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

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

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

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

However, the final regulations do address concerns arising from this relatively recent development of producing gasohol at the refinery rather than at the terminal rack. Specifically, section 4101 provides that every person required to be registered with respect to the gasoline tax must register at such time, in such form and manner, and subject to such terms and conditions as the Secretary may prescribe by regulations. Pursuant to that provision, the final regulations provide that a refiner registered by the IRS that

produces a batch of gasohol may treat itself as not registered with respect to a bulk removal of that gasohol. If the refiner treats itself in this manner, the removal would not be exempt from the tax under section 4081(a)(1)(B), which provides that the bulk removal by a registered refiner for delivery to a terminal operated by a registered terminal operator is not subject to the tax. However, because the mixture would qualify as gasohol at the time of removal from the refinery, it would be subject to tax at the reduced rate. The final regulations also provide that the refiner is not required to deposit this tax before filing the return relating to that tax.

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

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

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

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

#### **Special Analyses**

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

## **Drafting Information**

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

## List of Subjects

26 CFR Parts 40 and 48

Excise taxes, Reporting and recordkeeping requirements.

### 26 CFR Part 602

Reporting and recordkeeping requirements.

# Adoption of Amendments to the Regulations

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

### PART 40—EXCISE TAX PROCEDURAL REGULATIONS

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

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

#### §40.6302(c)-0 [Removed]

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

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

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

\* \* \* \* \*

\*

(e) \* \* \*

\*

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

### PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

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

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

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

1. Revising the introductory text of paragraph (f)(1).

2. Revising paragraph (f)(1)(i).

3. Redesignating paragraph (f)(1)(ii) as paragraph (f)(1)(iii) and adding a new paragraph (f)(1)(ii).

4. Removing from paragraph (f)(2) the language "diesel fuel or".

The revisions and additions read as follows: