under section 1012) by members of the P consolidated group (while they are members) in a 12-month period of an amount of the nonmember's stock satisfying the requirements of section 1504(a)(2).

(*2*) *Election.* The election described in this paragraph (6)(i)(C) must be made in a separate statement entitled ''ELECTION TO REDUCE BASIS OF P STOCK UNDER § 1.1502–13(f)(6).'' The statement must be filed with the P consolidated group's return for the year in which the nonmember becomes a member, and it must be signed by both P and the nonmember. The statement must identify the fair market value of, and the amount of the basis reduction in, the P stock.

(ii) *Gain stock.* If a member, M, would otherwise recognize gain on a qualified disposition of P stock, then immediately before the qualified disposition, M is treated as purchasing the P stock from P for fair market value with cash contributed to M by P (or, if necessary, through any intermediate members). A disposition is a qualified disposition only if—

(A) The member acquires the P stock directly from the common parent (P) through a contribution to capital or a transaction qualifying under section 351(a) (or, if necessary, through a series of such transactions involving only members);

(B) Pursuant to a plan, the member transfers the stock immediately to a nonmember that is not related, within the meaning of section 267(b) or 707(b), to any member of the group;

(C) No nonmember receives a substituted basis in the stock within the meaning of section 7701(a)(42);

(D) The P stock is not exchanged for P stock;

(E) P neither becomes nor ceases to be the common parent as part of, or in contemplation of, the disposition or plan; and

(F) M is neither a nonmember that becomes a member nor a member that becomes a nonmember as part of, or in contemplation of, the disposition or plan.

(iii) *Mark-to-market of P stock.* Paragraphs (f)(6)(i) and (ii) of this section shall not apply to any gain or loss from a share of P stock held by a member, M, if—

(A) M regularly trades in P stock (of the same class) with customers in the ordinary course of its business as a dealer;

(B) The gain or loss on the share is taken into account by M pursuant to section 475(a);

(C) M's basis in the share is not adjusted by reference to the basis of any other property or by reference to income, gain, deduction, or loss from other property; and

(D) Neither M nor any other member of the group has structured or engaged in any transaction while a member (or in anticipation of becoming a member), during the taxable year or in any year within the preceding five taxable years that is open for assessment under section 6501, with a principal purpose of avoiding gain or creating loss on P stock subject to section 475(a).

(iv) *Options, warrants, and other positions*—(A) *In general.* This paragraph (f)(6) applies with appropriate adjustments to positions in P stock to the extent that P's gain or loss from an equivalent position would not be recognized under section 1032. Thus, if M purchases an option to buy or sell P stock and sells the option at a loss, the loss is permanently disallowed under paragraph (f)(6)(i)(A) of this section. Similarly, if M is the grantor of such an option and becomes a nonmember, then the principles of paragraph (f)(6)(i)(B) of this section apply to the extent that M would recognize loss from cash settlement of the option at its fair market value immediately before M becomes a nonmember, and proper adjustments must be made in the amount of any gain or loss subsequently realized from the position by M. If P grants M an option to acquire P stock in a transaction meeting the requirements of paragraph (f)(6)(ii) of this section, M is treated as having purchased the option from P for fair market value with cash contributed to M by P.

(B) *Mark-to-market of positions in P stock.* For purposes of paragraph (f)(6)(iii) of this section, gain or loss with respect to a position taken into account under section 1256(a) is treated as taken into account under section 475(a) to the extent that the gain or loss would be taken into account under the principles of section 475.

(v) *Effective date.* This paragraph (f)(6) applies to gain or loss taken into account on or after July 12, 1995, and to transactions occurring on or after July 12, 1995. For example, if S sells P stock to B at a loss prior to July 12, 1995, and B sells the P stock to a nonmember after July 12, 1995, S's loss is disallowed because it is taken into account after July 12, 1995. If a taxpayer takes a gain or loss into account or engages in a transaction on or after July 12, 1995, during a tax year ending prior to December 31, 1995, the taxpayer may treat the gain or loss or the transaction under the rules published in 1995–32 I.R.B. 47, instead of under the rules of this paragraph (f)(6).

* * * * *

Par. 4. In § 1.1502–13(g)(2)(i)(B), the last sentence is amended by removing the language ''paragraph (f)(4) of this section and § 1.1502–13T(f)(6)'' and adding ''paragraphs (f)(4) and (6) of this section.''

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: March 8, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 96–6151 Filed 3–13–96; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Parts 40, 42, 48, and 602

[TD 8659]

RIN 1545–AR92

Gasoline and Diesel Fuel Excise Tax; Registration Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the taxes on gasoline and diesel fuel. This document also removes obsolete excise tax regulations. The regulations reflect and implement certain changes made by the Omnibus Budget Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1993 (the 1993 Act). The regulations affect certain blenders, enterers, industrial users, refiners, terminal operators, and throughputters. The regulations also affect certain persons that sell, buy, or use diesel fuel for a nontaxable use.

EFFECTIVE DATE: These regulations are effective March 14, 1996.

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622–3130 (not a toll-free call).

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. 3507) under control number 1545–1418. Responses to this collection of information are mandatory and are required to obtain certain credits or payments.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid control number.

The estimated average annual reporting burden per respondent is .1 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.

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

Background

The Diesel Fuel Regulations

Before 1994, the diesel fuel tax applied to sales of diesel fuel by importers or producers (including registered wholesale distributors). Because of concerns that this system fostered considerable tax evasion, Congress made significant changes to the tax in the 1993 Act. Effective January 1, 1994, tax is imposed on diesel fuel when it is removed at the terminal rack, and diesel fuel may be removed tax free only if the fuel contains a prescribed type and amount of dye. These changes made the taxing point readily identifiable, required untaxed fuel to be physically identified (that is, dyed), and reduced the number of taxpayers.

Temporary regulations (TD 8496) relating to these changes (the diesel fuel regulations) were published in the Federal Register on November 30, 1993 (58 FR 63069), along with a notice of proposed rulemaking (PS–52–93) cross-referencing the temporary regulations (58 FR 63131). Amendments to these temporary regulations (TD 8512) relating to dye color and concentration were published in the Federal Register on December 27, 1993 (58 FR 68304), along with a notice of proposed rulemaking (PS–76–93) cross-referencing those amendments (58 FR 68338). Written comments responding to the proposed diesel fuel regulations were received and a public hearing was held on March 22, 1994. Final regulations (TD 8550) relating to dye color and concentration were published in the Federal Register on June 30, 1994 (59 FR 33656).

The Conforming Regulations

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 (the conforming regulations). The conforming regulations also proposed rules relating to gasohol and compressed natural gas.

Written comments regarding the proposed conforming regulations were received and a public hearing was held on January 11, 1995.

Final regulations (TD 8609) relating to gasohol and compressed natural gas were published in the Federal Register on August 7, 1995 (60 FR 40079).

