returns. The proposed regulations note this rule and also reflect the rules of § 301.7701-2(c)(2)(v), which was added by TD 9356 (72 FR 45891, August 16, 2007), relating to the excise tax

treatment of certain business entities that are treated as separate from their owner for income tax purposes.

#### *Proposed Effective/Applicability Date*

The amendments to the regulations generally are proposed to be effective on the date they are published as final regulations in the **Federal Register**.

#### *Future Regulations Projects*

Future proposed regulations will address other fuel-related provisions in the American Jobs Creation Act, the Energy Policy Act, and SAFETEA. These include provisions related to kerosene used in aviation, the Leaking Underground Storage Tank Trust Fund tax, the tax on alternative fuel, and two-party exchanges.

#### *Availability of IRS Documents*

IRS notices cited in this preamble are published in the Internal Revenue Bulletin or Cumulative Bulletin and are available at IRS.gov.

#### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 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) does not apply to these proposed regulations. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on IRS estimates that less than 700 small entities will be required to provide certificates each year, such certificates will be provided only on occasion, and the average annual burden per respondent will be 22 hours. The economic impact of the collection of information is limited to completing a certificate in the form prescribed by the regulations. The certificate can be completed by filling in a small number of fields with information that is readily available to the taxpayer, and completion of a certificate should generally take less than 15 minutes. Accordingly, the time and resources required to prepare and provide these certificates is minimal and will not have a significant effect on those entities providing them. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small business.

#### **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

#### **Drafting Information**

The principal authors of these regulations are Taylor Cortright and Frank Boland, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

#### **List of Subjects**

##### *26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

##### *26 CFR Parts 40 and 48*

Excise taxes, Reporting and recordkeeping requirements.

#### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 40, and 48 are proposed to be amended as follows:

#### **PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 1.40-2 also issued under 26 U.S.C. 40(g)(5); Section 1.40A-1 also issued under 26 U.S.C. 40A(e)(5); \* \* \*

**Par. 2.** Section 1.40-1 is revised to read as follows:

##### **§ 1.40-1 Alcohol used as a fuel.**

For the definition of "alcohol" for purposes of the credits allowed by section 40, see § 48.6426-1(c) of this chapter.

**Par. 3.** Sections 1.40-2 and 1.40A-1 are added to read as follows:

**§ 1.40–2 Small ethanol producer credit.**

(a) *In general.* Section 40 provides a small ethanol producer credit for each gallon of qualified ethanol production of an eligible small ethanol producer. Section 40(b)(4)(B) defines “qualified ethanol production”. Section 40(g)(1) defines “eligible small ethanol producer”. Section 40(g)(5) provides authority to prescribe such regulations as may be necessary to prevent the credit from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 60 million gallons of alcohol during the taxable year. A person has produced ethanol if the person has title to the ethanol immediately after it is created.

(b) *Qualified ethanol production.* Section 40(b)(4)(B) limits qualified ethanol production to ethanol that is produced by an eligible small ethanol producer. Ethanol is “produced” for this purpose only when a feedstock other than ethanol is transformed into ethanol.

(c) *Denial of credit for ethanol produced at certain facilities.* The person at whose facilities ethanol is produced is treated for purposes of section 40(g)(5) as an indirect beneficiary of any credit allowed with respect to the ethanol. Accordingly, the small ethanol producer credit is not allowed with respect to ethanol that is produced at the facilities of a contract manufacturer or other person if such contract manufacturer or other person has a direct or indirect productive capacity of more than 60 million gallons of alcohol during the taxable year. Similarly, if the manufacturer does not have a productive capacity of more than 60 million gallons but more than 15 million gallons of ethanol is produced at the manufacturer’s facilities during the taxable year, the small ethanol producer credit is allowed with respect to only the first 15 million gallons of ethanol produced at the facilities during the taxable year.

(d) *Examples.* The following examples illustrate the application of this section:

*Example 1.* X purchases hydrous ethanol and processes it into anhydrous ethanol. X is not the producer of the ethanol because X does not transform a feedstock other than ethanol into ethanol.

*Example 2.* Y arranges with contract manufacturer Z to produce 10 million gallons of ethanol. Y is not related to Z. Y provides the raw materials and retains title to them and to the finished ethanol. Z has the capacity to produce 100 million gallons of alcohol per year. The small producer credit is not allowed with respect to the 10 million gallons of ethanol because it is produced at the facilities of a contract manufacturer that has a productive capacity of more than 60

million gallons of alcohol during the taxable year.

(e) *Effective/applicability date.* This section is applicable on and after the date of publication of these regulations in the **Federal Register** as final regulations.

**§ 1.40A–1 Biodiesel.**

(a) *In general.* Rules similar to the rules of § 1.40–2 apply for purposes of the small agri-biodiesel producer credit allowed by section 40A.

(b) *Definitions.* For the definitions of “biodiesel” and “renewable diesel” for purposes of the credits allowed by section 40A, see § 48.6426–1(b) of this chapter.

(c) *Effective/applicability date.* This section is applicable on and after the date of publication of these regulations in the **Federal Register** as final regulations.

**PART 40—EXCISE TAX PROCEDURAL REGULATIONS**

**Par. 4.** The authority citation for part 40 is amended by removing the entry for section 40.6071(a)–3 to read in part as follows:

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

**Par. 5.** Section 40.0–1 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

**§ 40.0–1 Introduction.**

\* \* \* \* \*

(d) *Person.* For purposes of this part, each business unit that has, or is required to have, a separate employer identification number is treated as a separate person. Thus, business units (for example, a parent corporation and a subsidiary corporation, a proprietorship and a related partnership, or the various members of a consolidated group), each of which has a different employer identification number, are separate persons.

(e) *Effective/applicability date.* This part is effective for returns and deposits that relate to calendar quarters beginning after September 30, 2008. For rules applicable to returns and deposits that relate to prior periods, see 26 CFR part 40 (revised as of April 1, 2008).

**§ 40.6302(c)–1 [Amended]**

**Par. 6.** Section 40.6302(c)–1 is amended as follows:

1. Paragraph (e)(1)(ii) is amended by removing the language “components);” and adding “components); and” in its place.

2. Paragraph (e)(1)(iii) is amended by removing the language “chemicals); and” and adding “chemicals).” in its place.

3. Paragraph (e)(1)(iv) is removed.

**PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES**

**Par. 7.** The authority citation for part 48 is amended by removing the entries for §§ 48.4081–6, 48.6427–8, 48.6427–9, 48.6427–10, and 48.6427–11 and adding entries in numerical order to read in part as follows:

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

Section 48.6426–3 also issued under 26 U.S.C. 6426(c). Section 48.6426–4 also issued under 26 U.S.C. 6426(c). Section 48.6427–8 also issued under 26 U.S.C. 6427(n). Section 48.6427–9 also issued under 26 U.S.C. 6427(n). Section 48.6427–10 also issued under 26 U.S.C. 6427(n). Section 48.6427–11 also issued under 26 U.S.C. 6427(n). Section 48.6427–12 also issued under 26 U.S.C. 6427(n).

**§ 48.0–1 [Amended]**

**Par. 8.** Section 48.0–1 is amended as follows:

1. In the second sentence, “and related credits, refunds, and payments” is added after “Code”.

2. In the third sentence, “certain luxury items,” is removed.

3. In the fourth sentence, “aviation fuel,” is removed.

**Par. 9.** Section 48.0–4 is added to read as follows:

**§ 48.0–4 Forms.**

Any reference to a form in this part is also a reference to any other form designated for the same use by the Commissioner after the date these regulations are published in the **Federal Register** as final regulations. All such forms must be completed in accordance with the instructions for the forms and contain any additional information required by this part.

**§ 48.4041–0 [Amended]**

**Par. 10.** Section 48.4041–0 is amended as follows:

1. In the first sentence, the language “sales or uses of diesel fuel” is removed and “any liquid (other than biodiesel) that is sold for use or used as a fuel in a diesel-powered highway vehicle or diesel-powered train” is added in its place.

2. In the second sentence, the language “diesel fuel tax” is removed and “tax with respect to these liquids” is added in its place.

**§ 48.4041–18 [Removed and Reserved]**

**Par. 11.** Section 48.4041–18 is removed and reserved.

**Par. 12.** Section 48.4041–19 is revised to read as follows:

**§ 48.4041–19 Reduction in tax for qualified methanol or ethanol fuel and partially exempt methanol or ethanol fuel.**

(a) *In general.* Section 4041(b)(2) provides a reduced rate of tax under sections 4041(a)(2) and (d) for qualified methanol or ethanol fuel. Section 4041(m) provides a reduced rate of tax under section 4041(a)(2) for partially exempt methanol or ethanol fuel.

