AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Sec.
40.0–1 Introduction.
40.0–1T Introduction (temporary).
40.6011(a)–1 Returns.
40.6011(a)–1T Returns (temporary).
40.6011(a)–2 Final returns.
40.6071(a)–1 Time for filing returns.
40.6071(a)–2 Time for filing quarterly returns under chapter 33 and sections 4681 and 4682(h).
40.6091–1 Place for filing returns.
40.6101–1 Period covered by returns.
40.6109(a)–1 Identifying numbers.
40.6151(a)–1 Time and place for paying tax shown on return.
40.6302(a)–1 Voluntary payments of excise taxes by electronic funds transfer.
40.6302(c)–1 Use of Government depositaries.
40.6302(c)–1T Use of Government depositaries (temporary).
40.6302(c)–2 Special rules for use of Government depositaries under section 4681.
40.6302(c)–2T Special rule for use of Government depositaries under section 4681 (temporary).
40.6302(c)–3 Special rules for use of Government depositaries under chapter 33.
40.6302(c)–4 Special rule for use of Government depositaries under section 4081.
40.9999–1 Examples.

AUTHORITY: 26 U.S.C. 7805.

Section 40.6011(a)–1 also issued under 26 U.S.C. 6011(a).

Section 40.6011(a)–2 also issued under 26 U.S.C. 6011(a).

Sections 40.6071(a)–1 and 40.6071(a)–2 also issued under 26 U.S.C. 6071(a).

Section 40.6091–1 also issued under 26 U.S.C. 6091.

Section 40.6101–1 also issued under 26 U.S.C. 6101.

Section 40.6109(a)–1 also issued under 26 U.S.C. 6109(a).

Section 40.6302(a)–1 also issued under 26 U.S.C. 6302 (a) and (h).

Section 40.6302(c)–1 also issued under 26 U.S.C. 6302(a) and (h).

Sections 40.6302(c)–2, 40.6302(c)–3, and 40.6302(c)–4 also issued under 26 U.S.C. 6302(a).

SOURCE: T.D. 8442, 57 FR 48177, Oct. 22, 1992, unless otherwise noted.

§ 40.0–1 Introduction.

(a) *In general.* The regulations in this part 40 are designated ''Excise Tax Procedural Regulations.'' The regulations set forth administrative provisions relating to the excise taxes imposed by chapters 31, 32, 33, 34, 36, 38, and 39 (except for the chapter 32 tax imposed by section 4181 (firearms tax) and the chapter 36 taxes imposed by sections 4461 (harbor maintenance tax), 4481 (heavy vehicle use tax), and 4495 (deep seabed mineral removal tax)). Chapter 31 relates to retail excise taxes; chapter 32 to manufacturers' excise taxes; chapter 33 to taxes imposed on communications services and air transportation; chapter 34 to taxes imposed on policies issued by foreign insurers; chapter 36 to taxes imposed on transportation by water; chapter 38 to environmental taxes; and chapter 39 to taxes imposed on registration-required obligations. See parts 43, 46, 48, 49, and 52 of this chapter for regulations relating to the imposition of tax.

(b) *References to 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 October 22, 1992.

(c) *Definition of semimonthly period.* The term ''semimonthly period'' means the first 15 days of a calendar month (the ''first semimonthly period'') or the portion of a calendar month following the 15th day of the month (the ''second semimonthly period'').

(d) *Examples.* See § 40.9999–1 for examples illustrating the rules of this part 40.

(e) *Cross references.* For provisions relating to penalties for failure to file a return or pay tax, see section 6651. For provisions relating to penalties for failure to make deposit of taxes, see section 6656. For provisions relating to timely mailing treated as timely filing and paying, see section 7502. For provisions relating to time for performance of acts where the last day for performance falls on Saturday, Sunday, or a legal holiday, see section 7503.

(f) *Effective date.* Except as otherwise provided, this part is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991, and for deposits that relate to calendar quarters beginning after March 31, 1991.

In the case of taxes for which rules are provided in this part, the administrative provisions that apply to such taxes before the effective date of this part are contained in 26 CFR parts 43, 46, 48, 49 and 52 (each revised as of April 1, 1992).

[T.D. 8442, 57 FR 48177, Oct. 22, 1992; 58 FR 6575, Jan. 29, 1993]

§ 40.0–1T Introduction (temporary).

(a)–(f) [Reserved]

(g) *Applicability to floor stocks taxes.* The regulations in this part 40 also apply with respect to floor stocks taxes imposed on articles subject to a tax described in § 40.0–1(a), beginning April 1, 1991.

[T.D. 8740, 62 FR 67569, Dec. 29, 1997]

§ 40.6011(a)–1 Returns.

(a) *In general*—(1) *Return required.* The return of any tax to which this part 40 applies must be made on Form 720, *Quarterly Federal Excise Tax Return,* according to the instructions applicable to the form. The requirement for filing a return under this part 40 applies separately to each tax listed by IRS Number on Form 720. Except as provided in this paragraph (a)(1), an entry must be made on the line for the IRS Number in order to file a return of the tax corresponding to that number. The entry on an IRS Number line of the word ''none,'' ''zero,'' or comparable entry clearly indicating a denial of liability constitutes a return of that tax. The entry of the word ''none'' across the return or in the summary portion, provided it clearly indicates a denial of liability for all taxes, constitutes a return of all taxes listed on Form 720.

(2) *Period covered by return*—(i) *In general.* Except as provided in paragraph (b) of this section, the return must be made for a period of one calendar quarter. A return must be filed for the first calendar quarter in which liability for tax is incurred (or in which tax must be collected and paid over) and for each subsequent calendar quarter, whether or not liability is incurred (or tax must be collected and paid over) during that subsequent quarter, until a final return under § 40.6011(a)–2 is filed. In the case of one-time filings (as defined in § 40.6011(a)–2(b)) and returns of floor stocks taxes under § 40.6011(a)–2(c), a first return is also a final return.

(ii) *First return.* A person's return is a first return if the person was not required under this part 40 to file a return (other than a final return) for the preceding period.

(3) *Person required to file the return.* Except in the case of a tax required to be collected and paid over, the person incurring liability for tax must file the return. In the case of a tax required to be collected and paid over, the person required to collect the tax (and not the person incurring liability) must file the return.

(b) *Monthly and semimonthly returns*—(1) *In general.* If the district director determines that any person that is required under this section to file returns has failed to comply in a timely manner with the requirements of this part 40 relating to returns, payments, and deposits of tax, that person will be required, if so notified in writing by the district director, to make a return for a monthly or semimonthly period (as defined in § 40.0–1(c)). Each person so notified by the district director must make a return for the calendar month or semimonthly period in which the notice is received and for each calendar month or semimonthly period thereafter until the person has filed a final return or until the person is notified by the district director to resume making quarterly returns.

(2) *Certain persons liable for tax on taxable fuel.* The district director may require a person to make a return of tax for a monthly or semimonthly period in the manner prescribed in paragraph (b)(1) of this section if the person—

(i) Is a bonded registrant (as defined in § 48.4101–1(b) of this chapter) at any time during the period;

(ii) Has been registered under section 4101 for less than one year at the beginning of the period;

(iii) Meets the acceptable risk test of § 48.4101–1(f)(3) of this chapter by reason of § 48.4101–1(f)(3)(i)(B) of this chapter at any time during the period;

(iv) Has failed to comply with the applicable provisions of § 48.4101–1(h) of this chapter (relating to the terms and conditions of registration);

(v) Is liable for tax under § 48.4082–4(a) of this chapter (relating to the back-up

tax on diesel fuel and kerosene) at any time during the period; or

(vi) Is liable for tax under section 4081 (relating to the tax on taxable fuel) at any time during the period and is not registered under section 4101 at that time.

(c) *Cross reference.* For provisions relating to the time to file returns, see §§ 40.6071(a)–1 and 40.6071(a)–2. For provisions relating to the place for filing returns, see § 40.6091–1. For provisions relating to time and place for paying tax, see § 40.6151(a)–1. For provisions relating to use of Government depositaries, see §§ 40.6302(c)–1, 40.6302(c)–2, 40.6302(c)–3, and 40.6302(c)–4. For provisions relating to obligations of a person required to collect and pay over facilities and services excise taxes, see § 49.4291–1 of this chapter.

[T.D. 8442, 57 FR 48177, Oct. 22, 1992, as amended by T.D. 8659, 61 FR 10452, Mar. 14, 1996; 61 FR 58005, Nov. 12, 1996; T.D 8748, 63 FR 25, Jan. 2, 1998; T.D. 8879, 65 FR 17153, Mar. 31, 2000]

§ 40.6011(a)–1T Returns (temporary).

(a)(1)–(2)(ii) [Reserved]

(iii) *Floor stocks tax return.* A return reporting liability for a floor stocks tax described in § 40.0–1T(g) is a return for the calendar quarter in which the tax payment is due and not for the calendar quarter in which the liability for tax is incurred, beginning April 1, 1991.

[T.D. 8740, 62 FR 67569, Dec. 29, 1997]

§ 40.6011(a)–2 Final returns.

(a) *In general*—(1) *Permanent cessation of operations.* Any person that is required under § 40.6011(a)–1 to make returns and that permanently ceases all operations with respect to which liability for tax was incurred (or with respect to which tax had to be collected and paid over) must make a final return in accordance with the instructions applicable to the form on which the return is made. A person does not make a final return if only a temporary or partial cessation of such operations occurs and must continue to file returns as required under § 40.6011(a)–1.

(2) *Change in law without cessation of operations.* Any person that is required under § 40.6011(a)–1 to make returns must make a final return in accordance with the instructions applicable to the form on which the return is made if, by reason of a change in law, that person is no longer liable for any tax (or, in the case of a collected tax, is no longer responsible for collecting and paying over any tax). For example, if the tax on a product is changed from a retail tax to a manufacturers tax, a retailer formerly liable for the tax but now buying the product tax-paid from its supplier must make a final return (assuming that the retailer has no other tax liability reportable on the return).

(b) *Special rule for one-time filings*—(1) *In general.* A first return is also a final return if it is a one-time filing. A return is a one-time filing if the person reporting tax does not engage in any activity with respect to which tax is reportable on the return in the course of a trade or business.

(2) *Deposits not required.* See § 40.6302(c)–1(f)(2) for a rule providing that no deposit of taxes reported on a one-time filing is required.

(c) *Special rule for floor stocks taxes.* A first return reporting only floor stocks taxes under this part 40 is also a final return.

(d) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

[T.D. 8442, 57 FR 48177, Oct. 22, 1992, as amended by T.D. 8685, 61 FR 58005, Nov. 12, 1996]

§ 40.6071(a)–1 Time for filing returns.

(a) *Quarterly returns*—(1) *In general.* Except as provided in paragraph (a)(2) of this section and in § 40.6071(a)–2 (relating to quarterly returns under chapter 33 and sections 4681 and 4682(h)), each quarterly return required under § 40.6011(a)–1(a)(2) must be filed by the last day of the first calendar month following the quarter for which it is made.

(2) *Special rule.* A person must file only one return for a quarter. If under § 40.6071(a)–2 a person is required to file a return for a quarter by a date that is later than the date provided in paragraph (a)(1) of this section, the person must file a single return for the quarter by the filing date provided under § 40.6071(a)–2. This rule does not extend

the time for making deposits or paying any excise tax.

(b) *Monthly and semimonthly returns*—(1) *Monthly returns.* Each monthly return required under § 40.6011(a)–1(b) must be filed by the fifteenth day of the month following the month for which it is made.

(2) *Semimonthly returns.* Each semimonthly return required under § 40.6011(a)–1(b) must be filed by the ninth day of the semimonthly period (as defined in § 40.0–1(c)) following the semimonthly period for which it is made.

(c) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

§ 40.6071(a)–2 Time for filing quarterly returns under chapter 33 and sections 4681 and 4682(h).

(a) *In general.* In the case of returns of tax imposed by chapter 33 (relating to communications services and air transportation) or section 4681 (relating to ozone-depleting chemicals), each quarterly return required under § 40.6011(a)–1(a)(2) must be filed by the last day of the second calendar month following the quarter for which it is made.

(b) *Special rule for floor stocks tax imposed by section 4682(h).* In the case of floor stocks taxes imposed by section 4682(h) on January 1 of a calendar year, each return required under § 40.6011(a)–1(a) must be filed by August 31 of the year the tax is imposed. Each of these returns will be a return for the second calendar quarter of the year in which the tax is imposed.

(c) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

[T.D. 8442, 57 FR 48177, Oct. 22, 1992; 58 FR 6575, Jan. 29, 1993]

§ 40.6091–1 Place for filing returns.

(a) *Quarterly returns.* Except as provided in paragraph (b) of this section, quarterly returns must be filed in accordance with the instructions applicable to the form on which the return is made.

(b) *Hand-carried returns*—(1) *Persons other than corporations.* Returns of persons other than corporations that are filed by hand carrying must be filed with the district director for the Internal Revenue district in which is located the principal place of business or legal residence of the person.

(2) *Corporations.* Returns of corporations that are filed by hand carrying must be filed with the district director for the Internal Revenue district in which is located the principal place of business or principal office or agency of the corporation.

(c) *Monthly and semimonthly returns.* Monthly and semimonthly returns required under § 40.6011(a)–1(b) must be filed in accordance with the instructions of the district director requiring that filing.

(d) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

§ 40.6101–1 Period covered by returns.

(a) *In general.* See § 40.6011(a)–1(a)(2) for the rules relating to the period covered by the return.

(b) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

§ 40.6109(a)–1 Identifying numbers.

(a) *In general.* Every person required under § 40.6011(a)–1 to make a return must provide the identifying number required by the instructions applicable to the form on which the return is made.

(b) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

§ 40.6151(a)–1 Time and place for paying tax shown on return.

(a) *In general.* Except as provided by statute, the tax must be paid at the time prescribed in § 40.6071(a)–1 or 40.6071(a)–2 for filing the return, and at the place prescribed in § 40.6091–1 for filing the return.

(b) *Special rule for floor stocks tax imposed by section 4682(h).* The floor stocks tax imposed by section 4682(h) (relating to ozone-depleting chemicals) on January 1 of a calendar year, must be paid by June 30 of the year the tax is imposed. Payments must be accompanied by Form 8109, *Federal Tax eposit Coupon*, and deposited in accordance with the instructions applicable to that form. In accordance with the instructions to Form 8109, mark the boxes on Form 8109 for ''720'' and ''2nd Quarter.''

(c) *Cross reference.* For provisions relating to use of Government depositaries, see §§ 40.6302(c)–1, 40.6302(c)–2, 40.6302(c)–3, and 40.6302(c)–4.

(d) *Effective date.* This section is effective April 1, 1991, for returns that relate to calendar quarters beginning after December 31, 1990, and are filed after March 31, 1991.

§ 40.6302(a)–1 Voluntary payments of excise taxes by electronic funds transfer.

Any person may voluntarily remit by electronic funds transfer any payment of tax to which this part 40 applies. Such payment must be made in accordance with procedures prescribed by the Commissioner.

[T.D. 8828, 64 FR 37677, July 13, 1999]

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

(a) *Overview.* This section sets forth the general rule that any person required to file a quarterly return under § 40.6011(a)–1(a)(2) must make deposits of taxes reported on the return. Rules relating to the time for making a deposit and its amount are provided, including safe harbor rules for computing the amount of a deposit. Return filers generally have an obligation to make semimonthly deposits of tax in advance of the due date of the return. Under this section, taxes that are required to be deposited on the same schedule are grouped together into classes of tax and referred to collectively as ''9-day rule taxes,'' ''30-day rule taxes,'' ''alternative method taxes,'' or ''14-day rule taxes.'' Paragraph (b)(6) of this section sets forth the general rule that the deposit of tax for a semimonthly period is due by the ninth day of the following semimonthly period (the ''9-day rule''). Most of the taxes to which this part 40 relates are required to be deposited in accordance with this rule (the ''9-day rule taxes''). Exceptions to the 9-day rule are set forth in other sections. Unless otherwise provided, the safe harbor rules set forth in this section apply as well to deposits of alternative method and 14-day rule taxes. Section 40.6302(c)–2 (relating to taxes imposed on ozone-depleting chemicals by section 4681) provides special rules for the time to make deposits of section 4681 taxes (the ''30-day rule'' and ''30-day rule taxes'') and the safe harbor rules for computing the amount of those deposits. Section 40.6302(c)–3 (relating to taxes imposed on communications services and air transportation by chapter 33) provides an alternative method for computing the amount of deposits of chapter 33 taxes (the ''alternative method'' and ''alternative method taxes''). Section 40.6302(c)–4 (relating to section 4081 taxes) provides a special rule under which qualified persons may make deposits of section 4081 taxes (the ''14-day rule'' and ''14-day rule taxes'').

(b) *In general*—(1) *Semimonthly deposits required*—(i) *General rule.* Except as provided by statute or by paragraph (f) of this section, each person required under § 40.6011(a)–1(a)(2) to file a quarterly return must make a deposit of tax for each semimonthly period (as defined in § 40.0–1(c)) in which liability is incurred.