The Final Regulations

After consideration of written comments and comments made at the public hearings, the proposed diesel fuel regulations and the proposed conforming regulations are adopted as revised by this Treasury decision. Comments and revisions are discussed below.

Significant Issues Raised in Comments and Changes Made in the Final Regulations

Treatment of Kerosene

The temporary diesel fuel regulations provide that kerosene would not be treated as diesel fuel before July 1, 1994, and invited comments on the treatment of kerosene after June 30, 1994. Notice 94–72 (1994–2 C.B. 553) informed taxpayers that the IRS was reviewing this issue and would not change the treatment of kerosene until the issuance of further guidance. The IRS is continuing its review of this issue. Accordingly, the final regulations do not treat kerosene as diesel fuel.

Because kerosene is not treated as diesel fuel, a person that adds kerosene to diesel fuel outside of the bulk transfer/terminal system generally must pay tax on the added kerosene and must be registered by the IRS.

Removal From Certain Refineries

The temporary diesel fuel regulations provide that tax is not imposed on the removal of undyed diesel fuel from an approved refinery for delivery to an approved terminal if the fuel is removed by rail car, the refinery and the terminal are operated by the same taxable fuel registrant, and the refinery is not served by pipeline or vessel.

One commentator noted that one of its refineries is not serviced by pipeline, vessel, or rail. In response to this comment, the final regulations expand this rule so that diesel fuel also may be removed tax free from an approved refinery that is not served by pipeline, vessel, or rail if the removal is by a trailer or semi-trailer and additional prescribed conditions are met.

Notice Relating to Sales and Removals of Dyed Diesel Fuel

The temporary diesel fuel regulations provide that terminal operators and others who sell dyed diesel fuel are responsible for informing their customers that the dyed fuel cannot be used for a taxable purpose and that a penalty may be imposed for taxable use (the notice requirement). Any person that fails to comply with the notice requirement is, for purposes of the penalty for misuse of dyed fuel imposed by section 6714, presumed to know that the dyed diesel fuel will not be used for a nontaxable use.

Under the final regulations, only terminal operators and certain retail sellers will be subject to the notice requirement. A terminal operator must comply with the notice requirement as one of the terms and conditions of its registration.

Visual Inspection Devices

The temporary diesel fuel regulations do not require the use of visual inspection devices and the final regulations continue this policy. The IRS will continue to evaluate the need for regulations addressing this issue. However, the use of visual inspection devices is encouraged so that the buyers and sellers of diesel fuel may readily determine whether the fuel may be used for a taxable use.

Back-Up Tax; Trains

A tax is imposed on the delivery of dyed diesel fuel into the fuel supply tank of a diesel-powered train. Under the temporary diesel fuel regulations, the operator of the train into which dyed fuel is delivered is liable for the tax.

Several commentators noted that a prevalent practice in the railroad industry is for one railroad's locomotives to be used to pull freight on another's track and to be fueled by the railroad that owns the track. In these situations, the identity of the operator is unclear.

In response to these comments, the final regulations provide that the person that delivers dyed diesel fuel into the fuel supply tank of a train is liable for the tax under certain prescribed conditions.

Credits and Payments

Information To Be Submitted With Claims

If undyed diesel fuel is used in a nontaxable use, a credit or payment is allowable to either (1) the ultimate purchaser or (2) in the case of diesel fuel used on a farm for farming purposes or by a State or local government, the registered ultimate vendor of the fuel. The temporary diesel fuel regulations prescribe the information that must be submitted to the IRS to support claims for these credits or payments.

Several commentators asserted that the information requirements in the diesel fuel temporary regulations are too burdensome. In response to these comments, the final regulations reduce the paperwork requirements for claimants by eliminating certain items from the list of required submissions. However, the paperwork requirements may be changed in the future if the IRS determines that additional information is necessary for effective enforcement of the tax.

Notice 94–61

Notice 94–61 (1994–1 C.B. 371) announced that the temporary diesel fuel regulations would be revised to clarify that (1) a registered ultimate vendor is the only person allowed a credit or payment with respect to diesel fuel used on a farm for farming purposes or by State or local governments, and (2) a credit or payment generally is allowed to a registered ultimate vendor who sells undyed diesel fuel to a custom harvester for use on a farm for farming purposes. The final regulations contain these revisions.

Undyed Diesel Fuel Mixed With Dyed Diesel Fuel

One condition for the allowance of a credit or payment under section 6427 is that tax must have been imposed on the diesel fuel to which the claim relates. Because untaxed diesel fuel is dyed, the temporary diesel fuel regulations require each claim to be accompanied by a statement that the diesel fuel covered by a claim did not contain visible evidence of dye.

On rare occasions, however, an amount of taxed diesel fuel may contain visible evidence of dye. This may occur, for example, when dyed diesel fuel and undyed diesel fuel are mixed together by a fuel marketer or user who accidentally delivers one type of fuel into a storage tank that already contains the other type of fuel.

The final regulations provide that each claim must be accompanied by a statement that tax has been imposed on the diesel fuel covered by a claim. Generally, this requirement will be met by a claimant's statement that the diesel fuel did not contain visible evidence of dye. However, for claims involving taxed fuel that has been mixed with dyed fuel, the claimant (that is, the ultimate purchaser or the registered ultimate vendor) cannot make such a statement. For these claims, the claimant must submit other evidence showing that the diesel fuel covered by the claim has been subject to tax. This evidence might include a statement from the person that produced the undyed/dyed fuel mixture explaining how the mixing occurred or a statement from the claimant (if the claimant did not produce the mixture) that explains when and from whom the claimant acquired the mixture. As with all claims, these claims are subject to review by the IRS before they are allowed.

Section 6714—Penalty

Section 6714(a)(3) provides that if any person willfully alters, or attempts to alter, the strength or composition of any dye or marking done pursuant to section 4082 in any dyed fuel, then such person shall pay a penalty in addition to the tax (if any).

Notice 94–21 (1994–1 C.B. 339) describes three situations in which the section 6714(a)(3) penalty does not apply. The final regulations incorporate the substance of the Notice. In addition, the final regulations provide that the section 6714(a)(3) penalty does not apply if dyed diesel fuel is blended with undyed diesel fuel and the blending occurs as part of an exempt or partially exempt (that is, bus or train) use. Thus, for example, the section 6714(a)(3) penalty does not apply if dyed and undyed diesel fuel are blended together in the fuel supply tank of a nonhighway vehicle such as a bulldozer or farm tractor.

Dye Injection Systems and Markers

The final regulations do not require the use of dye injection systems or markers. These topics will be addressed in a future notice of proposed rulemaking.