(b) *Qualified methanol or ethanol fuel and partially exempt methanol or ethanol fuel defined.* For purposes of section 4041(b)(2) and this section, qualified methanol or ethanol fuel is liquid motor fuel, at least 85 percent of which (by volume) consists of alcohol produced from coal (including peat). For purposes of section 4041(m) and this section, partially exempt methanol or ethanol fuel is a liquid motor fuel, at least 85 percent of which (by volume) consists of alcohol produced from natural gas (including ethanol produced through the process of thermally cracking ethane that is a constituent of natural gas). The actual gallonage of each component of the mixture (without adjustment for temperature) shall be used in determining whether, at the time of the taxable sale or use, the applicable 85 percent alcohol requirement has been met. A mixture containing less than 85 percent alcohol produced from coal (or less than 85 percent alcohol produced from natural gas) may be treated as satisfying the applicable percentage requirement. In determining whether a particular mixture should be so treated, the Commissioner shall take into account the existence of any facts and circumstances establishing that, but for the commercial and operational realities of the blending process, it may reasonably be concluded that the mixture would have contained at least 85 percent alcohol from the appropriate source. The necessary facts and circumstances will not be found to exist if over a period of time the mixtures blended by a blender show a consistent pattern of failing to contain at least 85 percent alcohol from the appropriate source.

(c) *Effective/applicability date.* This section is applicable on and after the date of publication of these regulations in the **Federal Register** as final regulations. For provisions applicable to prior periods, see 26 CFR 48.4041–19 (revised as of April 1, 2008).

**§ 48.4041–20 [Removed and Reserved]**

**Par. 13.** Section 48.4041–20 is removed and reserved.

**Par. 14.** Section 48.4081–1 is amended as follows:

1. Paragraph (b) is amended by:

a. Revising the definition of Blender.  
b. Adding the definition of Diesel-water fuel emulsion in alphabetical order.

c. Adding the language “(other than a mixture as defined in § 48.6426–1(b))” after “any liquid” in the introductory text of the definition of Excluded liquid.

d. Revising the definition of Finished gasoline.

e. Revising the definition of Gasoline.  
f. Adding the definition of Gasoline blend in alphabetical order.

g. Revising the definition of Refinery.  
h. Removing the language “effective January 2, 1998,” from the last sentence in the definition of Terminal.

2. Paragraph (c) is amended by:

a. In paragraph (c)(1)(i), removing the language “paragraphs (c)(1)(ii) and (c)(1)(iii)” in the introductory text and adding “paragraph (c)(1)(ii)” in its place.

b. In paragraph (c)(1)(ii), removing the language “A mixture” and adding “In calendar quarters beginning before the date of publication of these regulations in the **Federal Register** as final regulations, a mixture” in its place.

c. Removing paragraph (c)(1)(iii).

d. In paragraph (c)(2)(i), first sentence, adding the language “any of the following: a mixture (as defined in § 48.6426–1(b)) that contains diesel fuel; renewable diesel as defined in section 40A(f)(3); transmix (as defined in section 4083(a)(3)(B)); and” after “*diesel fuel* means”.

e. In paragraph (c)(2)(ii), first sentence, adding the language “biodiesel, alternative fuel (as defined in section 6426(d)(2)), qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in section 4041(m)(2)),” after “kerosene.”

f. In paragraph (c)(3)(i)(V) removing the language “gasoline;” and adding “gasoline; and” in its place.

g. In paragraph (c)(3)(i)(W), removing the language “Toluene; and” and adding “Toluene.” in its place.

h. Removing paragraph (c)(3)(i)(X).

3. Paragraph (e) is amended by removing the language “48.4081–6(b),” and by adding the language “48.6426–1(b)” after “48.4101–1(b).”

4. Revising paragraph (f).

The revisions and additions read as follows:

**§ 48.4081–1 Taxable fuel; definitions**

\* \* \* \* \*

(b) \* \* \*

*Blender* means the person that has title to blended taxable fuel immediately after it is created.

\* \* \* \* \*

*Diesel-water fuel emulsion* means diesel fuel at least 14 percent of which

is water and with respect to which the emulsion additive is registered by a United States manufacturer with the Environmental Protection Agency pursuant to section 211 of the Clean Air Act (as in effect on March 31, 2003).

\* \* \* \* \*

*Finished gasoline* means all products that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel, other than—

(1) Products that have an ASTM octane number of less than 75 as determined by the motor method; and

(2) Alternative fuel as defined in section 6426(d)(2).

*Gasoline* means aviation gasoline, finished gasoline, gasoline blends, gasoline blendstocks, and leaded gasoline.

*Gasoline blend* includes any liquid (other than finished gasoline) that contains at least 0.1 percent (by volume) of finished gasoline and that is suitable for use as a fuel in a motor vehicle or motorboat. However, the term does not include qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in section 4041(m)(2)), or alcohol that is denatured under a formula approved by the Secretary.

\* \* \* \* \*

*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 taxable fuel, and no other type of taxable fuel, is produced.

\* \* \* \* \*

(f) *Effective/applicability date.* This section is applicable on and after the date of publication of these regulations in the **Federal Register** as final regulations. For provisions applicable to prior periods, see 26 CFR 48.4081–1 (revised as of April 1, 2008).

**§ 48.4081–2 [Amended]**

**Par. 15.** Section 48.4081–2 is amended by removing the last sentence of paragraph (d).

**§ 48.4081–3 [Amended]**

**Par. 16.** Section 48.4081–3 is amended as follows:

1. Paragraph (b)(1)(iii) is removed.
2. Removing the last sentence in paragraphs (g)(1) and (h).

**§ 48.4081–6 [Removed and Reserved]**

**Par. 17.** Section 48.4081–6 is removed and reserved.

**§ 48.4082-4 [Amended]**

**Par. 18.** Section 48.4082-4, is amended by adding the language “or biodiesel” after “taxable fuel” in paragraphs (a)(1)(iii) and (b)(1)(iii).

**Par. 19.** Section 48.4101-1 is amended as follows:

1. Paragraph (a)(1) is amended by removing the language “4081 and” and adding “4081, for certain producers and importers of alcohol, biodiesel, and renewable diesel, and alternative fuelers under sections 6426 and 6427, and for purposes of” in its place.

2. Revising paragraphs (a)(2), (c)(1)(vi), (c)(1)(vii), and adding paragraph (c)(1)(viii).

3. Paragraphs (a)(3) and (b)(3) are removed and reserved.

4. Paragraph (b)(9) is amended by removing the language “48.4081-6(b), 48.4082-5(b), 48.4082-6(b), 48.4082-7(b)” and adding “48.4082-5(b), 48.4082-7(b), 48.6426-1(b),” in its place.

5. Revising paragraph (d)(2) and adding paragraph (d)(7).

6. Paragraph (d)(5) is amended by, removing the language “vendor; or” and adding “vendor;” in its place.

7. Paragraph (d)(6) is amended by removing the language “pump;” and adding “pump; or” in its place.

8. Paragraph (f)(1)(i) is amended by removing from the heading the language “and vessel operators.” and adding “vessel operators, alternative fuelers, producers or importers of alcohol, biodiesel, or renewable diesel, and diesel-water fuel emulsion producers.” in its place.

9. Paragraph (f)(1)(ii) is amended by removing the language in the heading “and vessel operators” and adding “vessel operators, alternative fuelers, producers or importers of alcohol, biodiesel, or renewable diesel, and diesel-water fuel emulsion producers” in its place.

10. Paragraph (f)(1)(ii) is amended by removing the language in the introductory text “or vessel operator” and adding “vessel operator, alternative fueler, producer or importer of alcohol, biodiesel, or renewable diesel, or diesel-water fuel emulsion producer” in its place.

11. Paragraph (f)(1)(ii)(B) is amended by adding the language “reporting,” after “payment.”

12. Paragraph (f)(4)(ii)(A) is amended by removing the language in the introductory text “district director” and adding “Commissioner” in its place.

13. Paragraph (f)(4)(ii)(A)(1) is amended by removing the language “district director;” and adding “Commissioner; and” in its place.