(ii) *Treatment of taxes imposed by chapter 33.* For purposes of this part 40, a tax imposed by chapter 33 (relating to communications services and air transportation) is treated as a tax liability incurred during the semimonthly period in which that tax is collected (or, in the case of the alternative method, is considered as collected).

(2) *Definition of net tax liability.* The term ''net tax liability'' means the tax liability for the specified period plus or minus any adjustments allowable in accordance with the instructions applicable to the form on which the return is made.

(3) *Computation of net tax liability.* The net tax liability for a semimonthly period may be computed by dividing by

two the net tax liability incurred during the calendar month that includes that semimonthly period, provided that this method of computation is used for all semimonthly periods in the calendar quarter.

(4) *Failure to comply with deposit requirements.* If a person fails to make deposits as required under this part 40, that failure may be reported to the appropriate district director and the Internal Revenue Service may withdraw the person's right to use the safe harbor rules of paragraph (c) of this section and § 40.6302(c)–2(b)(2) and (3) in computing deposits.

(5) *Amount of deposit*—(i) *In general.* The deposit of tax for each semimonthly period must be not less than the amount of net tax liability incurred during that semimonthly period. Except as provided under paragraph (c)(2) of this section and § 40.6302(c)–2(b)(2) (relating to safe harbor rules based on look-back quarter liability), no deposit is required for any semimonthly period in which no tax liability is incurred.

(ii) *Exceptions; cross references.* Special rules for determining the amount to deposit are provided in paragraph (c) of this section (relating to safe harbor rules), paragraph (f)(3) of this section (relating to the de minimis exception), § 40.6302(c)–2(b)(2) and (3) (relating to safe harbor rules for section 4681 taxes), and § 40.6302(c)–3(d) (relating to the alternative method for chapter 33 taxes).

(6) *Time to deposit*—(i) *In general.* The deposit of tax for any semimonthly period must be made by the ninth day of the following semimonthly period (the ''9-day rule''). Thus, under the 9-day rule generally, the deposit of tax for the first semimonthly period in a month is due by the 24th day of that month and the deposit of tax for the second semimonthly period in a month is due by the 9th day of the following month.

(ii) *Exceptions; cross references.* The 9-day rule does not apply to deposits for which rules are prescribed by paragraph (e) of this section (relating to deposits of 9–day rule taxes for September), § 40.6302(c)–2 (relating to deposits of section 4681 taxes (''30-day rule taxes'')), § 40.6302(c)–3 (relating to the alternative method for computing deposits of chapter 33 taxes (''alternative method taxes'')), or § 40.6302(c)–4 (relating to deposits by qualified persons of section 4081 taxes (''14-day rule taxes'')).

(c) *Amount of deposit; safe harbor rules*—(1) *Applicability*—(i) *In general.* This paragraph (c) provides the safe harbor rules for deposits of 9-day rule taxes, alternative method taxes, and 14-day rule taxes.

(ii) *Separate applicability to each class of tax.* The rules of this paragraph (c) are applied separately to each class of tax. For this purpose, all 9-day rule taxes are treated as one class of tax, all alternative method taxes are treated as a second class of tax, and all 14-day rule taxes are treated as a third class of tax.

(2) *Safe harbor rule based on look-back quarter liability*—(i) *In general.* Except as provided in paragraph (c)(2)(iii) of this section, any person that made a return of tax reporting a class of tax to which this paragraph (c) applies for the second preceding calendar quarter (the ''look-back quarter'') is considered to have complied with the requirement of this part 40 for deposit of taxes in that class for the current calendar quarter if—

(A) The deposit of those taxes for each semimonthly period in the current calendar quarter is not less than ⅙ of the net tax liability reported for the class of tax for the look-back quarter;

(B) Each deposit is made on time;

(C) In any case in which the due date of the return is extended under § 40.6071(a)–1(a)(2) (relating to filing a single return), a special deposit (the amount of which is determined under paragraph (c)(2)(ii) of this section) is made by the last day of the first calendar month following the end of the quarter; and

(D) The amount of any underpayment of those taxes is paid by the due date of the return.

(ii) *Amount of special deposit.* The amount of the special deposit required under paragraph (c)(2)(i)(C) of this section with respect to a class of tax is not less than the lesser of—

(A) The amount by which net tax liability with respect to taxes in that

class (other than taxes imposed by chapter 33) for the current calendar quarter exceeds that net tax liability for the look-back quarter; and

(B) The amount of any underpayment of taxes in that class for the current calendar quarter.

(iii) *Modification for tax rate increase*—(A) *Applicability.* The safe harbor rule of paragraph (c)(2)(i) of this section is modified for the first and second calendar quarters beginning on or after the effective date of an increase in the rate of any tax to which this part 40 applies.

(B) *Modification.* The safe harbor rule of paragraph (c)(2)(i) of this section does not apply to a class of tax for those calendar quarters unless the deposit of taxes in that class for each semimonthly period in the calendar quarter is not less than ⅙ of the tax liability the person would have had with respect to that class for the look-back quarter if the increased rate of tax had been in effect for that look-back quarter.

(C) *Effective date.* This paragraph (c)(2)(iii) is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

(3) *Safe harbor rule based on current liability*—(i) *In general.* A person is considered to have complied with the requirement of this part 40 for deposit of a class of tax to which this paragraph (c) applies for a calendar quarter if—

(A) The deposit of those taxes for each semimonthly period in the calendar quarter is not less than 95 percent of the net tax liability incurred with respect to those taxes during the semimonthly period;

(B) Each deposit is made on time; and

(C) In any case in which the due date of the return is extended under §40.6071(a)–1(a)(2) (relating to filing a single return), a special deposit (the amount of which is determined under paragraph (c)(3)(ii) of this section) is made by the last day of the first calendar month following the end of the quarter; and

(D) The amount of any underpayment of those taxes is paid by the due date of the return.

(ii) *Amount of special deposit.* The amount of the special deposit required under paragraph (c)(3)(i)(C) of this section with respect to a class of tax is not less than the lesser of—

(A) An amount equal to 5 percent of net tax liability with respect to taxes in that class (other than taxes imposed by chapter 33) for the current calendar quarter; and

(B) The amount of any underpayment of taxes in that class for the current calendar quarter.

(iii) *Effective date.* This paragraph (c)(3) is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

(d) *Remittance of deposits*—(1) *Deposits by Federal tax deposit coupon.* A completed Form 8109, *Federal Tax Deposit Coupon,* must accompany each deposit. The deposit must be remitted, in accordance with the instructions applicable to the form, to a financial institution authorized as a depositary for federal taxes (as provided in 31 CFR part 214) or to a Federal Reserve bank.

(2) *Deposits by electronic funds transfer.* For the requirement to deposit excise taxes by electronic funds transfer, see §31.6302–1(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to §31.6302–1(h) of this chapter remains subject to the rules of this paragraph (d).

(e) *Special rules for September*—(1) *Deposits required.* In the case of deposits of 9-day rule taxes for the second semimonthly period in September, separate deposits are required for the period September 16th–26th and the period September 27th–30th.

(2) *Amount of deposit.* The deposits of 9-day rule taxes for the period September 16th–26th and the period September 27th–30th must be not less than the amount of net tax liability for 9-day rule taxes incurred during the respective periods. The net tax liability incurred during these periods may be computed by—

(i) Determining the amount of net tax liability reasonably expected to be incurred during the second semimonthly period in September;

(ii) Treating 11/15 of that amount as the net tax liability incurred during the period September 16th–26th; and

(iii) Treating the remainder of the amount determined under paragraph

(e)(2)(i) of this section (adjusted to reflect net tax liability actually incurred through the end of September) as the net tax liability incurred during the period September 27th–30th.

(3) *Time to deposit*—(i) *In general.* The deposit of 9-day rule taxes required for the period beginning September 16th must be made by September 29. The deposit required for the period ending September 30th must be made at the time prescribed in paragraph (b)(6)(i) of this section for making deposits for the second semimonthly period in September.

(ii) *Due date on Saturday or Sunday.* A deposit that would otherwise be due on September 29 must be made by September 28 if September 29 is a Saturday and by September 30 if September 29 is a Sunday.

(4) *Safe harbor rule based on look-back quarter liability.* The safe harbor rule in paragraph (c)(2)(i) of this section does not apply to 9-day rule taxes for the third calendar quarter unless—

(i) The deposit of 9-day rule taxes for the period September 16th–26th is not less than 11/90 of the net tax liability reported for 9-day rule taxes for the look-back quarter; and

(ii) The total deposit of 9-day rule taxes for the second semimonthly period in September is not less than 1/6 of the net tax liability reported for 9-day rule taxes for the look-back quarter.

(5) *Safe harbor rule based on current liability.* The safe harbor rule of paragraph (c)(3)(i) of this section does not apply to 9-day rule taxes for the third calendar quarter unless—

(i) The deposit of 9-day rule taxes for the period September 16th–26th is not less than 69.67 percent of the net tax liability for 9-day rule taxes for the second semimonthly period in September; and

(ii) The total deposit of 9-day rule taxes for the second semimonthly period in September is not less than 95 percent of the net tax liability for 9-day rule taxes for that semimonthly period.

(6) *Persons not required to use electronic funds transfer.* In the case of a person that is not required to deposit excise taxes by electronic funds transfer (a non-EFT depositor), the rules of this paragraph (e) apply with the following modifications:

(i) The periods for which separate deposits must be made are September 16th–25th and September 26th–30th.

(ii) The deposit required for the period beginning September 16th must be made by September 28. A deposit that would otherwise be due on September 28 must be made by September 27 if September 28 is a Saturday and by September 29 if September 28 is a Sunday.

(iii) The generally applicable fractions and percentage are modified to reflect the different deposit periods in accordance with the following table:

Generally applicable fractions and percentage	Modifications for non-EFT depositors
11/15	10/15.
11/90	10/90.
69.67 percent	63.33 percent.

(7) *Effective date.* This paragraph (e) is effective August 1, 1995, for all 9-day rule taxes except those imposed by section 4261 or 4271. For taxes imposed by section 4261 or 4271, this paragraph (e) applies beginning January 1, 1997.

(f) *Exceptions*—(1) *Taxes excluded.* No deposit is required in the case of the taxes imposed by section 4042 (relating to fuel used on inland waterways), section 4161 (relating to sport fishing equipment and bows and arrows), and section 4682(h) (relating to floor stocks tax on ozone-depleting chemicals).

(2) *One-time filings.* No deposit is required in the case or any taxes reportable on a one-time filing (as defined in § 40.6011(a)–2(b)).

(3) *De minimis exception*—(i) *In general.* For any calendar quarter, no deposit is required if the net tax liability for the quarter does not exceed $2,000.

(ii) *Effective date.* This paragraph (f)(3) is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

(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.

(g) *Cross references.* For provisions relating to penalties for failure to make deposit of taxes, see section 6656.

[T.D. 8442, 57 FR 48177, Oct. 22, 1992, as amended by T.D. 8609, 60 FR 40081, Aug. 7, 1995; T.D. 8685, 61 FR 58005, Nov. 12, 1996; T.D. 8723, 62 FR 37494, July 14, 1997]

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

(a)–(c)(2)(iii) [Reserved]

(iv) *Modification for new or reinstated taxes*—(A) *Applicability.* The safe harbor rule of § 40.6302(c)–1(c)(2)(i) is modified for any calendar quarter in which a person's liability for a class of tax includes liability for any new or reinstated tax. For this purpose, a new or reinstated tax is—

(*1*) Any tax (including an alternative method tax) that was not in effect at all times during the look-back quarter; and

(*2*) Any alternative method tax that was not in effect at all times during the month preceding the look-back quarter.

(B) *Modification.* The safe harbor rule of § 40.6302(c)–1(c)(2)(i) does not apply to a class of tax unless the deposit of taxes in that class for each semimonthly period in the calendar quarter is not less than the greater of—

(*1*) ⅙ of the net tax liability reported for the class of tax for the look-back quarter; or

(*2*) The sum of—

(*i*) 95 percent of the net tax liability incurred with respect to new or reinstated taxes during the semimonthly period; and

(*ii*) ⅙ of the net tax liability reported for all other taxes in the class for the look-back quarter.

(C) *Effective date.* This paragraph (c)(2)(iv) applies to tax liabilities for new or reinstated taxes incurred after February 28, 1997, except that paragraph (c)(2)(iv)(A)(*2*) of this section applies only for calendar quarters beginning after December 31, 1997.

(3)–(f)(4) [Reserved]

(5) *Taxes excluded; floor stocks taxes.* No deposit is required in the case of any floor stocks tax described in § 40.0–1T(g), beginning April 1, 1991.

[T.D. 8740, 62 FR 67569, Dec. 29, 1997]

§ 40.6302(c)–2 Special rules for use of Government depositaries under section 4681.

(a) *Overview.* This section sets forth special rules for deposits of tax imposed by section 4681 (relating to ozone-depleting chemicals), including rules relating to the time to deposit and safe harbors. The general rules relating to deposits are set forth in § 40.6302(c)–1 and apply unless inconsistent with the rules set forth below.

(b) *In general*—(1) *Time to deposit.* In the case of tax imposed by section 4681 (section 4681 tax), the deposit of tax for a semimonthly period must be made by the last day of the second following semimonthly period (the ''30-day rule''). Thus, under the 30-day rule generally, the deposit of tax for the first semimonthly period in a month is due by the 15th day of the following month and the deposit of tax for the second semimonthly period in a month is due by the end of the following month.

(2) *Amount of deposit; safe harbor rule based on look-back quarter liability*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, any person that made a return of section 4681 tax for the second preceding calendar quarter (the ''look-back quarter'') is considered to have complied with the requirement of this part 40 for deposit of that tax for the current calendar quarter if—

(A) The deposit of that tax for each semimonthly period in the current calendar quarter is not less than ⅙ of the net tax liability under section 4681 reported for the look-back quarter;

(B) Each deposit is made on time; and

(C) The amount of any underpayment of that tax for the current calendar quarter is paid by the due date of the return.

(ii) *Modification for tax rate increases*—(A) *Applicability.* The safe harbor rule of paragraph (b)(2)(i) of this section is modified for the first and second calendar quarters beginning on or after the effective date of—

(*1*) An increase in the base tax amount under section 4681(b); or

(*2*) A change in the tax treatment of ozone-depleting chemicals that are described in section 4682(g).

(B) *Modification.* The safe harbor rule in paragraph (b)(2)(i) of this section

does not apply for those calendar quarters unless the deposit of section 4681 taxes for each semimonthly period in the calendar quarter is not less than 1/6 of the tax liability the person would have had under section 4681 for the look-back quarter if the increased base tax amount or the change in treatment had been in effect for that look-back quarter.

(3) *Amount of deposit; safe harbor rule based on current liability*—(i) *In general.* A person is considered to have complied with the requirement of this part 40 for deposit of section 4681 tax for a calendar quarter if—

(A) The deposit of that tax for each semimonthly period in the calendar quarter is not less than 95 percent of the net tax liability incurred under section 4681 during the semimonthly period;

(B) Each deposit is made on time; and

(C) The amount of any underpayment of that tax for the calendar quarter is paid by the due date of the return.

(ii) *Effective date.* This paragraph (b)(3) is effective for deposits that relate to calendar quarters beginning after December 31, 1992.

(c) *Special rules for September*—(1) *Deposits required.* In the case of deposits of 30-day rule taxes for the first semimonthly period in September, separate deposits are required for the period September 1st–11th and the period September 12th–15th.

(2) *Amount of deposit.* The deposits of 30-day rule taxes for the period September 1st–11th and the period September 12th–15th must be not less than the amount of net tax liability for 30-day rule taxes incurred during the respective periods. The net tax liability incurred during these periods may be computed by—

(i) Determining the amount of net tax liability incurred during the first semimonthly period in September (or, if semimonthly liability is computed by dividing monthly liability by two, the amount reasonably expected to be incurred);

(ii) Treating 11/15 of that amount as the net tax liability incurred during the period September 1st–11th; and

(iii) Treating the remainder of the amount determined under paragraph (c)(2)(i) of this section (adjusted, if that amount is based on reasonable expectations, to reflect net tax liability actually incurred through the end of September) as the net tax liability incurred during the period September 12th–15th.

(3) *Time to deposit*—(i) *In general.* The deposit required for the period beginning September 1st and the deposit for the second semimonthly period in August must be made by September 29. The deposit required for the period ending September 15th must be made at the time prescribed in paragraph (b)(1)(i) of this section for making deposits for the first semimonthly period in September.

(ii) *Due date on Saturday or Sunday.* A deposit that would otherwise be due on September 29 must be made by September 28 if September 29 is a Saturday and by September 30 if September 29 is a Sunday.

(4) *Safe harbor rule based on look-back quarter liability.* The safe harbor rule of paragraph (b)(2)(i) of this section does not apply for the third calendar quarter unless—

(i) The deposit of 30-day rule taxes for the period September 1st–11th is not less than 11/90 of the net tax liability reported for 30-day rule taxes for the look-back quarter; and

(ii) The total deposit of 30-day rule taxes for the first semimonthly period in September is not less than 1/6 of the net tax liability reported for 30-day rule taxes for the look-back quarter.