Effect on Other Documents

The following publications are obsolete as of March 14, 1996:

Rev. Rul. 72–213, 1972–1 C.B. 328.
Rev. Proc. 73–21, 1973–2 C.B. 471.
Notice 88–26, 1988–1 C.B. 495.
Notice 89–17, 1989–1 C.B. 647.
Notice 94–18, 1994–1 C.B. 338.
Notice 94–21, 1994–1 C.B. 339.
Notice 94–61, 1994–1 C.B. 371.
Notice 94–72, 1994–2 C.B. 553.

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 notices of proposed rulemaking preceding these regulations were submitted to the Small Business Administration for comment on their 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, 42, and 48

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, chapter I is amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by removing the entry for sections 40.6011(a)–1, 40.6011(a)–2, and 40.6011(a)–3T and adding entries in numerical order to read in part as follows:

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). * * *

Par. 2. Section 40.6011(a)–1(b) is amended by:

1. Redesignating the text of paragraph (b) following the heading as paragraph (b)(1) and adding a heading for newly designated paragraph (b)(1).

2. Adding paragraph (b)(2).

The additions read as follows:

§ 40.6011(a)-1 Returns.

* * * * *

(b) * * * (1) *In general.* * * *

(2) *Certain persons liable for tax on taxable fuel.* Effective January 1, 1994, 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) 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 a taxable fuel registrant at that time.

* * * * *

§ 40.6011(a)–3T [Removed]

Par. 3. Section 40.6011(a)–3T is removed.

PART 42—[REMOVED]

Par. 4. Part 42 is removed.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 5. The authority citation for part 48 is amended by removing the entries for sections 48.4081–4, 48.4082–1 and 48.4082–2T, 48.4101–3T, 48.4101–4T, 48.6427–8T and 48.6427–9T, and adding entries in numerical order to read in part as follows:

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

Section 48.4081–4 also issued under 26 U.S.C. 4083(a)(2). * * *

Section 48.4082–1 also issued under 26 U.S.C. 4082.

Section 48.4082–2 also issued under 26 U.S.C. 4082.

Section 48.4101–1 also issued under 26 U.S.C. 4101(a).

Section 48.4101–2 also issued under 26 U.S.C. 4101(d). * * *

Section 48.6427–8 also issued under 26 U.S.C. 6427(n).

Section 48.6427–9 also issued under 26 U.S.C. 6427(n).

Par. 6. Section 48.0–1 is amended by removing from the fourth sentence the language ''gasoline, diesel and aviation fuel,'' and adding ''taxable fuel, aviation fuel,'' in its place.

§ 48.4041–0T [Removed]

Par. 7. Section 48.4041–0T is removed.

Par. 8. Section 48.4041–0 is added to read as follows:

§ 48.4041–0 Applicability of regulations relating to diesel fuel after December 31, 1993.

Sections 48.4041–3 through 48.4041–17 do not apply to sales or uses of diesel fuel after December 31, 1993. For rules relating to the diesel fuel tax imposed by section 4041 after that date, see § 48.4082–4.

§§ 48.4041–1 and 48.4041–2 [Removed]

Par. 9. Sections 48.4041–1 and 48.4041–2 are removed.

§ 48.4041–2T [Removed]

Par. 10. Section 48.4041–2T is removed.

§ 48.4041–21 [Amended]

§§ 48.4041–15 through 48.4041–21 [Transferred]

Par. 11. Sections 48.4041–15 through 48.4041–21 are transferred from subpart G to subpart F.

§ 48.4041–21 [Amended]

Par. 12. In the first sentence of § 48.4041–21(c)(1), the language ''§ 48.4082–4T(c)(1) through (5)(A) or (c)(6) through (11)'' is removed and ''§ 48.4082–4(c)(1) through (c)(4)(i) or (c)(5) through (c)(10)'' is added in its place.

Par. 13. The heading for subpart G is revised to read as follows:

Subpart G—Fuel Used on Inland Waterways

Par. 14. Section 48.4042–1 is amended as follows:

1. Paragraphs (b) and (e) are revised.

2. In the introductory text of paragraph (f)(1), the language ''(26)'' is removed and ''(27)'' is added in its place.

3. Paragraphs (g)(25) and (g)(26) are redesignated as paragraphs (g)(26) and (g)(27), respectively, and a new paragraph (g)(25) is added.

The revisions and additions read as follows:

§ 48.4042–1 Tax on fuel used in commercial waterway transportation.

* * * * *

(b) *Amount of tax.* For the amount of tax, see section 4042(b).

* * * * *

(e) *Liquid fuel.* For purposes of the tax imposed under this section, liquid fuel means any liquid fuel including gasoline, diesel fuel, special motor fuel, or Bunker C residual fuel oil.

* * * * *

(g) * * *

(25) Tennessee-Tombigbee Waterway: From its confluence with the Tennessee River to the Warrior River at Demopolis, Alabama.

* * * * *

Par. 15. The heading for subpart H is revised to read as follows:

Subpart H—Motor Vehicles, Tires, Tubes, Tread Rubber, and Taxable Fuel

Par. 16. Section 48.4064–1(e)(2) is amended by removing the language ''Form 843'' and adding ''Form 8849 (or on such other form as the Commissioner may designate)'' in its place.

Par. 17. The undesignated center heading preceding § 48.4081–1 is revised to read as follows:

Taxable Fuel

Par. 18. Sections 48.4081–1, 48.4081–2 and 48.4081–3 are revised to read as follows:

§ 48.4081–1 Taxable fuel; definitions.

(a) *Overview.* This section provides definitions for purposes of the tax on taxable fuel imposed by section 4081.

(b) *Definitions.*

Approved terminal or refinery means a terminal or refinery that is operated, respectively, by a taxable fuel registrant that is a terminal operator, or by a taxable fuel registrant that is a refiner.

Blender means any person that produces blended taxable fuel.

Bulk transfer means any transfer of taxable fuel by pipeline or vessel.

Bulk transfer/terminal system means the taxable fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Thus, taxable fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer/terminal system. Taxable fuel in the fuel supply tank of any engine, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

Bus means automobile bus.

Diesel-powered boat means any waterborne vessel of any size or configuration that is propelled, in whole or in part, by a diesel-powered engine.

Diesel-powered bus means any bus that is propelled by a diesel-powered engine.

Diesel-powered highway vehicle means a highway vehicle, as defined in § 48.4041–8(b), that is propelled by a diesel-powered engine.

Diesel-powered train means any diesel-powered equipment or machinery that rides on rails. Thus, for example, the term includes a locomotive, work train, switching engine, and track maintenance machine.

Enterer generally means the importer of record (under customs law) with respect to the taxable fuel. However, if the importer of record is acting as an agent (for example, the importer of record is a customs broker engaged by the owner of the taxable fuel), the person for whom the agent is acting is the enterer. If there is no importer of record for taxable fuel entered into the United States, the owner of the taxable fuel at the time it is brought into the United States is the enterer.