14. Paragraph (f)(4)(ii)(A)(2) is amended by removing the language “district director; and” and adding “Commissioner.” in its place.

15. Removing paragraph (f)(4)(i)(A)(3).

16. Paragraph (f)(4)(iii) is amended by removing the language “deposit, and payment” and adding “deposit, payment, reporting, and claim” in its place.

17. Revising paragraph (h)(2)(iii).

18. Paragraph (j)(2) is amended by removing the language in the introductory text “district director” and adding “Commissioner” in its place.

19. Paragraph (j)(2)(i), is amended by removing the language “district director;” and adding “Commissioner; and” in its place.

20. Paragraph (j)(2)(ii) is amended by removing the language “district director; and” and adding “Commissioner.” in its place.

21. Removing paragraph (j)(2)(iii).

22. Paragraph (k) is amended by adding a new sentence between the existing second and third sentences.

23. Paragraph (l)(5) is added.

The revisions and additions read as follows:

**§ 48.4101-1 Taxable fuel; registration.**

(a) \* \* \*

(2) A person is registered under section 4101 only if the Commissioner has issued a registration letter to the person and the registration has not been revoked or suspended or the person is treated under this paragraph (a)(2) as registered under section 4101. The following persons are treated as registered under section 4101:

(i) The United States is treated as registered under section 4101 for all purposes.

(ii) A partner in a partnership is treated as registered under section 4101 for purposes of claims filed under section 34 if the partnership is registered under section 4101 for purposes of filing claims under section 6426 or 6427.

(iii) A taxable fuel registrant is treated as registered under section 4101 as a diesel-water fuel emulsion producer.

(iv) A foreign person is treated as registered under section 4101 as a producer of alcohol, biodiesel, or renewable diesel if—

(A) The person produces alcohol, biodiesel, or renewable diesel outside the United States and does not produce alcohol, biodiesel, or renewable diesel within the United States; and

(B) The alcohol, biodiesel, or renewable diesel is imported into the United States by a person registered under section 4101 as a producer or

importer of alcohol, biodiesel, or renewable diesel.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(vi) A terminal operator;

(vii) A vessel operator; or

(viii) A producer or importer of alcohol, biodiesel, or renewable diesel.

\* \* \* \* \*

(d) \* \* \*

(2) An alternative fueler;

\* \* \* \* \*

(7) A diesel-water fuel emulsion producer.

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \*

(iii) Make any false statement on, or violate the terms of, any certificate given to another person to support—

(A) Any claim for credit, refund, or payment; or

(B) An exemption from, or reduced rate of, tax imposed by section 4081; or

\* \* \* \* \*

(k) \* \* \* For rules relating to claims with respect to alcohol, biodiesel, renewable diesel and alternative fuel, see §§ 48.6426-1 through 48.6426-7.

\* \* \*

(l) \* \* \*

(5) References in this section to biodiesel and alcohol are applicable after December 31, 2004. References in this section to renewable diesel and diesel-water fuel emulsion are applicable after December 31, 2005. References in this section to alternative fuel are applicable after September 30, 2006.

**Par. 20.** Sections 48.6426-1 through 48.6426-7 are added to read as follows:

**§ 48.6426-1 Renewable and alternative fuels; explanation of terms.**

(a) *Overview.* This section provides an explanation of terms for purposes of the credits allowed by sections 34 and 6426 and the payments allowed by section 6427(e). The definition of *alcohol* in paragraph (c) of this section is also applicable for purposes of the credits allowed by section 40. The definitions of *biodiesel* and *renewable diesel* in paragraph (b) of this section are also applicable for purposes of the credits allowed by section 40A.

(b) *Explanation of terms.*

*Agri-biodiesel* means biodiesel derived solely from virgin oils. Virgin oils include virgin vegetable oils from the sources listed in section 40A(d)(2), as well as virgin oils not listed, such as palm oil and fish oil. Biodiesel produced from a feedstock that includes any recycled oils (such as recycled cooking oils) is not agri-biodiesel



because it is not derived solely from virgin oils.

*Alcohol* is defined in paragraph (c) of this section.

*Alcohol fuel mixture* means a mixture of alcohol and taxable fuel that contains at least 0.1 percent (by volume) of taxable fuel.

*Alternative fuel* means, except as otherwise provided in the following sentence, liquefied petroleum gas, P Series Fuels (as defined by the Secretary of Energy under 42 U.S.C. 13211(2)), compressed or liquefied natural gas, liquefied hydrogen, any liquid fuel derived from coal (including peat) through the Fischer-Tropsch process, and liquid fuel derived from biomass (as defined in section 45K(c)(3)). The term does not include ethanol, methanol, biodiesel, or renewable diesel.

*Alternative fuel mixture* means a mixture of alternative fuel and taxable fuel that contains at least 0.1 percent (by volume) of taxable fuel.

*Alternative fueler* means a person that—

(1) Is an alternative fueler (unmixed fuel); or

(2) Produces alternative fuel mixtures for sale or use in its trade or business.

*Alternative fueler (unmixed fuel)* with respect to any alternative fuel that is sold for use or used as a fuel in a motor vehicle or motorboat is—

(1) In the case of alternative fuel on which tax is imposed by section 4041(a)(2) or (3), the person liable for such tax (determined in the case of compressed natural gas after the application of § 48.4041–21 and in the case of any other alternative fuel after the application of rules similar to the rules of §§ 48.4041–3 and 48.4041–5);

(2) In the case of alternative fuel that is not described in paragraph (1) or (3) of this definition, the person that would be so liable for such tax but for the application of an exemption provided by section 4041(a)(3)(B), (b), (f), (g), or (h); and

(3) In the case of liquefied natural gas (LNG) that is sold in bulk for the exclusive use of a State that provides the written waiver described in § 48.6426–6(c)(4) and is delivered into a bulk supply tank that can only fuel motor vehicles and motorboats of the State, the person that sells the alternative fuel to the State.

*Biodiesel* means biodiesel as defined in section 40A(d)(1). Biodiesel may be produced either within or outside the United States. Fuel meets the Environmental Protection Agency (EPA) registration requirements described in section 40A(d)(1)(A) if the EPA does not require the fuel to be registered.

*Biodiesel mixture* means a mixture of biodiesel and diesel fuel that contains at least 0.1 percent (by volume) of diesel fuel. The kerosene in a biodiesel mixture is not included in either the overall volume of the mixture or the volume of diesel fuel in the mixture for purposes of determining whether the biodiesel mixture satisfies the 0.1 percent requirement. The diesel fuel in a biodiesel mixture may be dyed or undyed. See, however, section 6715 for the penalty for willful alteration of the strength or composition of any dye in dyed fuel and § 48.6715–1 for related rules.

*Commingled biodiesel* means biodiesel that is held by—

(1) Its producer in a storage tank at a time when the tank is used only for the storage of biodiesel and is used to store both biodiesel (other than agri-biodiesel) and agri-biodiesel; or

(2) A person other than its producer in a storage tank at a time when the tank is used only for the storage of biodiesel and is used to store biodiesel to which more than a single Certificate for Biodiesel applies.

*Commingled renewable diesel* means renewable diesel held by a person other than its producer in a storage tank at a time when the tank is used only for the storage of renewable diesel and is used to store renewable diesel to which more than a single Certificate for Renewable Diesel applies.

*Mixture* means an alcohol fuel mixture, a biodiesel mixture, a renewable diesel mixture, or an alternative fuel mixture.

*Mixture producer* is the person that has title to the mixture immediately after it is created.

*Motor vehicle* has the meaning given to the term by § 48.4041–8(c). Thus, for example, the term includes forklift trucks used to carry loads at industrial plants and warehouses.

*Producer* means the person that produces alcohol, biodiesel, or renewable diesel.

*Registered biodiesel producer* means a biodiesel producer that is registered under section 4101 as a producer of biodiesel.

*Registered renewable diesel producer* means a renewable diesel producer that is registered under section 4101 as a producer of renewable diesel.

*Renewable diesel* means renewable diesel as defined in section 40A(f)(3). For this purpose, a fuel meets the Environmental Protection Agency's (EPA's) registration requirements described in section 40A(f)(3)(A) if the EPA does not require the fuel to be registered or if diesel fuel coproduced from renewable diesel and petroleum

feedstocks is registered. Renewable diesel may be produced either within or outside the United States.

*Renewable diesel mixture* is defined in paragraph (d) of this section.

