SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

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

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

Background

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

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

Explanation of Provisions

CNG; Treatment of Liquefied Natural Gas (LNG)

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

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

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

- 260 degrees Fahrenheit, is a liquid when it is delivered into the fuel supply tank of a motor vehicle or motorboat, but is vaporized into a gas when it is actually combusted in the engine.

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

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

CNG; Gasoline Gallon Equivalent

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

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

Gasohol; Tolerance Rule

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

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

to be gasohol. Any excess liquid in the mixture is taxed at the regular rate.

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

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

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

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

Gasohol; Alcohol-Based Ethers

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

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