Entry of taxable fuel into the United States occurs when—

(1) The taxable fuel is brought into the United States and applicable customs law requires that the taxable fuel be entered into the United States for consumption, use, or warehousing; or

(2) The taxable fuel is brought into the United States from Puerto Rico and applicable customs law would require that the taxable fuel be entered into the United States for consumption, use, or warehousing if the taxable fuel were brought into the United States from somewhere other than Puerto Rico.

Finished gasoline means all products (including gasohol (as defined in § 48.4081–6(b)(2))) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel, other than products that have an ASTM octane number of less than 75 as determined by the motor method.

Gasoline means finished gasoline and gasoline blendstocks.

Industrial user means any person that receives gasoline blendstocks by bulk transfer for its own use in the manufacture of any product other than finished gasoline.

Position holder means, with respect to taxable fuel in a terminal, the person that holds the inventory position in the taxable fuel, as reflected on the records of the terminal operator. A person holds the inventory position in taxable fuel when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the taxable fuel. The term also includes a terminal operator that owns taxable fuel in its terminal.

Rack means a mechanism for delivering taxable fuel from a refinery or terminal into a truck, trailer, railroad car, or other means of nonbulk transfer.

Refiner means any person that owns, operates, or otherwise controls a refinery.

Refinery means a facility used to produce taxable fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which taxable fuel may be removed by pipeline, by vessel, or at a rack. However, the term does not include a facility where only blended fuel or gasohol (as defined in § 48.4081–6(b)(2)), and no other type of taxable fuel, is produced. For this purpose blended fuel is any mixture that, if produced outside the bulk transfer/terminal system, would be blended taxable fuel.

Removal means any physical transfer of taxable fuel, and any use of taxable fuel other than as a material in the production of taxable fuel or special fuels (as defined in § 48.4041–8(f)). However, taxable fuel is not removed when it evaporates or is otherwise lost or destroyed.

Sale means—

(1) The transfer of title to, or substantial incidents of ownership in, taxable fuel (other than taxable fuel in a terminal) to the buyer for a consideration, which may consist of money, services, or other property; or

(2) The transfer of the inventory position in the taxable fuel in a terminal if the transferee becomes the position holder with respect to the taxable fuel.

State includes any State, any political subdivision of a State, the District of Columbia, the American Red Cross, and, subject to the limitations of section 7871, any Indian tribal government.

Taxable fuel means gasoline and diesel fuel.

Taxable fuel registrant means an enterer, industrial user, refiner, terminal operator, or throughputter that is registered under section 4101.

Terminal means a taxable fuel storage and distribution facility that is supplied by pipeline or vessel, and from which taxable fuel may be removed at a rack. However, the term does not include any facility at which gasoline blendstocks are used in the manufacture of products other than finished gasoline and from which no gasoline is removed.

Terminal operator means any person that owns, operates, or otherwise controls a terminal.

Throughputter means any person that—

(1) Owns taxable fuel within the bulk transfer/terminal system (other than in a terminal); or

(2) Is a position holder.

Vessel means a waterborne taxable fuel transporting vessel.

(c) *Blended taxable fuel, diesel fuel, and gasoline blendstocks; definitions*—(1) *Blended taxable fuel*—(i) *In general.* Except as provided in paragraphs (c)(1)(ii) and (c)(iii) of this section, *blended taxable fuel* means any mixture that is produced outside the bulk transfer/terminal system and that consists of—

(A) Taxable fuel with respect to which tax has been imposed under section 4041(a)(1) or 4081(a); and

(B) Any other liquid on which tax has not been imposed under section 4081.

(ii) *Exclusion; minor blending.* A mixture described in paragraph (c)(1)(i) of this section is not blended taxable fuel if, during the calendar quarter in which the blender removes or sells the mixture, all such mixtures removed or sold by the blender contain, in the aggregate, less than 400 gallons of liquid described in paragraph (c)(1)(i)(B) of this section.

(iii) *Exclusion; gasohol.* Blended taxable fuel does not include any gasohol (as defined in § 48.4081–6(b)(2)) if, disregarding the alcohol, the gasohol is not blended taxable fuel and contains, in addition to permitted amounts of liquids described in paragraph (c)(1)(i)(B) of this section, only gasoline with respect to which—

(A) Tax was imposed under section 4081(a) at a rate described in § 48.4081–6(e) (relating to the gasohol production tax rate and the gasohol tax rate); or

(B) A valid claim is made under section 6427(f).

(2) *Diesel fuel.* (i) Effective April 1, 1996, *diesel fuel* means any liquid (other than gasoline) that, without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle, diesel-powered train, or diesel-powered boat. However, *diesel fuel* does not include kerosene, No. 5 and No. 6 fuel oils (as described in ASTM Specification D 396, which may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428), or F–76 (Fuel Naval Distillate MIL-F–16884, which may be obtained from Standardization Document Order Desk, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111).

(ii) Before April 1, 1996, *diesel fuel* means any liquid (other than kerosene) that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle, diesel-powered train, or diesel-powered boat. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of the highway vehicle, train, or boat. A liquid may possess this practical and commercial fitness even though the specified use is not the liquid's predominant use. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of a highway vehicle, train, or boat.

(iii) *Cross reference.* For the tax on blended taxable fuel, see § 48.4081–3(g). For the back-up tax on certain uses of liquids other than diesel fuel, see § 48.4082–4.

(3) *Gasoline blendstocks*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, *gasoline blendstocks* means—
(A) Alkylate;
(B) Butane;
(C) Butene;
(D) Catalytically cracked gasoline;
(E) Coker gasoline;
(F) Ethyl tertiary butyl ether (ETBE);
(G) Hexane;
(H) Hydrocrackate;
(I) Isomerate;
(J) Methyl tertiary butyl ether (MTBE);
(K) Mixed xylene (not including any separated isomer of xylene);
(L) Natural gasoline;
(M) Pentane;
(N) Pentane mixture;
(O) Polymer gasoline;
(P) Raffinate;
(Q) Reformate;
(R) Straight-run gasoline;
(S) Straight-run naphtha;
(T) Tertiary amyl methyl ether (TAME);
(U) Tertiary butyl alcohol (gasoline grade) (TBA);
(V) Thermally cracked gasoline;
(W) Toluene; and
(X) Transmix containing gasoline.

(ii) *Exclusion. Gasoline blendstocks* does not include any product that cannot, without further processing, be used in the production of finished gasoline. For example, a mixed hydrocarbon stream that is produced in a natural gas processing plant is not a gasoline blendstock if the stream cannot be used to produce finished gasoline without further processing.

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

§ 48.4081–2 Taxable fuel; tax on removal at a terminal rack.

(a) *Overview.* This section provides the general rule that all removals of taxable fuel at a terminal rack are subject to tax and the position holder with respect to the fuel is liable for the tax.

(b) *Imposition of tax.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks) and § 48.4082–1 (relating to dyed diesel fuel), tax is imposed on the removal of taxable fuel from a terminal if the taxable fuel is removed at the rack.

(c) *Liability for tax*—(1) *In general.* The position holder with respect to the taxable fuel is liable for the tax imposed under paragraph (b) of this section.

(2) *Joint and several liability of terminal operator; unregistered position holder*—(i) *In general.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (b) of this section if—

(A) The position holder with respect to the taxable fuel is a person other than the terminal operator and is not a taxable fuel registrant; and

(B) The terminal operator has not met the conditions of paragraph (c)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under this paragraph (c)(2) if, at the time of the removal, the terminal operator—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (as described in § 48.4081–5) from the position holder; and

(C) Has no reason to believe that any information in the notification certificate is false.

(3) *Joint and several liability of terminal operator; incorrect information provided.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (b) of this section if, in connection with the removal of diesel fuel that is not dyed and marked in accordance with § 48.4082–1, the terminal operator provides any person (including the position holder with respect to the fuel) with any bill of lading, shipping paper, record, or similar document indicating that the diesel fuel is dyed and marked in accordance with § 48.4082–1.

(4) *Example.* The following example illustrates this paragraph (c) and § 48.4082–1:

Example. (i) TO is a terminal operator and PH is the position holder with respect to, and owner of, 8,000 gallons of diesel fuel stored in TO's terminal. TO and PH are taxable fuel registrants. When the fuel is removed from the terminal at the rack, the fuel is not dyed and marked in accordance with § 48.4082–1, and TO does not provide any person with any paperwork indicating that the fuel is dyed and marked. After the removal from the terminal, PH sells the fuel to individuals for use as heating oil, a nontaxable use.

(ii) Because PH is the position holder of the fuel at the time of the removal from the terminal, PH is liable for the tax imposed by section 4081. The removal is subject to tax because the fuel is not dyed and marked in accordance with § 48.4082–1, and later use of the fuel in a nontaxable use does not make the removal from the terminal exempt from tax.

(iii) Because PH is a taxable fuel registrant and TO did not provide any person with any paperwork indicating that the fuel is dyed and marked, TO is not jointly and severally liable for tax under paragraph (c) (2) or (3) of this section.

(d) *Rate of tax.* For the rate of tax generally, see section 4081(a). For the rate of tax on gasohol and on gasoline removed for gasohol production, see § 48.4081–6.

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

§ 48.4081–3 Taxable fuel; taxable events other than removal at the terminal rack.

(a) *Overview.* Although tax is imposed when taxable fuel is removed from the terminal at the rack, tax also is imposed in certain other situations described in this section. For the back-up tax on the use of dyed diesel fuel, see § 48.4082–4.

(b) *Tax on removal from a refinery*—(1) *Imposition of tax.* Except as provided in paragraph (b)(2) of this section (relating to an exemption for certain refineries), § 48.4081–4 (relating to gasoline blendstocks), and § 48.4082–1 (relating to dyed diesel fuel), tax is imposed on the following removals from a refinery:

(i) A removal by bulk transfer if the refiner or the owner of the taxable fuel immediately before the removal is not a taxable fuel registrant.

(ii) A removal at the rack.

(iii) After September 30, 1995, a removal of a batch of gasohol from an approved refinery by bulk transfer if the refiner treats itself with respect to the removal as a person that is not registered under section 4101. See § 48.4101–1(a). For the rule providing that no deposit is required in the case of the tax imposed under this paragraph (b)(1)(iii), see § 40.6302(c)–1(e)(4) of this chapter. For the rule allowing inspections of facilities where gasohol is produced, see section 4083.

(2) *Exception for certain refineries.* The tax imposed under paragraph (b)(1)(ii) of this section does not apply to a removal of taxable fuel if—

(i) The taxable fuel is removed from an approved refinery that is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel;

(ii) The taxable fuel is received at a facility that is operated by a taxable fuel registrant and is located within the bulk transfer/terminal system;

(iii) The removal from the refinery is by—

(A) Rail car; or

(B) In the case of diesel fuel, a trailer or semi-trailer that is used exclusively for the transport service described in paragraphs (b)(2)(i) and (b)(2)(ii) of this section;

(iv) In the case of taxable fuel removed by rail car, the facility at which the fuel is received is operated by the same person that operates the refinery from which the fuel was removed; and

(v) In the case of diesel fuel removed by a trailer or semi-trailer, the facility at which the fuel is received is less than

20 miles from the refinery from which the diesel fuel was removed.

(3) *Liability for tax.* The refiner is liable for the tax imposed under paragraph (b)(1) of this section.

(c) *Tax on entry into the United States*—(1)*Imposition of tax.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks) and § 48.4082–1 (relating to dyed diesel fuel), a tax is imposed on the entry of taxable fuel into the United States if—

(i) The entry is by bulk transfer and the enterer is not a taxable fuel registrant; or

(ii) The entry is not by bulk transfer.

(2) *Liability for tax.* The enterer is liable for the tax imposed under paragraph (c)(1) of this section.

(d) *Tax on bulk transfers from a terminal by an unregistered position holder*—(1) *Imposition of tax.* A tax is imposed on the removal by bulk transfer of taxable fuel from a terminal if the position holder with respect to the taxable fuel is not a taxable fuel registrant.

(2) *Liability for tax*—(i) *In general.* The position holder with respect to the taxable fuel is liable for the tax imposed under paragraph (d)(1) of this section.

(ii) *Joint and several liability of terminal operator.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (d)(1) of this section if—

(A) The position holder with respect to the taxable fuel is a person other than the terminal operator; and

(B) The terminal operator has not met the conditions of paragraph (d)(2)(iii) of this section.

(iii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under this paragraph (d)(2) if, at the time of the bulk transfer, the terminal operator—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the position holder; and

(C) Has no reason to believe that any information in the notification certificate is false.

(e) *Tax on bulk transfers not received at an approved terminal or refinery*—(1) *Imposition of tax.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks) and § 48.4082–1 (relating to dyed diesel fuel), a tax on taxable fuel is imposed if—

(i) Taxable fuel is removed by bulk transfer from a refinery or terminal, or entered by bulk transfer into the United States;

(ii) No tax was imposed on such removal or entry under paragraph (b), (c), or (d) of this section; and

(iii) Upon removal from the pipeline or vessel, the taxable fuel is not received at an approved terminal or refinery (or at another pipeline or vessel).

(2) *Liability for tax*—(i) *In general.* The owner of the taxable fuel when it is removed from the pipeline or vessel is liable for the tax imposed under paragraph (e)(1) of this section if the owner has not met the conditions of paragraph (e)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* An owner of taxable fuel is not liable for tax under paragraph (e)(2)(i) of this section if, at the time the taxable fuel is removed from the pipeline or vessel, the owner of the taxable fuel—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the operator of the terminal or refinery where the taxable fuel is received; and

(C) Has no reason to believe that any information in the notification certificate is false.

(iii) *Liability of the operator of the facility where the taxable fuel is received.* The operator of the facility where the taxable fuel is received is liable for the tax imposed under paragraph (e)(1) of this section if the owner of the taxable fuel has met the conditions of paragraph (e)(2)(ii) of this section and is jointly and severally liable for the tax if the owner has not met such conditions.

(f) *Tax on sales within the bulk transfer/terminal system*—(1) *Imposition of tax.* Except as provided in paragraph (f)(2) of this section and § 48.4082–1 (relating to dyed diesel fuel), a tax is imposed on the sale of taxable fuel located within the bulk transfer/terminal system if the sale is to a person that is not a taxable fuel registrant and tax has not been imposed on such taxable fuel under § 48.4081–2, or paragraph (b), (c), (d), or (e) of this section.

(2) *Exception for certain sales of taxable fuel for export.* The tax imposed under paragraph (f)(1) of this section does not apply to a sale of taxable fuel if—

(i) The buyer's principal place of business is not within the United States;

(ii) The sale of the fuel occurs as the fuel is delivered into a transport vessel;

(iii) The vessel has a capacity of at least 20,000 barrels of fuel;

(iv) The seller is a taxable fuel registrant and the exporter of record of the fuel; and

(v) The fuel was exported in due course.

(3) *Liability for tax*—(i) *In general.* The seller of the taxable fuel is liable for the tax imposed under paragraph (f)(1) of this section if the seller has not met the conditions of paragraph (f)(3)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A seller is not liable for tax under paragraph (f)(3)(i) of this section if, at the time of the sale, the seller—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the buyer; and

(C) Has no reason to believe that any information in the certificate is false.

(iii) *Liability of the buyer.* The buyer of the taxable fuel is liable for the tax imposed under paragraph (f)(1) of this section if the seller of the taxable fuel has met the conditions of paragraph (f)(3)(ii) of this section and is jointly and severally liable for the tax if the seller has not met such conditions.

(4) *Example.* The following example illustrates this paragraph (f) and the definition of the term *sale* in § 48.4081–1:

Example. PH owns one million gallons of untaxed gasoline that is stored in TO's terminal. PH also is the position holder with respect to the gasoline. While the gasoline remains stored in the terminal, PH transfers title to 200,000 gallons of the gasoline to A, a person that is not a taxable fuel registrant. PH continues to hold the inventory position on TO's records with respect to the one million gallons. Because PH continues as the position holder with respect to the gasoline, the transfer of title to the gasoline from PH to A is not a sale of gasoline. Because this transfer of title from PH to A is not a sale of gasoline, the tax imposed under paragraph (f) of this section does not apply to the transfer.

(g) *Tax on removal or sale of blended taxable fuel by the blender*—(1) *Imposition of tax.* A tax is imposed on the removal or sale of blended taxable fuel by the blender thereof. Tax is computed on the difference between the total number of gallons of blended taxable fuel removed or sold and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel. For this purpose, the alcohol in gasohol is treated as previously taxed taxable fuel.

(2) *Liability for tax.* The blender is liable for the tax imposed under paragraph (g)(1) of this section.

(3) *Example.* The following example illustrates the provisions of this paragraph (g) and the definition of the term *blended taxable fuel* in § 48.4081–1(c):

Example. (i) X, a gasoline wholesale distributor, buys 9,500 gallons of gasoline at a terminal rack. The gasoline is delivered into a tank trailer. The position holder is liable for tax under § 48.4081–2 when the gasoline is removed at the rack. X then goes to another location where 500 gallons of alcohol (a substance not subject to tax under section 4081) are delivered into the tank

trailer already containing the 9,500 gallons of gasoline. The gasoline and alcohol are splash blended as X drives to X's retail service station where X pumps the blended gasoline into a storage tank for sale to consumers.

(ii) X is a blender within the meaning of § 48.4081–1 because X has produced blended taxable fuel, as defined in § 48.4081–1, by mixing the 9,500 gallons of gasoline on which tax has been imposed under § 48.4081–2(b) with 500 gallons of alcohol, a substance not subject to tax under section 4081. The 10,000 gallon mixture is not gasohol because it does not satisfy the alcohol-content requirement described in § 48.4081–6(b)(2). X, the blender, is liable for the tax imposed under this paragraph (g) on the blended gasoline. The tax is imposed when the blended gasoline is removed from the tank trailer at the retail station. Tax on the blended mixture is computed on 500 gallons, the number of gallons not previously subject to tax under section 4081.

(h) *Rate of tax.* For the rate of tax generally imposed under this section, see section 4081(a). For the rate of tax on gasohol and on gasoline removed or entered for gasohol production, see § 48.4081–6.

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

Par. 19. Section 48.4081–4 is amended as follows:

1. The heading for § 48.4081–4 is revised.

2. In paragraph (a), the language ''to produce gasoline'' is removed and ''to produce finished gasoline'' is added in its place.

3. In paragraph (b)(1)(i), the language ''gasoline registrant'' is removed and ''taxable fuel registrant'' is added in its place.

4. In paragraph (b)(1)(ii), the language ''gasoline (as defined in § 48.4081–1(i)(1))'' is removed and ''finished gasoline'' is added in its place.

5. In paragraphs (b)(2)(i) and (c)(1), the language ''gasoline registrant'' is removed each place it appears and ''taxable fuel registrant'' is added in its place.

6. The language ''and'' is added following the semicolon at the end of paragraph (c)(2).

7. Paragraph (c)(3) is revised.

8. Paragraph (c)(4) is removed.

9. In paragraph (d), the language ''gasoline registrant'' is removed and ''taxable fuel registrant'' is added in its place.

10. In paragraphs (e)(2) and (e)(3), the language ''production of gasoline'' is removed each place it appears and ''production of finished gasoline'' is added in its place.

11. In paragraph (e)(3), the language ''to produce gasoline'' is removed each place it appears, and ''to produce finished gasoline'' is added in its place.

12. In paragraph (f), the language ''1993'' is removed and ''1994'' is added in its place.

The revisions read as follows:

§ 48.4081–4 Gasoline; special rules for gasoline blendstocks.

* * * * *

(c) * * *

(3) Has no reason to believe that any information in the certificate is false.

* * * * *

Par. 20. Section 48.4081–5 is amended as follows:

1. The heading for § 48.4081–5 is revised to read as follows:

§ 48.4081–5 Taxable fuel; notification certificate of taxable fuel registrant.

2. In paragraph (a), the first sentence in paragraph (b)(1) introductory text, and paragraph (b)(2), the language ''gasoline'' is removed each place it appears and ''taxable fuel'' is added in its place.

3. In paragraph (b)(3), the language ''or letter of registration'' is added after ''Form 637'' in the heading and after ''(Form 637)'' in the text.

4. In paragraph (c), the language ''1993'' is removed and ''1994'' is added in its place.

Par. 21. The heading for § 48.4081–6 is revised to read as follows:

§ 48.4081–6 Gasoline; gasohol.

§ 40.4081–7 [Amended]

Par. 22. Section 48.4081–7 is amended as follows:

1. In paragraph (c)(2), two new listings are added at the end of the listings in line 5 of the taxpayer's report:

''_____ Removal at the terminal rack
_____ Removal or sale by the blender''

2. In paragraph (c)(4)(i)(A) and the first sentence of paragraph (c)(4)(iii), the language ''§ 48.4081–1(r))'' is removed and ''§ 48.4081–1))'' is added in its place.

Par. 23. Section 48.4081–8 is revised to read as follows:

§ 48.4081–8 Taxable fuel; measurement.

(a) *In general.* For purposes of the tax imposed by section 4081, gallons of taxable fuel may be measured on the basis of—

(1) Actual volumetric gallons;

(2) Gallons adjusted to 60 degrees Fahrenheit; or

(3) Any other temperature adjustment method approved by the Commissioner.

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

§§ 48.4081–10T, 48.4081–11T, and 48.4081–12T [Removed]

Par. 24. Sections 48.4081–10T through 48.4081–12T are removed.

Par. 25. Section 48.4082–1 is revised to read as follows:

§ 48.4082–1 Diesel fuel tax; exemption.

(a) *Exemption.* Tax is not imposed by section 4081 on the removal, entry, or sale of any diesel fuel if—

(1) The person otherwise liable for tax is a taxable fuel registrant;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3) The diesel fuel satisfies the dyeing and marking requirements of paragraphs (b), (c), and (d) of this section.

(b) *Dyeing requirements.* Diesel fuel satisfies the dyeing requirement of this paragraph (b) only if it contains—

(1) The dye Solvent Red 164 (and no other dye) at a concentration spectrally equivalent to at least 3.9 pounds of the solid dye standard Solvent Red 26 per thousand barrels of diesel fuel; or

(2) Any dye of a type and in a concentration that has been approved by the Commissioner.

(c) *Marking requirements.* [Reserved]

(d) *Time for adding the dye and marker.* [Reserved]

(e) *Effective date.* This section is effective March 14, 1996.

§§ 48.4082–2T, 48.4082–3T, 48.4082–4T and 48.4083 [Removed]

Par. 26. Sections 48.4082–2T, 48.4082–3T, 48.4082–4T, and 48.4083 are removed.

Par. 27. Sections 48.4082–2, 48.4082–3, 48.4082–4, and 48.4083–1 are added to read as follows:

§ 48.4082–2 Diesel fuel tax; notice required with respect to dyed diesel fuel.

(a) *In general.* A legible and conspicuous notice stating: *DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE* must be posted by a seller on any retail pump or other delivery facility where it sells dyed diesel fuel for use by its buyer. Any seller that fails to post the required notice on any retail pump or other delivery facility where it sells dyed diesel fuel is, for purposes of the penalty imposed by section 6714, presumed to know that the fuel will not be used for a nontaxable use.

(b) *Cross reference; terminal operators.* For the requirement that terminal operators provide a notice with respect to dyed diesel fuel, see § 48.4101–1(h)(3) (relating to terms and conditions of registration for terminal operators).

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

§ 48.4082–3 Diesel fuel; visual inspection devices. [Reserved]

§ 48.4082–4 Diesel fuel; back-up tax.

(a) *Imposition of tax*—(1) *In general.* Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered highway vehicle (other than a diesel-powered bus) or diesel-powered boat of—

(i) Any diesel fuel on which tax has not been imposed by section 4081;

(ii) Any diesel fuel on which a credit or payment has been allowed under section 6427; or

(iii) Any liquid other than gasoline or diesel fuel.

(2) *Liability for tax*—(i) *In general.* The operator of the highway vehicle or boat into which the fuel is delivered is liable for the tax imposed under paragraph (a)(1) of this section.

(ii) *Joint and several liability of the seller.* The seller of the fuel is jointly and severally liable for the tax imposed under paragraph (a)(1) of this section if the seller knows or has reason to know that the fuel will not be used in a nontaxable use.

(3) *Rate of tax.* The rate of tax is the rate imposed on diesel fuel by section 4081(a).

(b) *Tax on diesel fuel; buses and trains*—(1) *In general.*Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered bus or a diesel-powered train of—

(i) Any diesel fuel on which tax has not been imposed by section 4081;

(ii) Any diesel fuel on which a credit or payment has been allowed under section 6427; or

(iii) Any liquid other than gasoline or diesel fuel.

(2) *Liability for tax*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, the operator of the bus or train into which the fuel is delivered is liable for the tax imposed under paragraph (b)(1) of this section.

(ii) *Special rule for certain train operators.* The person that delivers the fuel into the fuel supply tank of a train, rather than the train operator, is liable for the tax imposed under paragraph (b)(1) of this section if, at the time of the delivery—

(A) The deliverer of the fuel and the operator of the train are both registered as train operators under § 48.4101–1; and

(B) A written agreement between the deliverer of the fuel and the operator requires the deliverer to pay the tax imposed under paragraph (b)(1) of this section.

(3) *Rate of tax*—(i) *Buses*—(A) *In general.* The rate of tax under paragraph (b)(1) of this section is the sum of the rates described in sections 4041(a)(1)(C)(iii)(I) and 4041(d)(1) (the bus rate) if the bus is used to furnish (for compensation) passenger land transportation available to the general public and either such transportation is scheduled and along regular routes or the seating capacity of the bus is at least 20 adults (not including the driver). A bus is available to the general public if the bus is available for hire to more than a limited number of persons, groups, or organizations.

(B) *Other uses.* The rate of tax under paragraph (b)(1) of this section is the rate of tax imposed on diesel fuel by section 4081(a) if the bus is used for a purpose other than that described in paragraph (b)(3)(i)(A) of this section.

(ii) *Trains.* The rate of tax under paragraph (b)(1) of this section is the rate prescribed in section 4041 for diesel fuel sold for use in a train (the train rate).

(4) *Cross reference.* For the registration requirement relating to certain bus and train operators, see § 48.4101–1(c)(2).