*Reseller* means, with respect to any biodiesel or renewable diesel, a person that buys and subsequently sells such fuel without using the fuel to produce a biodiesel or renewable diesel mixture.

*Thermal depolymerization process* means, for purposes of the definition of *renewable diesel* in section 40A(f)(3), a process for the reduction of complex organic materials through the use of pressure and heat to decompose long chain polymers of hydrogen, oxygen, and carbon into short-chain petroleum hydrocarbons with a maximum length of around 18 carbons. A process may qualify as thermal depolymerization even if catalysts are used in the process.

*Use as a fuel* is defined in paragraph (e) of this section.

(c) *Alcohol; definition*—(1) *In general.* Except as otherwise provided in this paragraph (c), *alcohol* means any alcohol, including methanol and ethanol, that is not a derivative product of petroleum, natural gas, or coal (including peat). Thus, for example, the term does not include an ethanol by-product produced from a derivative of petroleum or natural gas. However, the term does include alcohol made from renewable resources, such as agricultural or forestry products. The term also includes alcohol made from urban wastes, such as methanol made from methane gas formed at waste disposal sites.

(2) *Source of the alcohol.* Alcohol may be produced either within or outside the United States.

(3) *Proof and denaturants.* Except for purposes of section 40, alcohol does not include alcohol with a proof of less than 190 degrees (determined without regard to added denaturants). For purposes of section 40, alcohol does not include alcohol with a proof of less than 150 degrees (determined without regard to added denaturants). If alcohol includes impurities or denaturants, the volume of alcohol is determined under the following rules:

(i) Except for purposes of section 40, the volume of alcohol 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 alcohol to not less than 190 proof (determined without regard to added denaturants and any fuel with which the alcohol is mixed).

(ii) For purposes of section 40, the volume of alcohol 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 alcohol to not less than 150 proof (determined without regard to added denaturants and any fuel with which the alcohol is mixed).

(iii) The volume of alcohol includes the volume of any approved denaturants that reduce the purity of the alcohol, but only to the extent that the volume of the approved denaturants does not exceed five percent of the unadjusted volume of the alcohol. The unadjusted volume of the alcohol is determined for this purpose by including in unadjusted volume the approved denaturants and the impurities included in volume under paragraph (c)(3)(i) or (ii) of this section. If the volume of the approved denaturants exceeds five percent of the unadjusted volume of the alcohol, the excess over five percent is not considered alcohol.

(iv) For purposes of this paragraph (c)(3), approved denaturants are any denaturants (including gasoline and other nonalcohol fuel denaturants) that reduce the purity of the alcohol and are added to such alcohol under a formula approved by the Secretary.

(4) *ETBE*. Ethyl tertiary butyl ether (ETBE) and other ethers produced from alcohol are treated as alcohol. The ether is treated as alcohol of the same type as the alcohol used to produce the ether and the volume of alcohol resulting from such treatment is the volume of alcohol of such type with an energy content equal to the energy content of the ether.

(d) *Renewable diesel mixture; definition*—(1) *In general. Renewable diesel mixture* means—

(i) A mixture of renewable diesel and diesel fuel (other than renewable diesel) that contains at least 0.1 percent (by volume) of diesel fuel (other than renewable diesel); and

(ii) Fuel produced from biomass (as defined in section 45K(c)(3)) and petroleum feedstocks using a thermal depolymerization process if such fuel has been registered by the Environmental Protection Agency (EPA) under section 211 of the Clean Air Act (42 U.S.C. 7545) and meets the requirements of ASTM D975 or D396.

(2) *Special rules*. The kerosene in a renewable diesel mixture is not included in either the overall volume of the mixture or the volume of diesel fuel in the mixture for purposes of determining whether the renewable diesel mixture satisfies the 0.1 percent requirement. The diesel fuel in the renewable diesel mixture may be dyed or undyed. See, however, section 6715 for the penalty for willful alteration of the strength or composition of any dye in dyed fuel and § 48.6715–1 for related

rules. For availability for ASTM specifications, see § 48.4081–1(d).

(e) *Use as a fuel; definitions*—(1) A mixture is *used as a fuel* when it is consumed in the production of energy. Thus, for example, a mixture is used as a fuel when it is consumed in an internal combustion engine to power a vehicle or in a furnace to produce heat. However, a mixture that is destroyed in a fire or other casualty loss is not used as a fuel.

(2) A mixture is *sold for use as a fuel* if the producer sells the fuel and has reason to believe that the mixture will be used as a fuel by either the producer's buyer or any later buyer of the mixture.

(3) Alternative fuel (not in a mixture) is sold for use or used as a fuel in a motor vehicle or motorboat when the alternative fueler (unmixed fuel) with respect to the fuel delivers it into the fuel supply tank of a motor vehicle or motorboat or sells it in bulk for use by the buyer as a fuel in a motor vehicle or motorboat.

(f) *Other definitions*. For the definitions of taxable fuel and diesel fuel, see § 48.4081–1.

(g) *Effective/applicability date*. This section is applicable on and after the date these regulations are published as final regulations in the **Federal Register**.

#### § 48.6426–2 Alcohol fuel mixtures.

(a) *Overview*. This section provides rules under which an alcohol fuel mixture producer may claim an excise tax credit under section 6426, a payment under section 6427, or an income tax credit under section 34. These claims relate to the mixture producer's sale or use of an alcohol fuel mixture and are based on the amount of alcohol used to produce the alcohol fuel mixture. For the applicable claim rate, see section 6426.

(b) *Conditions to allowance*—(1) *Excise tax credit*. A claim for the alcohol fuel mixture credit with respect to an alcohol fuel mixture is allowed under section 6426 only if each of the following conditions is satisfied:

(i) The claimant produced the alcohol fuel mixture for sale or use in the trade or business of the claimant.

(ii) The claimant sold the alcohol fuel mixture for use as a fuel or used the alcohol fuel mixture as a fuel.

(iii) The claimant has made no other claim with respect to the alcohol in the mixture or, if another claim has been made, such other claim is disregarded under this paragraph (b)(1)(iii). A claim is disregarded under this paragraph (b)(1)(iii) if it is—

(A) A claim for the small ethanol producer credit under section 40; or

(B) An erroneous claim under section 6427 and either the claim has been disallowed or the claimant has repaid the government the amount received under section 6427 with interest.

(iv) The claimant has filed a timely claim on Form 720, "Quarterly Federal Excise Tax Return," that contains all the information required in paragraph (c) of this section.

(2) *Payment or income tax credit*. A claim for an alcohol fuel mixture payment under section 6427 or an income tax credit under section 34 is allowed only if—

(i) The conditions of paragraphs (b)(1)(i) and (ii) of this section are met; and

(ii) The claimant has filed a timely claim for payment on Form 720 or Form 8849, "Claim for Refund of Excise Taxes," or for a credit on Form 4136, "Credit for Federal Tax Paid on Fuels," that contains all the information required by paragraph (c) of this section.

(3) *ETBE; sold for use or used as a fuel*. An alcohol fuel mixture that is produced at a refinery and that includes ethyl tertiary butyl ether or other ethers produced from alcohol is treated as meeting the requirement of paragraph (b)(1)(ii) of this section when the mixture is removed from the refinery and any subsequent sale or use of the mixture is disregarded for purposes of this section.

(4) *Overall limitations on credits and payments*. See § 48.6426–7(a) for overall limitations on credits and payments allowed with respect to mixtures under sections 34, 6426, and 6427.

(c) *Content of claim*. Each claim for an alcohol fuel mixture credit or payment must contain the following information with respect to the mixture covered by the claim:

(1) The amount of alcohol in the alcohol fuel mixture.

(2) A statement that the conditions to allowance described in paragraph (b) of this section have been met.

(3) A statement that the claimant either—

(i) Produced the alcohol it used in the mixture; or

(ii) Has in its possession a record of the name, address, and employer identification number of the person(s) that sold the alcohol to the claimant and the date of purchase.

(d) *Effective/applicability date*. This section is applicable on and after the date these regulations are published as final regulations in the **Federal Register**.

#### § 48.6426–3 Biodiesel mixtures.

(a) *Overview*. This section provides rules under which a biodiesel mixture producer may claim an excise tax credit

under section 6426, a payment under section 6427, or an income tax credit under section 34. These claims relate to the mixture producer's sale or use of a biodiesel mixture and are based on the amount of biodiesel used to produce the biodiesel mixture. For the applicable claim rate, see section 6426.