(5) *Safe harbor rule based on current liability.* The safe harbor rule of paragraph (b)(3) of this section does not apply for the third calendar quarter unless—

(i) The deposit of 30-day rule taxes for the period September 1st–11th is not less than 69.67 percent of the net tax liability for 30-day rule taxes for the first semimonthly period in September; and

(ii) The total deposit of 30-day rule taxes for the first semimonthly period in September is not less than 95 percent of the net tax liability for 30-day rule taxes for that semimonthly period.

(6) *Persons not required to use electronic funds transfer.* In the case of a person that is not required to deposit excise taxes by electronic funds transfer (a non-EFT depositor), the rules of

this paragraph (c) apply with the following modifications:

(i) The periods for which separate deposits must be made are September 1st-10th and September 11th–15th.

(ii) The deposit required for the period beginning September 1st and the deposit required for the second semimonthly period in August must be made by September 28. A deposit that would otherwise be due on September 28 must be made by September 27 if September 28 is a Saturday and by September 29 if September 28 is a Sunday.

(iii) The generally applicable fractions and percentage are modified to reflect the different deposit periods in accordance with the following table:

Generally applicable fractions and percentage	Modifications for non-EFT depositors
11/15	10/15.
11/90	10/90.
69.67 percent	63.33 percent.

(7) *Effective date.* This paragraph (c) is effective August 1, 1995.

[T.D. 8442, 57 FR 48177, Oct. 22, 1992, as amended by T.D. 8685, 61 FR 58005, Nov. 12, 1996]

§ 40.6302(c)–2T Special rule for use of Government depositaries under section 4681 (temporary).

(a)–(b)(2)(ii) [Reserved]

(iii) *Modification for new chemicals*—(A) *Applicability.* The safe harbor rule of § 40.6302(c)–2(b)(2)(i) is modified for any calendar quarter in which a person's liability for section 4681 tax includes liability with respect to any new chemical. For this purpose, a new chemical is any chemical that was not subject to tax at all times during the look-back quarter.

(B) *Modification.* The safe harbor rule of § 40.6302(c)–2(b)(2)(i) does not apply unless the deposit of section 4681 taxes for each semimonthly period in the calendar quarter is not less than the greater of—

(*1*) ⅙ of the net tax liability reported under section 4681 for the look-back quarter; or

(*2*) The sum of—

(*i*) 95 percent of the net tax liability incurred under section 4681 with respect to the new chemical during the semimonthly period; and

(*ii*) ⅙ of the net tax liability reported under section 4681 with respect to all other chemicals for the look-back quarter.

(C) *Effective date.* This paragraph (b)(2)(iii) applies to tax liabilities for new chemicals incurred after February 28, 1997.

[T.D. 8740, 62 FR 67569, Dec. 29, 1997]

§ 40.6302(c)–3 Special rules for use of Government depositaries under chapter 33.

(a) *Overview.* This section sets forth an alternative method for computing the amount of deposits of taxes imposed by chapter 33, and provides rules relating to the time for making a deposit and the amount of tax to be reported on the return of tax for each quarter by persons using the alternative method. The safe harbor rules for computing deposits of tax using the alternative method and the general rules relating to deposits are set forth in § 40.6302(c)–1 and apply unless inconsistent with the rules set forth below.

(b) *Alternative method for computing deposits*—(1) *In general*—(i) *Alternative method.* Any person required to collect and pay over any tax imposed by chapter 33 may compute the amount of that tax to be deposited on the basis of amounts considered as collected (the ''alternative method'') instead of on the basis of actual collections of tax.

(ii) *Using more than one method to compute deposits.* A person may compute deposits of tax imposed by one or more sections of chapter 33 using the alternative method provided by this section and compute deposits of taxes imposed by other sections of chapter 33 on the basis of amounts actually collected using the 9-day rule of § 40.6302(c)–1(b)(6). For purposes of this paragraph (b)(1)(ii), the taxes imposed by section 4261(a) and (b) are treated as taxes imposed by the same section.

(2) *Applicability*—(i) *In general.* A person may use the alternative method with respect to a tax only if the person—

(A) Separately accounts for the tax in accordance with paragraph (b)(2)(ii) of this section; and

(B) Makes a return of the tax on the basis of the amount of the tax that is considered as collected.

(ii) *Separate account.* The account required under paragraph (b)(2)(i)(A) of this section (the ''separate account'') must reflect for each month—

(A) All items of the tax that are included in amounts billed or tickets sold to customers during the month; and

(B) Items of adjustment (including bad debts and errors) relating to the tax for prior months within the period of limitations on credits or refunds.

(iii) *Change of method.* The method of computing deposits of tax imposed by a section of chapter 33 (as described in paragraph (b)(1)(ii) of this section) may be changed only at the beginning of a calendar quarter. Before a person changes the method used to compute the amount of tax to be deposited and reported for a calendar quarter, the person must notify the Commissioner so that proper adjustments may be made in order to properly reflect that person's collections of excise tax.

(3) *Period during which tax is considered as collected.* For purposes of this section, the tax included in amounts billed or tickets sold during a semimonthly period (as defined in § 40.0–1(c)) is considered as collected during the first seven days of the second following semimonthly period. Thus, the tax included in amounts billed or tickets sold during the first semimonthly period of a calendar month is considered as collected during the period of the 1st day through the 7th day of the following month; the tax included in amounts billed or tickets sold during the second semimonthly period of a calendar month is considered as collected during the period of the 6th day through the 22nd day of the following month.

(4) *When amounts are billed.* For purposes of this section, an amount is billed on the earlier of the date the amount is received or the date a bill for the amount is rendered.

(c) *Time to deposit.* Under the alternative method, the deposit of tax for any semimonthly period must be made by the third banking day after the seventh day of that semimonthly period. Thus, for example, the deposit for the semimonthly period beginning on January 1, 1993 (relating to amounts billed between December 1st and December 15, 1992) is due by January 12, 1993, three banking days after January 7, the seventh day of the semimonthly period.

(d) *Amount of deposit.* Under the alternative method, the deposit of tax for any semimonthly period must be not less than the net amount of tax that is considered as collected during that semimonthly period. The net amount of tax that is considered as collected during the semimonthly period must be either the net amount of tax reflected in the separate account for the corresponding semimonthly period of the preceding month or one-half the net amount of tax reflected in the separate account for the preceding month.

(e) *Reporting of tax.* If a tax is deposited under the alternative method for a calendar quarter, the return of tax for the quarter must report the net amount of the tax that is considered as collected during the quarter and not the amount of the tax that is actually collected during the quarter. The amount to be reported for each month is the net amount of tax reflected in the separate account for the preceding month. For example, amounts billed in December, January, and February are considered as collected during January, February, and March, and are reported as the collections of tax for January, February, and March (the first calendar quarter). Thus, the net amount of tax reflected in the separate accounts for December, January, and February is the amount reported as collections for the first quarter.

(f) *Special rules for September*—(1) *Deposits required.* In the case of alternative method taxes charged (that is, included in amounts billed or tickets sold) during the first semimonthly period in September, separate deposits are required for the taxes charged during the period September 1st–11th and the period September 12th–15th.

(2) *Time to deposit*—(i) *In general.* The deposit required for alternative method taxes charged during the period beginning September 1st must be made by September 29. The deposit required for alternative method taxes charged during the period ending September 15th must be made at the time prescribed in

paragraph (c) of this section for making deposits for the first semimonthly period in October.

(ii) *Due date on Saturday or Sunday.* A deposit that would otherwise be due on September 29 must be made by September 28 if September 29 is a Saturday and by September 30 if September 29 is a Sunday.

(3) *Amount of deposit.* The deposits of alternative method taxes required for the period September 1st–11th and the period September 12th–15th must be not less than the amount of alternative method taxes charged during the respective periods. The amount of alternative method taxes charged during these periods may be computed by—

(i) Determining the net amount of alternative method taxes reflected in the separate account for the first semimonthly period in September (or one-half of the net amount of alternative method taxes reasonably expected to be reflected in the separate account for the month of September);

(ii) Treating 11/15 of that amount as the amount of taxes charged during the period September 1st–11th; and

(iii) Treating the remainder of the amount determined under paragraph (f)(3)(i) of this section (adjusted, if that amount is based on reasonable expectations, to reflect actual taxes charged through the end of September) as the amount charged during the period September 12th–15th.

(4) *Safe harbor rule based on look-back quarter liability.* The safe harbor rule of §40.6302(c)–1(c)(2)(i) does not apply for the fourth calendar quarter unless—

(i) The deposit for alternative method taxes charged during the period September 1st–11th is not less than 11/90 of the net tax liability reported for alternative method taxes for the look-back quarter; and

(ii) The total deposit for alternative method taxes charged during the first semimonthly period in September is not less than 1/6 of the net tax liability reported for alternative method taxes for the look-back quarter.