(b) *Conditions to allowance*—(1)

*Excise tax credit.* A claim for the biodiesel mixture credit with respect to a biodiesel mixture is allowed under section 6426 only if each of the following conditions is satisfied:

(i) The claimant produced the biodiesel mixture for sale or use in the trade or business of the claimant.

(ii) The claimant sold the biodiesel mixture for use as a fuel or used the biodiesel mixture as a fuel.

(iii) The claimant—

(A) Produced the biodiesel in the mixture; or

(B) Has obtained a certificate from the registered biodiesel producer as described in paragraph (e) of this section and, if applicable, a statement described in paragraph (f) of this section, for such biodiesel and has no reason to believe any information in the certificate and statement is false.

(iv) The claimant has made no other claim with respect to the biodiesel in the mixture or, if another claim has been made, such other claim is disregarded under this paragraph (b)(1)(iv). A claim is disregarded under this paragraph (b)(1)(iv) if it is—

(A) A claim for the small agri-biodiesel producer credit under section 40A; or

(B) An erroneous claim under section 6427 and either the claim has been disallowed or the claimant has repaid the government the amount received under section 6427 with interest.

(v) The claimant has filed a timely claim on Form 720, "Quarterly Federal Excise Tax Return," that contains all the information required in paragraph (c) of this section.

(2) *Payment or income tax credit.* A claim for a biodiesel mixture payment under section 6427 or an income tax credit under section 34 is allowed only if—

(i) The conditions of paragraphs (b)(1)(i), (ii), and (iii) of this section are met; and

(ii) The claimant has filed a timely claim for payment on Form 720 or Form 8849, "Claim for Refund of Excise Tax," or for a credit on Form 4136, "Credit for Federal Tax Paid on Fuels," that contains all the information required by paragraph (c) of this section.

(3) *Overall limitations on credits and payments.* See § 48.6426-7(a) for overall limitations on credits and payments

allowed with respect to mixtures under sections 34, 6426, and 6427.

(c) *Content of claim.* Each claim for a biodiesel mixture credit or payment must contain the following information with respect to the mixture covered by the claim:

(1) The amount of agri-biodiesel and biodiesel other than agri-biodiesel in the biodiesel mixture.

(2) Unless the claimant is the producer of the biodiesel in the biodiesel mixture, a copy of the applicable Certificate for Biodiesel described in paragraph (e) of this section and Statement(s) of Biodiesel Reseller described in paragraph (f) of this section. In the case of a certificate and statement that support a claim made on more than one claim form, the certificate and statement are to be included with the first claim and the claimant is to provide information related to the certificate and statement on any subsequent claim in accordance with the instructions applicable to the claim form.

(3) A statement that the conditions to allowance described in paragraph (b) of this section have been met.

(4) A statement that the claimant either—

(i) Is a registered biodiesel producer and produced the biodiesel it used in the mixture; or

(ii) Has in its possession a record of the name, address, and employer identification number of the person(s) that sold the biodiesel to the claimant and the date of purchase.

(d) *Commingled biodiesel; accounting method.* For purposes of determining the certificate applicable to commingled biodiesel, a person that holds commingled biodiesel may identify the biodiesel it sells or uses by any reasonable method, including the first-in, first-out method applied either on a tank-by-tank basis or on an aggregate basis to all commingled biodiesel the person holds.

(e) *Certificate for Biodiesel*—(1) *In general.* The certificate to be obtained by the claimant is a statement that is signed under penalties of perjury by a person with authority to bind the registered biodiesel producer, is in substantially the same form as the model certificate in paragraph (e)(4) of this section, and contains all the information necessary to complete such model certificate.

(2) *Certificate identification number.* The certificate identification number is determined by the producer and must be unique to each certificate.

(3) *Multiple certificates for single sale.* A registered biodiesel producer may, with respect to a particular sale of

biodiesel, provide multiple separate certificates, each applicable to a portion of the total volume of biodiesel sold. Thus, for example, a biodiesel producer that sells 5,000 gallons of biodiesel may provide its buyer with five certificates for 1,000 gallons each. The multiple certificates may be provided either to the buyer at or after the time of sale or to a reseller in the circumstances described in paragraph (f)(2) of this section.

(4) *Model certificate.*

**CERTIFICATE FOR BIODIESEL**

*Certificate Identification Number:* \_\_\_\_\_

*(To support a claim related to biodiesel or a biodiesel mixture under the Internal Revenue Code)*

The undersigned biodiesel producer ("Producer") hereby certifies the following under penalties of perjury:

1. \_\_\_\_\_

\_\_\_\_\_

Producer's name, address, and employer identification number

2. \_\_\_\_\_

\_\_\_\_\_

Name, address, and employer identification number of person buying the biodiesel from Producer

3. \_\_\_\_\_

Date and location of sale to buyer

4. This certificate applies to \_\_\_\_ gallons of biodiesel.

5. Producer certifies that the biodiesel to which this certificate relates is:

\_\_\_\_% Agri-biodiesel (derived solely from virgin oils)

\_\_\_\_% Biodiesel other than agri-biodiesel

6. This certificate applies to the following sale:

\_\_\_\_ Invoice or delivery ticket number

\_\_\_\_ Total number of gallons of biodiesel sold under that invoice or delivery ticket number (including biodiesel not covered by this certificate)

7. \_\_\_\_ Total number of certificates issued for that invoice or delivery ticket number

8. \_\_\_\_\_

\_\_\_\_\_

Name, address, and employer identification number of reseller to whom certificate is issued (only in the case of certificates reissued to a reseller after the return of the original certificate)

9. \_\_\_\_ Original Certificate Identification Number (only in the case of certificates reissued to a reseller after return of the original certificate)

10. Producer is registered as a biodiesel producer with registration number \_\_\_\_\_. Producer's registration has not been suspended or revoked by the Internal Revenue Service.

Producer certifies that the biodiesel to which this certificate relates is monoalkyl

esters of long chain fatty acids derived from plant or animal matter and that it meets the requirements of the American Society of Testing and Materials D6751 and the registration requirements for fuels and fuel additives established by EPA under section 211 of the Clean Air Act (42 U.S.C. 7545).

Producer understands that the fraudulent use of this certificate may subject Producer 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 this certificate

Title of person signing

Signature and date signed

(f) *Statement of Biodiesel Reseller—*  
 (1) *In general.* A person that receives a Certificate for Biodiesel, and subsequently sells the biodiesel without producing a biodiesel mixture, is to give the certificate and a statement that satisfies the requirements of this paragraph (f) to its buyer. The statement must contain all of the information necessary to complete the model statement in paragraph (f)(4) of this section and be attached to the Certificate for Biodiesel. A reseller cannot make multiple copies of a Certificate for Biodiesel to divide the certificate between multiple buyers.

(2) *Multiple resales.* If a single Certificate for Biodiesel applies to biodiesel that a reseller expects to sell to multiple buyers, the reseller should return the certificate (together with any statements provided by intervening resellers) to the producer who may reissue to the reseller multiple Certificates for Biodiesel in the appropriate volumes. The reissued certificates must include the Certificate Identification Number from the certificate that has been returned.

(3) *Withdrawal of the right to provide a certificate.* The Internal Revenue Service may withdraw the right of a reseller of biodiesel to provide the certificate and a statement under this section if the Internal Revenue Service cannot verify the accuracy of the reseller's statements. The Internal Revenue Service may notify any person to whom the buyer has provided a statement that the reseller's right to provide the certificate and a statement has been withdrawn.

(4) *Model statement of biodiesel reseller.*

**STATEMENT OF BIODIESEL RESELLER**

*(To support a claim related to biodiesel or a biodiesel mixture under the Internal Revenue Code)*

The undersigned biodiesel reseller ("Reseller") hereby certifies the following under penalties of perjury:

1. \_\_\_\_\_

Reseller's name, address, and employer identification number

2. \_\_\_\_\_

Name, address, and employer identification number of Reseller's buyer

3. \_\_\_\_\_

Date and location of sale to buyer

4. \_\_\_\_\_

Volume of biodiesel sold

5. \_\_\_\_\_

Certificate Identification Number on the Certificate for Biodiesel

Reseller has bought the biodiesel described in the accompanying Certificate for Biodiesel and Reseller has no reason to believe that any information in the certificate is false.

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

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

Printed or typed name of person signing this certificate

Title of person signing

Signature and date signed

(g) *Erroneous certificates; reasonable cause.* If a claim for credit or payment described in this section is based on erroneous information in a certificate or statement described in paragraph (e)(4) or (f)(4) of this section, the claim is not allowed. Thus, for example, if a producer identifies a product as agri-biodiesel on a Certificate for Biodiesel and the product does not meet the registration requirements established by EPA, a claim for a biodiesel mixture credit based on the certificate is not allowed. However, if the claimant has met the conditions of paragraph (b)(1)(iii)(B) of this section with respect to the certificate or statement, reliance on the certificate or statement will be treated as reasonable cause for purposes of the penalties imposed by sections 6651 (relating to failure to pay) and 6675 (relating to excessive claims).

(h) *Effective/applicability date.* This section is applicable on and after the

date of publication of these regulations as final regulations in the **Federal Register**.

**§ 48.6426–4 Renewable diesel mixtures.**

(a) *Overview.* This section provides rules under which a renewable diesel mixture producer may claim an excise tax credit under section 6426, a payment under section 6427, or an income tax credit under section 34. These claims relate to the mixture producer's sale or use of a renewable diesel mixture and are based on the amount of renewable diesel used to produce the renewable diesel mixture. For the applicable claim rate, see section 40A(f)(2).

(b) *Conditions to allowance—*(1) *Excise tax credit.* A claim for the renewable diesel mixture credit with respect to a renewable diesel mixture is allowed under section 6426 only if each of the following conditions is satisfied:

(i) The claimant produced the renewable diesel mixture for sale or use in the trade or business of the claimant.

(ii) The claimant sold the renewable diesel mixture for use as a fuel or used the renewable diesel mixture as a fuel.

(iii) The claimant—

(A) Produced the renewable diesel in the mixture; or

(B) Has obtained a certificate from the registered renewable diesel producer as described in paragraph (e) of this section and, if applicable, a statement described in paragraph (f) of this section, for such renewable diesel and has no reason to believe any information in the certificate and statement is false.

(iv) The claimant has made no other claim with respect to the renewable diesel in the mixture or, if another claim has been made, such other claim is disregarded under this paragraph (b)(1)(iv). A claim is disregarded under this paragraph (b)(1)(iv) if it is an erroneous claim under section 6427 and either the claim has been disallowed or the claimant has repaid the government the amount received under section 6427 with interest.

(v) The claimant has filed a timely claim on Form 720, "Quarterly Federal Excise Tax Return," that contains all the information required in paragraph (c) of this section.

(2) *Payment or income tax credit.* A claim for a renewable diesel mixture payment under section 6427 or an income tax credit under section 34 is allowed only if—

(i) The conditions of paragraphs (b)(1)(i), (ii), and (iii) of this section are met; and

(ii) The claimant has filed a timely claim for payment on Form 720 or Form 8849, "Claim for Refund of Excise

Taxes,” or for a credit on Form 4136, “Credit for Federal Tax Paid on Fuels,” that contains all the information required by paragraph (c) of this section.

(3) *Overall limitations on credits and payments.* See § 48.6426–7(a) for overall limitations on credits and payments allowed with respect to mixtures under sections 34, 6426, and 6427.

(c) *Content of claim.* Each claim for a renewable diesel mixture credit or payment must contain the following information with respect to the mixture covered by the claim:

(1) The amount of renewable diesel in the renewable diesel mixture.

(2) Unless the claimant is the producer of the renewable diesel in the renewable diesel mixture, a copy of the applicable Certificate for Renewable Diesel described in paragraph (e) of this section and Statement(s) of Renewable Diesel Reseller described in paragraph (f) of this section. In the case of a certificate and statement that support a claim made on more than one claim form, the certificate and statement are to be included with the first claim and the claimant is to provide information related to the certificate and statement on any subsequent claim in accordance with the instructions applicable to the claim form.

(3) A statement that the conditions to allowance described in paragraph (b) of this section have been met.

(4) A statement that the claimant either—

(i) Is a registered renewable diesel producer and produced the renewable diesel it used in the mixture; or

(ii) Has in its possession a record of the name, address, and employer identification number of the person(s) that sold the renewable diesel to the claimant and the date of purchase.

(d) *Commingled renewable diesel; accounting method.* For purposes of determining the certificate applicable to commingled renewable diesel, a person that holds commingled renewable diesel may identify the renewable diesel it sells or uses by any reasonable method, including the first-in, first-out method applied either on a tank-by-tank basis or on an aggregate basis to all commingled renewable diesel the person holds.

(e) *Certificate for Renewable Diesel—(1) In general.* The certificate to be obtained by the claimant is a statement that is signed under penalties of perjury by a person with authority to bind the registered renewable diesel producer, is substantially in the same form as the model certificate in paragraph (e)(4) of this section, and contains all the information necessary to complete such model certificate.

(2) *Certificate identification number.* The certificate identification number is determined by the producer and must be unique to each certificate.

(3) *Multiple certificates for single sale.* A registered renewable diesel producer may, with respect to a particular sale of renewable diesel, provide multiple separate certificates, each applicable to a portion of the total volume of renewable diesel sold. Thus, for example, a renewable diesel producer that sells 5,000 gallons of renewable diesel may provide its buyer with five certificates for 1,000 gallons each. The multiple certificates may be provided either to the buyer at or after the time of sale or to a reseller in the circumstances described in paragraph (f)(2) of this section.

(4) *Model certificate.*

**CERTIFICATE FOR RENEWABLE DIESEL**

*Certificate Identification Number:*

*(To support a claim related to renewable diesel or a renewable diesel mixture under the Internal Revenue Code)*

The undersigned renewable diesel producer (“Producer”) hereby certifies the following under penalties of perjury:

1. \_\_\_\_\_

Producer’s name, address, and employer identification number

2. \_\_\_\_\_

Name, address, and employer identification number of person buying the renewable diesel from Producer

3. \_\_\_\_\_

Date and location of sale to buyer

4. This certificate applies to \_\_\_\_\_ gallons of renewable diesel.

5. This certificate applies to the following sale:

\_\_\_\_\_ Invoice or delivery ticket number  
 \_\_\_\_\_ Total number of gallons of renewable diesel sold under that invoice or delivery ticket number (including renewable diesel not covered by this certificate)

6. \_\_\_\_\_ Total number of certificates issued for that invoice or delivery ticket number

7. \_\_\_\_\_

Name, address, and employer identification number of reseller to whom certificate is issued (only in the case of certificates reissued to a reseller after the return of the original certificate)

8. \_\_\_\_\_ Original Certificate Identification Number (only in the case of certificates reissued to a reseller after return of the original certificate)

9. Producer is registered as a renewable diesel producer with registration number \_\_\_\_\_. Producer’s registration has not been suspended or revoked by the Internal Revenue Service.

Producer certifies that the renewable diesel to which this certificate relates is diesel fuel derived from biomass (as defined in section 45K(c)(3) of the Internal Revenue Code) using a thermal depolymerization process and that it meets the requirements of the American Society of Testing and Materials D975 or D396 and the registration requirements for fuels and fuel additives established by EPA under section 211 of the Clean Air Act (42 U.S.C. 7545).

Producer understands that the fraudulent use of this certificate may subject Producer 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 this certificate

Title of person signing

Signature and date signed

(f) *Statement of Renewable Diesel Reseller—(1) In general.* A person that receives a Certificate for Renewable Diesel, and subsequently sells the renewable diesel without producing a renewable diesel mixture, is to give the certificate and a statement that satisfies the requirements of this paragraph (f) to its buyer. The statement must contain all of the information necessary to complete the model statement in paragraph (f)(4) of this section and be attached to the Certificate for Renewable Diesel. A reseller cannot make multiple copies of a Certificate for Renewable Diesel to divide the certificate between multiple buyers.

(2) *Multiple resales.* If a single Certificate for Renewable Diesel applies to renewable diesel that a reseller expects to sell to multiple buyers, the reseller should return the certificate (together with any statements provided by intervening resellers) to the producer who may reissue to the reseller multiple Certificates for Renewable Diesel in the appropriate volumes. The reissued certificates must include the Certificate Identification Number from the certificate that has been returned.

(3) *Withdrawal of the right to provide a certificate.* The Internal Revenue Service may withdraw the right of a reseller of renewable diesel to provide the certificate and a statement under this section if the Internal Revenue Service cannot verify the accuracy of the reseller’s statements. The Internal Revenue Service may notify any person to whom the buyer has provided a statement that the reseller’s right to

provide the certificate and a statement has been withdrawn.