(5) *Safe harbor rule based on current liability.* The safe harbor rule of §40.6302(c)–1(c)(3)(i) does not apply for the fourth calendar quarter unless—

(i) The deposit for alternative method taxes charged during the period September 1st–11th is not less than 69.67 percent of the alternative method taxes charged during the first semimonthly period in September; and

(ii) The total deposit for alternative method taxes charged during the first semimonthly period in September is not less than 95 percent of the alternative method taxes charged during that semimonthly period.

(6) *Persons not required to use electronic funds transfer.* In the case of a person that is not required to deposit excise taxes by electronic funds transfer (a non-EFT depositor), the rules of this paragraph (f) apply with the following modifications:

(i) The taxes for which separate deposits must be made are the taxes charged during the periods September 1st–10th and September 11th–15th.

(ii) The deposit required for taxes charged during the period beginning September 1st must be made by September 28. A deposit that would otherwise be due on September 28 must be made by September 27 if September 28 is a Saturday and by September 29 if September 28 is a Sunday.

(iii) The generally applicable fractions and percentage are modified to reflect the different deposit periods in accordance with the following table:

Generally applicable fractions and percentage	Modifications for non-EFT depositors
11/15	10/15.
11/90	10/90.
69.67 percent	63.33 percent.

(7) *Effective date.* This paragraph (f) is effective August 1, 1995, for all taxes except those imposed by section 4261 or 4271. For taxes imposed by section 4261 or 4271, this paragraph (f) applies beginning January 1, 1997.

(g) *Transitional rule for first calendar quarter of 1993*—(1) *Applicability.* This paragraph (g) applies to a chapter 33 tax if the person—

(i) Erroneously applied the ''considered collected'' method provided under §49.6302(c)–1(a)(1) of this chapter in the fourth calendar quarter of 1992 by calculating deposits of that tax on the basis of amounts billed or tickets sold during the quarter rather than on the basis of taxes considered as collected during the quarter; and

(ii) Uses the alternative method provided under this section to calculate deposits and make a return of that tax for the first quarter of 1993.

(2) *Rule*—(i) *Crediting of deposits.* If this paragraph (g) applies to a tax, any deposits of the tax computed on the basis of amounts billed or tickets sold during December 1992 are credited to the first calendar quarter of 1993.

(ii) *Return of tax for fourth calendar quarter of 1992.* If this paragraph (g) applies to a tax, the amount of the tax to be reported on the person's return for the fourth calendar quarter of 1992 must be the amount of the tax included in amounts billed or tickets sold in October and November 1992.

(3) *Example.* The application of this paragraph (g) may be illustrated by the following example:

(a) *Facts.* (i) X, a corporation, has been providing air transportation subject to tax under section 4261 (a) and (b) for several years and is required to collect and pay over these taxes. X maintains a separate account in which all items of these taxes are recorded. For calendar quarters beginning before January 1, 1993, including the fourth quarter of 1992, X erroneously applied the ''considered collected'' method of computing deposits of these taxes by treating the tickets sold during each quarter as the collections for the quarter. For quarters beginning after December 31, 1992, X uses the alternative method provided by this section for computing deposits of these taxes.

(ii) For the period September 1, 1992, through December 31, 1992, X's separate account reflects the following amounts of tax:

Sept. 1st–15th	$4,000
Sept. 16th–30th	4,000
Oct. 1st–15th	7,000
Oct. 16th–31st	7,000
Nov. 1st–15th	5,000
Nov. 16th–30th	5,000
Dec. 1st–15th	9,000
Dec. 16th–31st	9,000

(iii) During the period October 1992 through January 1993, X made the following deposits:

Date	Amount
Oct. 13th	$4,000
Oct. 27th	4,000
Nov. 12th	7,000
Nov. 26th	7,000
Dec. 10th	5,000
Dec. 28th	5,000
Jan. 12th	9,000
Jan. 27th	9,000

(iv) X credited the October deposits (relating to tickets sold in September) to the third quarter of 1992 and reported the tax included in tickets sold in September as third quarter collections on the Form 720 for the third quarter. Following the same procedure, X credited the November, December, and January deposits (relating to the October, November, and December tickets sold) to the fourth quarter.

(b) *Transitional rule.* In order to use the alternative method beginning with the first calendar quarter of 1993, X must deposit and report the amount of tax that is considered as collected in the quarter rather than the amount of tax included in tickets sold during the quarter. Under paragraph (g)(2)(i) of this section, X's January deposits (relating to the tickets sold in December) will be credited to the first quarter of 1993. X must report on the Form 720 for the fourth quarter only the $24,000 of tax included in the October and November tickets sold. The amount of tax included in the tickets sold in December must be reported on the Form 720 for the first quarter of 1993.

(h) *Effective date.* Except as otherwise provided, this section is effective January 1, 1993, for deposits of taxes that are considered as collected after December 31, 1992. (i.e., tax with respect to amounts billed or tickets sold after November 30, 1992), and for returns of tax for quarters beginning after September 30, 1992. The provisions that apply in the case of semimonthly deposits under the considered collected method before the effective date of this section are contained in 26 CFR § 49.6302(c)–1(a)(1) (revised as of April 1, 1992).

[T.D. 8442, 57 FR 48177, Oct. 22, 1992, as amended by T.D. 8685, 61 FR 58006, Nov. 12, 1996; 63 FR 15292, Mar. 31, 1998]

§ 40.6302(c)–4 Special rule for use of Government depositaries under section 4081.

(a) *Overview.* This section sets forth a special rule for deposits of taxes imposed by section 4081. The general rules, including the amount to deposit and safe harbors, are set forth in § 40.6302(c)–1 and apply unless inconsistent with the rules set forth below.

(b) *Time to deposit under the 14-day rule.* (1) In the case of taxes imposed by section 4081, a qualified person may make deposits of the tax for a semimonthly period by the fourteenth day following the semimonthly period if the deposit is made by electronic funds

transfer (the ''14-day rule''). Thus, under the 14-day rule generally, the deposit of tax for the first semimonthly period in a month is due by the 29th day of that month and the deposit of tax for the second semimonthly period in a month is due by the 14th day of the following month.

(2) If the due date under paragraph (b)(1) of this section falls on a Saturday, Sunday, or legal holiday in the District of Columbia, the due date of the deposit is the immediately preceding day which is not a Saturday, Sunday, or legal holiday in the District of Columbia.

(c) *Qualified person defined*—(1) *In general.* The term ''qualified person'' means—

(i) Any independent refiner (within the meaning of section 4995(b)(4) (as in effect on January 6, 1983)); or

(ii) Any person whose average daily production of crude oil for the preceding calendar quarter did not exceed 1,000 barrels.

(2) *Related groups.* In determining whether a person's production exceeds 1,000 barrels per day, the rules of section 4992(e) (as in effect on January 6, 1983) relating to allocation within related groups shall apply. Thus, for persons who are members of the same related group (within the meaning of section 4992(e)(2)) at any time during the preceding calendar quarter, the 1,000 barrel amount will be reduced for each such person by allocating that amount among all such persons in accordance with the rules of section 4992(e).

(d) *Special rules for September.* Deposits of 14-day rule taxes for the second semimonthly period in September must be made in the manner prescribed by § 40.6302(c)–1(e) applied with the following modifications:

(1) Each reference to 9-day rule taxes is treated, instead, as a reference to 14-day rule taxes.

(2) The deposit required for the period ending September 30th must be made at the time prescribed in paragraph (b) of this section (rather than at the time prescribed in § 40.6302(c)–1(b)(6)(i)).

(e) *Effective date and termination date.* This section is effective April 1, 1991, for deposits that relate to calendar quarters beginning after March 31, 1991. This section terminates on the date that section 518 of the Highway Revenue Act of 1982 terminates.

[T.D. 8442, 57 FR 48177, Oct. 22, 1992, as amended by T.D. 8685, 61 FR 58007, Nov. 12, 1996]

§ 40.9999–1 Examples.

The following examples illustrate the rules of this part 40.

Example 1. Luxury tax; one-time filing. (i) *Facts.* On March 20, 1991, A, an individual, purchases a new automobile outside the United States for $102,000. In April of 1991, A imports the automobile into the U.S. and uses it for personal use. At the time of importation, the automobile's retail value is $100,000. Thus, A is liable for the luxury tax imposed by section 4001. The amount of A's section 4001 tax liability is $7,000, 10% of the amount by which the $100,000 retail value exceeds $30,000. The liability is incurred in the second calendar quarter of 1991, the quarter during which the automobile is imported and used. The fuel economy of the automobile's model type is at least 22.5 miles per gallon, so that A is not liable for the gas guzzler tax imposed by section 4064. A did not import the automobile in the course of its trade or business, does not engage in any activities with respect to which tax is reportable on Form 720 in the course of a trade or business, and was not required to file a Form 720 for the preceding calendar quarter.