(4) *Model statement of renewable diesel reseller.*

#### STATEMENT OF RENEWABLE DIESEL RESELLER

(To support a claim related to renewable diesel or a renewable diesel mixture under the Internal Revenue Code)

The undersigned renewable diesel reseller ("Reseller") hereby certifies the following under penalties of perjury:

1. \_\_\_\_\_

Reseller's name, address, and employer identification number

2. \_\_\_\_\_

Name, address, and employer identification number of Reseller's buyer

3. \_\_\_\_\_

Date and location of sale to buyer

4. \_\_\_\_\_

Volume of renewable diesel sold

5. \_\_\_\_\_

Certificate Identification Number on the Certificate for Renewable Diesel

Reseller has bought the renewable diesel described in the accompanying Certificate for Renewable Diesel and Reseller has no reason to believe that any information in the certificate is false.

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

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

Printed or typed name of person signing this certificate

Title of person signing

Signature and date signed

(g) *Erroneous certificates; reasonable cause.* If a claim for credit or payment described in this section is based on erroneous information in a certificate or statement described in paragraph (e)(4) or (f)(4) of this section, the claim is not allowed. Thus, for example, if a producer identifies a product as renewable diesel on a Certificate for Renewable Diesel and the product does not meet the registration requirements established by EPA, a claim for a renewable diesel mixture credit based on the certificate is not allowed. However, if the claimant has met the conditions of paragraph (b)(1)(iii)(B) of this section with respect to the certificate or statement, reliance on the

certificate or statement will be treated as reasonable cause for purposes of the penalties imposed by sections 6651 (relating to failure to pay) and 6675 (relating to excessive claims).

(h) *Effective/applicability date.* This section is applicable on and after the date these regulations are published as final regulations in the **Federal Register**.

#### § 48.6426–5 Alternative fuel mixtures.

(a) *Overview.* This section provides rules under which an alternative fueler that produces an alternative fuel mixture may claim an excise tax credit under section 6426, a payment under section 6427, or an income tax credit under section 34. These claims relate to the mixture producer's sale or use of an alternative fuel mixture and are based on the amount of alternative fuel used to produce the alternative fuel mixture. For the applicable claim rate, see section 6426.

(b) *Conditions to allowance—(1) Excise tax credit.* A claim for the alternative fuel mixture credit with respect to an alternative fuel mixture is allowed under section 6426 only if each of the following conditions is satisfied:

(i) The claimant produced the alternative fuel mixture for sale or use in the trade or business of the claimant.

(ii) The claimant sold the alternative fuel mixture for use as a fuel or used the alternative fuel mixture as a fuel.

(iii) The claimant is registered under section 4101 as an alternative fueler.

(iv) The claimant has made no other claim with respect to the alternative fuel in the mixture or, if another claim has been made, such other claim is disregarded under this paragraph (b)(1)(iv). A claim is disregarded under this paragraph (b)(1)(iv) if it is an erroneous claim under section 6427 and either the claim has been disallowed or the claimant has repaid the government the amount received under section 6427 with interest.

(v) The claimant has filed a timely claim on Form 720, "Quarterly Federal Excise Tax Return," that contains all the information required by the claim form described in paragraph (c) of this section.

(2) *Payment or income tax credit.* A claim for an alternative fuel mixture payment under section 6427 or an alternative fuel mixture credit under sections 34 and 6427 is allowed only if—

(i) The conditions of paragraphs (b)(1)(i), (ii), and (iii) of this section are met; and

(ii) The claimant has filed a timely claim for payment on Form 720 or Form 8849, "Claim for Refund of Excise Taxes," or for a credit on Form 4136,

"Credit for Fuel Tax Paid on Fuels," that contains all the information required by the claim form described in paragraph (c) of this section.

(3) *Overall limitations on credits and payments.* See § 48.6426–7(a) for overall limitations on credits and payments allowed with respect to mixtures under sections 34, 6426, and 6427.

(c) *Content of claim.* Each claim for an alternative fuel mixture credit or payment must contain the following information with respect to the mixture covered by the claim:

(1) The amount of alternative fuel in the alternative fuel mixture.

(2) A statement that the conditions to allowance described in paragraph (b) of this section have been met.

(3) A statement that the claimant either—

(i) Produced the alternative fuel it used in the mixture; or

(ii) Has in its possession—

(A) A record of the name, address, and employer identification number of the person(s) that sold the alternative fuel to the claimant and the date of purchase; and

(B) An invoice or other purchase documentation identifying the alternative fuel.

(d) *Effective/applicability date.* This section is applicable on and after the date these regulations are published as final regulations in the **Federal Register**.

#### § 48.6426–6 Alternative fuel.

(a) *Overview.* This section provides rules under which an alternative fueler (unmixed fuel) may claim an excise tax credit under section 6426, a payment under section 6427, or an income tax credit under section 34. These claims are based on the amount of alternative fuel sold or used. For the applicable claim rate, see section 6426.

(b) *Conditions to allowance—(1) Excise tax credit.* A claim for the alternative fuel excise tax credit with respect to alternative fuel sold for use or used as a fuel in a motor vehicle or motorboat is allowed under section 6426 only if each of the following conditions is satisfied:

(i) The claimant is the alternative fueler (unmixed fuel) with respect to the fuel.

(ii) The claimant is registered under section 4101 as an alternative fueler (unmixed fuel).

(iii) The claimant has made no other claim with respect to the alternative fuel or, if another claim has been made, such other claim is disregarded under this paragraph (b)(1)(iii). A claim is disregarded under this paragraph (b)(1)(iii) if it is an erroneous claim under section 6427 and either the claim

has been disallowed or the claimant has repaid the government the amount received under section 6427 with interest.

(iv) The claimant has filed a timely claim on Form 720, "Quarterly Federal Excise Tax Return," that contains all the information required by the claim form described in paragraph (c) of this section.

(2) *Payment or income tax credit.* A claim for an alternative fuel payment under section 6427 or an income tax credit under section 34 is allowed only if—

(i) The conditions of paragraphs

(b)(1)(i) and (ii) of this section are met;

(ii) The sale or use is in the claimant's trade or business; and

(iii) The claimant has filed a timely claim for payment on Form 8849, "Claim for Refund of Excise Taxes," or for a credit on Form 4136, "Credit for Fuel Tax Paid on Fuels," that contains all the information required by paragraph (c) of this section.

(3) *Overall limitations on credits and payments.* See § 48.6426–7(b) for overall limitations on credits and payments allowed with respect to alternative fuel under sections 34, 6426, and 6427.

(c) *Content of claim.* Each claim for an alternative fuel credit or payment must contain the following information with respect to the alternative fuel covered by the claim:

(1) The amount of alternative fuel sold or used.

(2) A statement that the conditions to allowance described in paragraph (b) of this section have been met.

(3) A statement that the claimant either—

(i) Produced the alternative fuel it sold or used; or

(ii) Has in its possession—

(A) A record of the name, address, and employer identification number of the person(s) that sold the alternative fuel to the claimant and the date of purchase; and

(B) An invoice or other purchase documentation identifying the alternative fuel.

(4) In the case of liquefied natural gas (LNG) that the claimant sold in bulk for the exclusive use of the State and delivered into a bulk supply tank that can only fuel motor vehicles or motorboats of the State, a statement that the claimant has in its possession a written waiver, signed under penalties of perjury by a person with authority to bind the State, stating that the LNG is delivered in bulk for the exclusive use of the State in a motor vehicle or motorboat and that the State gives up its right to claim any alternative fuel credit for such LNG.

(d) *Effective/applicability date.* This section is applicable on and after the date these regulations are published as final regulations in the **Federal Register**

**§ 48.6426–7 Overall limitations on credits and payments.**

(a) *Limitations applicable to mixtures.* In the case of mixtures, the following limitations apply:

(1) The aggregate amount that, but for the coordination rules in sections 6426(g) and 6427(e)(3), would be allowable to a claimant either as a credit under section 6426 or a payment under section 6427 with respect to sales and uses of mixtures during a calendar quarter is allowed only as a credit under section 6426 to the extent such amount does not exceed the claimant's tax liability under section 4081 for the calendar quarter.

(2) The aggregate amount allowed to a claimant as a payment under section 6427 or an income tax credit under section 34 with respect to sales and uses of mixtures during a calendar quarter shall not exceed the amount that, but for the coordination rules in sections 6426(g) and 6427(e)(3), would be allowable to the claimant with respect to such sales and uses reduced by the claimant's tax liability under section 4081 for the calendar quarter.