(ii) *Filing requirement.* A must file a return of the luxury tax on Form 720 (§ 40.6011(a)–1(a)(1)) for the second calendar quarter of 1991 (§ 40.6011(a)–1(a)(2)) reporting A's $7,000 luxury tax liability. The Form 720 is due by July 31, 1991, the last day of the first month following the calendar quarter (§ 40.6071(a)–1(a)(1)). A's Form 720 for the second calendar quarter of 1991 is a first return (§ 40.6011(a)–1(a)(2)(ii)). Because A did not import the automobile in the course of its trade or business and is not otherwise required to file a Form 720 for the calendar quarter on account of transactions in the course of a trade or business, the return is a one-time filing (§ 40.6011(a)–2(b)). As a one-time filing, A's Form 720 also constitutes a final return. Therefore, in accordance with the instructions for Form 720, A checks the box marked ''Final Return.''

(iii) *Payment requirement.* Because A's Form 720 is a one-time filing, A is not required to make deposits of tax (§ 40.6302(c)–1(f)(2)). Instead, A pays the $7,000 of tax with the return.

Example 2. Luxury tax; deposit requirement; safe harbor based on current liability. (i) *Facts.* On March 16, 1993, B, an individual in the business of automobile dealing, sells in a first retail sale a new automobile subject to the luxury tax imposed by section 4001. The

amount of B's section 4001 tax liability is $12,000. The sale of the automobile is in the course of B's business, but B does not expect to sell any other automobiles subject to the luxury tax. B is not required to file a Form 720 for the first calendar quarter of 1993 by reason of any other activity, and has not in the past filed a Form 720.

(ii) *Filing requirement.* B must file a return of the luxury tax (§ 40.6011(a)–1(a)(1)) on Form 720 for the first calendar quarter of 1993 (§ 40.6011(a)–1(a)(2)) reporting B's $12,000 luxury tax liability. The Form 720 is due by April 30, 1993, the last day of the first month following the calendar quarter (§ 40.6071(a)–1(a)(1)). Although B does not ordinarily engage in transactions giving rise to a luxury tax liability in B's business, the tax is due with respect to a transaction engaged in by B in the course of a trade or business. Thus, the return is not a one-time filing under § 40.6011(a)–2(b), and B must file a Form 720 for each subsequent calendar quarter until B files a final return in accordance with § 40.6011(a)–2 (§ 40.6011(a)–1(a)(2)). However, if B does not expect to incur liability for luxury tax in subsequent quarters (i.e., has permanently ceased all operations with respect to which liability for tax was incurred), B's Form 720 also constitutes a final return (§ 40.6011(a)–2(a)(1)), and B is not required to file a return reporting zero tax liability in subsequent quarters. If B's Form 720 is also a final return, B checks the box marked ''Final Return'' in accordance with the instructions for the return.

(iii) *Deposit requirement; in general.* Because the return is not a one-time filing, B is required to make a deposit of tax (§ 40.6302(c)–1(b)(1)(i)) for the semimonthly period in which the liability was incurred. Under § 40.6302(c)–1(b)(5)(i), B must deposit an amount not less than the net tax liability incurred during the semimonthly period, in this case $12,000. Deposits of luxury tax for a semimonthly period are due by the 9th day of the following semimonthly period (the 9-day rule under § 40.6302(c)–1(b)(6)(i)). Thus, B must deposit the $12,000 by April 9, 1993. Form 8109, *Federal Tax Deposit Coupon,* completed in accordance with the instructions to the form must accompany the deposit (§ 40.6302(c)–1(d)).

(iv) *Deposit requirement; safe harbor.* B may also meet the deposit requirement by using a safe harbor rule. B did not file a return for the second preceding calendar quarter, so B does not qualify for the safe harbor based on look-back quarter liability (§ 40.6302(c)–1(c)(2)(i)), but B may use the safe harbor based on current liability (§ 40.6302(c)–1(c)(3)(i)). Under this safe harbor, B's deposit for the semimonthly period must be at least 95% of B's net tax liability for the semimonthly period (§ 40.6302(c)–1(c)(3)(i)(A)), B's deposit must be timely (§ 40.6302(c)–1(c)(3)(i)(B)), and B must pay the amount of any underpayment of tax by the due date of the return (§ 40.6302(c)–1(c)(3)(i)(D)). B meets this safe harbor by depositing $11,400 (95% of $12,000) by April 9, 1993, and by paying $600 (the amount of the underpayment ($12,000 minus $11,400)) with the return by April 30, 1993.

Example 3. Classes of tax (aviation fuel tax, foreign insurance tax, ozone-depleting chemicals tax); books kept on a monthly basis; deposit requirement; safe harbor based on look-back quarter liability. (i) *Facts.* (1) M, a corporation, is an aviation fuel wholesaler registered under section 4101 with respect to the tax imposed by section 4091, and is therefore treated as a producer for purposes of the section 4091 tax on the sale of aviation fuel by its producer. M's net aviation fuel tax liability in the fourth quarter of 1990 was $36,000. The aviation fuel tax liability incurred by M during each calendar month in the second calendar quarter of 1991 is as follows:

Apr. 1st–30th	$10,000
May 1st–31st	15,000
Jun. 1st–30th	12,000
Total	$37,000

(2) M also purchases insurance from a foreign insurer, thereby incurring liability for the tax imposed by section 4371 on policies issued by a foreign insurer. M's net section 4371 tax liability in the fourth quarter of 1990 was $6,000. The section 4371 liability incurred by M during each calendar month in the second calendar quarter of 1991, is as follows:

Apr. 1st–30th	$0
May 1st–31st	0
June 1st–30th	6,000
Total	$6,000

(3) In addition, M imports into the United States and sells CFC–12, an ozone-depleting chemical subject to tax under section 4681. M's net ozone-depleting chemicals tax liability for the fourth calendar quarter of 1990 was $3,300. The ozone-depleting chemicals tax liability incurred by M during each calendar month in the second calendar quarter of 1991 is as follows:

Apr. 1st–30th	$1,300
May 1st–31st	1,500
June 1st–30th	1,500
Total	$4,300

(4) M keeps its books on a monthly basis. M makes deposits and files Form 720 each quarter to report liability for the aviation fuel tax, the section 4371 tax, and the ozone-depleting chemicals tax. M's total net tax liability for the second calendar quarter of 1991 is $47,300.

(ii) *Filing requirement.* Because M must report ozone-depleting chemicals tax, M's Form 720 for the second calendar quarter of 1991 is due by Tuesday, September 3, 1991.

The Form 720 would ordinarily be due by August 31st (the last day of the second month after the end of the calendar quarter (§ 40.6071(a)–2(a)), but August 31, 1991 is a Saturday, and Monday, September 2, 1991, is Labor Day, a legal holiday. Thus, under section 7503, M has additional time to file. If M had reported only aviation fuel and section 4371 tax liability on M's Form 720 for the second calendar quarter of 1991, the Form 720 would have been due by July 31, 1991, the last day of the first month after the end of the calendar quarter (§ 40.6071(a)–1(a)(1)). However, only one Form 720 is filed for a calendar quarter (§ 40.6071(a)–1(a)(2)). Thus, M's responsibility for reporting ozone-depleting chemicals tax allows M to delay the filing of the Form 720. Although M may delay the filing of its Form 720 until two months after the quarter ends, M must deposit the full amount of the aviation fuel tax and foreign insurance tax for the quarter by the date the return of those taxes would ordinarily be due (i.e. July 31, 1991) (§ 40.6071(a)–1(a)(2)). Under § 40.6011(a)–1(a)(2), M must continue to file a Form 720 for each calendar quarter until M files a final return in accordance with § 40.6011(a)–2.

(iii) *Deposit requirement; in general.* M is required to make a deposit of tax for each semimonthly period in which liability is incurred (§ 40.6302(c)–1(b)(1)(i)). M is required to make deposits of tax because M's liability for the quarter exceeds $2,000 (§ 40.6302(c)–1(f)(3)). Deposits of aviation fuel tax and section 4371 tax for a semimonthly period are due by the 9th day of the following semimonthly period (the 9-day rule under § 40.6302(c)–1(b)(6)(i)). The 9-day rule does not apply to ozone-depleting chemicals tax (§ 40.6302(c)–1(b)(6)(ii)). Deposits of ozone-depleting chemicals tax for a semimonthly period are due by the last day of the second following semimonthly period (the 30-day rule under § 40.6302(c)–2(b)(1)). M uses the rule provided under § 40.6302(c)–1(b)(3) to compute its net tax liability for each semimonthly period. Thus, M divides monthly net tax liability for each tax by two to determine its semimonthly liability. The amount of M's deposit for a semimonthly period under the 9-day rule must be not less than the total net tax liability for 9-day rule taxes incurred during the semimonthly period (§ 40.6302(c)–1(b)(5)(i)). The amount of M's deposit for a semimonthly period under the 30-day rule must be not less than the total net tax liability for 30-day rule taxes incurred during the semimonthly period (§ 40.6302(c)–1(b)(5)(i)). Accordingly, M meets the deposit requirement if M makes the following deposits:

Deposit due by	Amount	Class of tax
Apr. 24th	$5,000	9-day rule
May 9th	5,000	9-day rule
May 15th	650	30-day rule
May 24th	7,500	9-day rule
May 31st	650	30-day rule
June 10th	7,500	9-day rule
June 17th	750	30-day rule
June 24th	9,000	9-day rule
July 1st	750	30-day rule
July 9th	9,000	9-day rule
July 15th	750	30-day rule
July 31st	750	30-day rule

The deposit due on Monday, June 10th would ordinarily be due on June 9th, but June 9, 1991, is a Sunday, Thus, under section 7503, M has additional time to make the required deposit. Similarly, the deposits otherwise due on June 15th and June 30th are due under section 7503 on the next succeeding day that is not a Saturday or Sunday.

(iv) *Deposit requirements; safe harbor.* M may also meet the deposit requirement by using a safe harbor rule. M uses the safe harbor based on look-back quarter liability for both the aviation fuel and section 4371 taxes (9-day rule taxes) and the ozone-depleting chemicals tax (30-day rule tax). This is permitted because M filed a return reporting both of those classes of tax for the fourth quarter of 1990 (the look-back quarter under §§ 40.6302(c)–1(c)(2)(i) and 40.6302(c)–2(b)(2)(i)). The safe harbor rules apply separately to 9-day rule and 30-day rule taxes (§ 40.6302(c)–1(c)(1)(ii)). Therefore, M must compute the amount to deposit separately for each class of tax.

(1) M's combined net tax liability in the look-back quarter for 9-day rule taxes was $42,000. M computes the amount to deposit for 9-day rule taxes based on M's combined look-back quarter liability for those taxes. Accordingly, M meets the safe harbor for 9-day rule taxes by—

(A) Depositing $7,000 (⅙ of $42,000, M's combined net 9-day rule tax liability for the fourth calendar quarter of 1990 (§ 40.6302(c)–1(c)(2)(i)(A))) by the due dates specified above for 9-day rule taxes (§ 40.6302(c)–1(c)(2)(i)(B)); and

(B) Depositing $1,000 (the amount by which the net 9-day rule tax liability for the second calendar quarter of 1991 ($43,000) exceeds the net 9-day rule tax liability for the look-back quarter ($42,000) by July 31, 1991 (§ 40.6302(c)–1(c)(2)(i)(C)).

(2) M's net tax liability in the look-back quarter for 30-day rule taxes was $3,300. Accordingly, M meets the safe harbor for 30-day rule taxes by—

(A) Depositing $550 (⅙ of $3,300, M's ozone-depleting chemicals tax liability for the fourth calendar quarter of 1990 (§ 40.6302(c)–2(b)(2)(i)(A))) by the due dates specified above for 30-day rule taxes (§ 40.6302(c)–2(b)(2)(i)(B)); and

(B) Paying $1,000 (the amount by which the net 30-day rule tax liability for the second calendar quarter of 1991 ($4,300) exceeds the

net 30-day rule tax liability for the look-back quarter ($3,300)) by September 3, 1991, the due date of the return (§ 40.6302(c)–2(b)(2)(i)(C)).

Example 4. Air transportation tax; deposits and reporting based on alternative method. (i) *Facts.* (1) P, a corporation engaged in providing air transportation subject to tax under section 4261 (a) and (b), is responsible for collecting and paying over that tax. P maintains a separate account in which all items of air transportation tax included in tickets sold are recorded and makes returns of tax on the basis of amounts considered as collected. P does not compute the amount of deposits of tax on the basis of actual collections. P files Form 720 on a quarterly basis to report the tax. P reported $54,000 of section 4261 (a) and (b) tax for the third calendar quarter of 1992. P is not required to report any other taxes on its Form 720.

(2) For the last month of 1992 and the first two months of 1993, P's separate account reflects the following:

Tickets sold during	Tax
Dec. 1st–15th	$11,000
Dec. 16th–31st	11,000
Jan. 1st–15th	7,500
Jan. 16th–31st	7,500
Feb. 1st–15th	9,500
Feb. 16th–28th	9,500
Total	$56,000

(3) The tax is considered as collected during the first week of the second semimonthly period following the semimonthly period in which the tickets were sold to the customers. Accordingly, the tax included in tickets sold during the period December 1992 through February 1993 is considered as collected as follows:

For tickets sold during	Tax is considered as collected during
Dec. 1st–15th	Jan. 1st–7th
Dec. 16th–31st	Jan. 16th–22nd
Jan. 1st–15th	Feb. 1st–7th
Jan. 16th–31st	Feb. 16th–22nd
Feb. 1st–15th	Mar. 1st–7th
Feb. 16th–28th	Mar. 16th–22nd

(ii) *Filing requirement.* Because P is responsible for collecting and paying over air transportation tax, P must file the return of that tax (§ 40.6011(a)–1(a)(3)). P's Form 720 for the first calendar quarter of 1993 is due by Tuesday, June 1, 1993. P's Form 720 would ordinarily be due by May 31, 1993 (the last day of the second month after the end of the calendar quarter (§ 40.6071(a)–2(a)), but May 31, 1993, is Memorial Day, a legal holiday. Thus, under section 7503, P has additional time to file. Under § 40.6011(a)–1(a)(2), P must continue to file a Form 720 for each calendar quarter until P files a final return under § 40.6011(a)–2.

(iii) *Deposit requirement; in general.* Because P maintains the separate account required under § 40.6302(c)–3(b)(2)(ii) and makes returns of tax on the basis of amounts of tax considered as collected, P may use the alternative method to compute the amount of tax to be deposited (§ 40.6302(c)–3(b)(2)). P is required to make a deposit of tax for each semimonthly period in which tax is considered as collected (§ 40.6302(c)–1(b)(1)(iii)). P must deposit an amount not less than the net amount of tax that is considered as collected during the semimonthly period (§ 40.6302(c)–3(d)). Under the alternative method, deposits of air transportation tax are due by the third banking day after the end of the week during which the tax is considered as collected (§ 40.6302(c)–3(c)). Accordingly, P meets the deposit requirement for the first quarter of 1993 if P makes the following deposits:

By Jan. 12th	$11,000
By Jan. 27th	11,000
By Feb. 10th	7,500
By Feb. 25th	7,500
By Mar. 10th	9,500
By Mar. 25th	9,500

(iv) *Deposit requirement; safe harbor.* P may also meet the deposit requirement by using a safe harbor rule (§ 40.6302(c)–1(c)(1)(i)). P uses the safe harbor based on look-back quarter liability. This is permitted because P filed a return reporting tax imposed on air transportation under section 4261 (a) and (b) for the third quarter of 1992 (the look-back quarter under § 40.6302(c)–1(c)(2)(i)). P meets this safe harbor by—

(1) Depositing $9,000 (⅙ of $54,000, P's net tax liability for the third calendar quarter of 1992 (§ 40.6302(c)–1(c)(2)(i)(A)) by the due dates specified above (§ 40.6302(c)–1(c)(2)(i)(B)); and

(2) Paying $2,000 (the amount by which the net tax liability for the first calendar quarter of 1993 ($56,000) exceeds the net tax liability for the look-back quarter ($54,000)) by June 1, 1993, the due date of the return (§ 40.6302(c)–1(c)(2)(i)(D)).

(v) *Reporting requirement.* Under the alternative method, P's Form 720 for the first quarter of 1993 reports the $56,000 of air transportation taxes considered as collected during that quarter (§ 40.6302(c)–3(e)).

[T.D. 8442, 57 FR 48177, Oct. 22, 1992; 58 FR 6575, Jan. 29, 1993, as amended by T.D. 8685, 61 FR 58007, Nov. 12, 1996]

PART 41—EXCISE TAX ON USE OF CERTAIN HIGHWAY MOTOR VEHICLES

Subpart A—Introduction

Sec.

41.0–1 Introduction.