(b) *Limitations applicable to alternative fuel.* In the case of alternative fuel, the following limitations apply:

(1) The aggregate amount that, but for the coordination rules in sections 6426(g) and 6427(e)(3), would be allowable to a claimant either as a credit under section 6426 or a payment under section 6427 with respect to sales and uses of alternative fuel during a calendar quarter is allowed only as a credit under section 6426 to the extent such amount does not exceed the claimant's tax liability under section 4041 for the calendar quarter.

(2) The aggregate amount allowed to a claimant as a payment under section 6427 or an income tax credit under section 34 with respect to sales and uses of alternative fuel during a calendar quarter shall not exceed the amount that, but for the coordination rules in sections 6426(g) and 6427(e)(3), would be allowable to the claimant with respect to such sales and uses reduced by the claimant's tax liability under section 4041 for the calendar quarter.

(c) *Effective/applicability dates.* This section is applicable on and after the date of publication of these regulations as final regulations in the **Federal Register**.

**Par. 21.** Section 48.6427–8 is amended as follows:

1. Revising paragraph (b)(1)(v) and adding (b)(1)(vii)(E).

2. Paragraph (b)(1)(vii)(C) is amended by removing the language "vehicle; or" and adding "vehicle;" in its place.

3. Paragraph (b)(1)(vii)(D) is amended by removing the language "6427(b)(3)," and adding "6427(b)(3)); or" in its place.

4. Paragraph (f) is amended by removing the language from the first sentence "1994." and adding "1994, and paragraph (b)(1)(vii)(E), which is applicable after the date these regulations are published as final regulations in the **Federal Register**." in its place."

The revision and addition read as follows:

**§ 48.6427–8 Diesel fuel and kerosene; claims by ultimate purchasers.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) The diesel fuel or kerosene was not used on a farm for farming purposes (as defined in § 48.6420–4) or, except in the case of fuel described in paragraph (b)(1)(vii)(E) of the section, by a State;

\* \* \* \* \*

(vii) \* \* \*

(E) For the exclusive use, in the case of blended taxable fuel that is produced by a State and is both diesel fuel and a mixture (as defined in § 48.6426–1(b)), of the State that produced the blended taxable fuel.

\* \* \* \* \*

**Par. 22.** Section 48.6427–12 is added to read as follows:

**§ 48.6427–12 Alcohol, alternative fuel, biodiesel, and renewable diesel.**

(a) *In general.* This section contains special rules for payments related to fuels containing alcohol, alternative fuel, biodiesel, and renewable diesel. Other rules for these payments are in §§ 48.6426–1 through 48.6426–7.

(b) *Coordination with excise tax credit.* If the aggregate amount a person receives as a payment under section 6427(e) with respect to sales and uses of mixtures during a calendar quarter exceeds the amount allowed under § 48.6426–7(a), the excess constitutes an excessive amount for purposes of section 6206 and such amount, as well as the civil penalty under section 6675, may be assessed as if it were a tax imposed by section 4081. If the excessive amount is repaid to the government, with interest from the date of the payment (section 6602), on or before the due date of the Form 720, "Quarterly Federal Excise Tax Return," for the calendar quarter, the claim for the excessive amount will be treated as due to reasonable cause and the penalty

under section 6675 will not be imposed with respect to the claim. If a person claims an income tax credit under section 34 in lieu of a payment under section 6427(e) with respect to sales and uses of mixtures during a calendar quarter and the aggregate amount claimed as an income tax credit with respect to such sales and uses exceeds the amount allowed under § 48.6426-7(a)(2), the income tax rules related to assessing an underpayment of income tax liability apply. The section 6675 penalty for excessive claims with respect to fuels does not apply in the case of section 34 income tax credits. Similar rules apply to excessive claims under sections 34 or 6427 with respect to sales and uses of alternative fuel.

(c) *Payment computation for certain blenders*—(1) *In general.* This paragraph (c) applies to a blender for any calendar quarter in which the blender's entire tax liability under section 4081 is based solely on the volume of alcohol in alcohol fuel mixtures, biodiesel in biodiesel mixtures, renewable diesel in renewable diesel mixtures, or alternative fuel in alternative fuel mixtures. If this paragraph (c) applies for a calendar quarter, the blender may use the following procedure to determine the amount it may claim as an income tax credit under section 34 or a payment under section 6427(e) with respect to each mixture that it sells or uses during the quarter:

(i) First, determine the amount allowed under section 6426 as a credit on Form 720 by multiplying the volume of untaxed liquid used to produce the mixture by the tax imposed per gallon on the untaxed liquid.

(ii) Then, determine the total credit and payment allowable by multiplying the volume of untaxed liquid used to produce the mixture by the tax credit rate per gallon.

(iii) Then, subtract the amount determined in paragraph (c)(1)(i) of this section (the section 6426 credit amount) from the amount determined in paragraph (c)(1)(ii) of this section. This difference is the amount of the payment or income tax credit that may be claimed with respect to that mixture.

(2) *Example.* The following example illustrates the provisions of this paragraph (c):

(i) P is a biodiesel mixture producer.

P produces blended taxable fuel outside of the bulk transfer/terminal system by adding biodiesel that is agri-biodiesel to taxed diesel fuel. See §§ 48.4081-1(c)(1) and 48.4081-3(g). P has no § 4081 liability other than its liability as a blender on its sale of the biodiesel mixture. During the period August 1 through August 10 (at which time the tax rate on diesel fuel is \$0.244 per gallon and

the claim amount on agri-biodiesel is \$1.00 per gallon), P uses 5,000 gallons of agri-biodiesel to produce a biodiesel mixture. P determines that it may claim \$3,780 as a payment under section 6427(e) with respect to this mixture. P computes this amount by—

(A) Multiplying 5,000 (gallons of agri-biodiesel) × \$0.244 (tax imposed per gallon) = \$1,220;

(B) Multiplying 5,000 (gallons of agri-biodiesel) × \$1.00 (tax credit rate per gallon) = \$5,000; and

(C) Subtracting \$1,220 from \$5,000 = \$3,780.

(ii) On August 11, P files Form 8849 for the period August 1–August 10. To avoid an excessive claim, P limits the claim on Form 8849 to \$3,780 reporting 3,780 gallons of agri-biodiesel.

(iii) On Form 720 P reports liability for IRS No. 60(c) of \$1,220 (5,000 gallons × \$.244) and claims a credit on Schedule C for \$1,220 for period August 1–August 10, reporting on Schedule C 1,220 gallons of agri-biodiesel.

(d) *Effective/applicability date.* This section is applicable on and after the date these regulations are published as final regulations in the **Federal Register**.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 26 and 301

[REG-147775-06]

RIN 1545-BH63

#### Regulations Under Section 2642(g); Hearing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels a public hearing on proposed rulemaking providing guidance under section 2642(g)(1). The proposed regulations describe the circumstances and procedures under which an extension of time will be granted under section 2642(g)(1). The proposed guidance affects individuals (or their estates) who failed to make a timely allocation of generation-skipping transfer (GST) exemption to a transfer, and individuals (or their estates) who failed to make a timely election under section 2632(b)(3) or (c)(5).

**DATES:** The public hearing, originally scheduled for August 5, 2008, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov*.

**SUPPLEMENTARY INFORMATION:** A notice of public hearing that appeared in the **Federal Register** on Thursday, April 17, 2008 (73 FR 20870), announced that a public hearing was scheduled for August 5, 2008, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under sections 2642 and 9100 of the Internal Revenue Code.

The public comment period for these regulations expired on July 16, 2008. Outlines of topics to be discussed at the hearing were due on July 15, 2008. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Friday, July 18, 2008, no one has requested to speak. Therefore, the public hearing scheduled for August 5, 2008, is cancelled.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. E8-17291 Filed 7-28-08; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Parts 1385, 1386, 1387, and 1388

RIN 0970-AB11

#### Developmental Disabilities Program

**AGENCY:** Administration on Developmental Disabilities, Administration for Children and Families, HHS.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Administration on Developmental Disabilities (ADD) reopens the public comment period on the proposed rule published in the **Federal Register** on April 10, 2008 (73 FR 19708) to propose clarifications and new requirements to implement the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act of 2000). During the comment period there were instances when the electronic system was not available and individuals were having difficulties using the system. ADD is reopening the