(c) *Exemptions.* The taxes imposed under paragraphs (a) and (b) of this section do not apply to a delivery of any liquid for—

(1) Use on a farm for farming purposes as that term and related terms are defined in § 48.6420–4 (a) through (g);

(2) The exclusive use of a State;

(3) Use described in section 4041(h) (relating to use in a vehicle owned by an aircraft museum);

(4) Use in a boat employed in—

(i) The business of commercial fishing;

(ii) The business of transporting persons or property for compensation or hire; or

(iii) Any other trade or business, unless the boat is used in any activity of a type generally considered to constitute entertainment, amusement, or recreation (within the meaning of section 274(a)(1)(A) and the regulations under that section);

(5) Use in a bus while the bus is engaged in the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C));

(6) Use in a qualified local bus (as defined in section 6427(b)(2)(D)) while the bus is engaged in furnishing (for compensation) intracity passenger land transportation that is available to the general public and is scheduled and along regular routes;

(7) Use in a highway vehicle that—

(i) Is not registered (and is not required to be registered) for highway use under the laws of any State or foreign country; and

(ii) Is used in the operator's trade or business or in an activity of the operator described in section 212 (relating to the production of income);

(8) The exclusive use of a nonprofit educational organization, as defined in § 48.4221–6(b);

(9) Use in a highway vehicle that is owned by the United States and is not used on the highway; or

(10) Use in any boat operated by the United States for the exclusive use of the United States or any vessel of war of any foreign nation, as described in § 48.4221–4(b)(5).

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

§ 48.4083–1 Taxable fuel; administrative authority.

(a) *In general*—(1) *Authority to inspect.* Officers or employees of the IRS designated by the Commissioner, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized to enter any place and to conduct inspections in accordance with paragraphs (a) through (c) of this section.

(2) *Reasonableness.* Inspections will be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.

(b) *Place of inspection*—(1) *In general.* Inspections may be at any place at which taxable fuel is (or may be) produced or stored or at any inspection site where evidence of activities described in section 6714(a) may be discovered. These places may include, but are not limited to—

(i) Any terminal;

(ii) Any fuel storage facility that is not a terminal;

(iii) Any retail fuel facility; or

(iv) Any designated inspection site.

(2) *Designated inspection sites.* A designated inspection site is any State highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Commissioner to be used as a fuel inspection site. A designated inspection site will be identified as a fuel inspection site.

(c) *Scope of inspection*—(1) *Inspection.* Officers or employees may physically inspect, examine or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of fuel, fuel dyes, or fuel markers. Inspection may also be made of any equipment used for, or in connection with, production, storage, or

transportation of fuel, fuel dyes, or fuel markers. This includes any equipment used for the dyeing or marking of fuel. This also includes books and records, if any, that are maintained at the place of inspection and are kept to determine excise tax liability under section 4081.

(2) *Detainment.* Officers or employees may detain any vehicle, train, or boat for the purpose of inspecting its fuel tanks and storage tanks. Detainment will be either on the premises under inspection or at a designated inspection site. Detainment may continue for such reasonable period of time as is necessary to determine the amount and composition of the fuel.

(3) *Removal of samples.* Officers or employees may take and remove samples of fuel in such quantities as are reasonably necessary to determine the composition of the fuel.

(d) *Refusal to submit to inspection*—(1) *Imposition of penalty.* Any person that refuses to allow an inspection will be fined $1,000 for each refusal. This penalty is in addition to any other penalty or tax that may be imposed upon that person or any other person liable for tax under section 4081 or penalty under section 6714.

(2) *Assessment of penalty.* This penalty is an assessable penalty and is assessed in accordance with section 6671.

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

Par. 28. The undesignated center heading preceding § 48.4101–1 is removed.

Par. 29. Section 48.4101–1 is revised to read as follows:

§ 48.4101–1 Registration.

(a) *In general.* (1) This section provides rules relating to registration under section 4101 for purposes of the federal excise tax on taxable fuel imposed by sections 4041(a)(1) and 4081 and the credit or payment allowed to registered ultimate vendors of diesel fuel under section 6427.

(2) A person is registered under section 4101 only if the district director has issued a registration letter to the person and the registration has not been revoked or suspended.

(3) A refiner that is registered under section 4101 may, with respect to the bulk removal of any batch of gasohol from its refinery, treat itself as a person that is not registered. See § 48.4081–3(b)(1)(iii).

(4) Each business unit that has, or is required to have, a separate employer identification number is treated as a separate person. Thus, two business units (for example, a parent corporation and a subsidiary corporation, or a proprietorship and a related partnership), each of which has a different employer identification number, are two persons.

(5) A registration in effect on December 31, 1993, with respect to the tax on gasoline or diesel fuel is subject to the district director's review, and to revocation or suspension, under the standards set forth in this section, but remains in effect until the earlier of—

(i) The effective date of a registration issued under paragraph (g)(3) of this section; or

(ii) The effective date of the revocation or suspension of the registration under paragraph (i) of this section.

(b) *Definitions*—(1) *Applicant.* An *applicant* is a person that has applied for registration under paragraph (e) of this section.

(2) *Bonded registrant.* A *bonded registrant* is a person that has given a bond to the district director under paragraph (j) of this section as a condition of registration.

(3) *Gasohol bonding amount.* The *gasohol bonding amount* is the product of—

(i) The rate of tax applicable to later separation, as described in § 48.4081–6(f)(1)(iii); and

(ii) The total number of gallons of gasoline expected to be bought at the gasohol production tax rate by the gasohol blender during a representative 6-month period (as determined by the district director).

(4) *Penalized for a wrongful act.* A person has been *penalized for a wrongful act* if the person has—

(i) Been assessed any penalty under chapter 68 of the Internal Revenue Code (or similar provision of the law of any State) for fraudulently failing to file any return or pay any tax, and the penalty has not been wholly abated, refunded, or credited;

(ii) Been assessed any penalty under chapter 68 of the Internal Revenue Code, such penalty has not been wholly abated, refunded, or credited, and the district director determines that the conduct resulting in the penalty is part of a consistent pattern of failing to deposit, pay, or pay over a substantial amount of tax;

(iii) Been convicted of a crime under chapter 75 of the Internal Revenue Code (or similar provision of the law of any State), or of conspiracy to commit such a crime, and the conviction has not been wholly reversed by a court of competent jurisdiction;

(iv) Been convicted, under the laws of the United States or any State, of a felony for which an element of the offense is theft, fraud, or the making of false statements, and the conviction has not been wholly reversed by a court of competent jurisdiction;

(v) Been assessed any tax under section 4103 and the tax has not been wholly abated, refunded, or credited; or

(vi) Had its registration under section 4101 or 4222 revoked.

(5) *Related person.* A *related person* is a person that—

(i) Directly or indirectly exercises control over an activity of the applicant if the activity is described in paragraph (c)(1) or (d) of this section;

(ii) Owns, directly or indirectly, five percent or more of the applicant;

(iii) Is under a duty to assure the payment of a tax for which the applicant is responsible;

(iv) Is a member, with the applicant, of a group of organizations (as defined in § 1.52–1(b) of this chapter) that would be treated as a group of trades or businesses under common control for purposes of § 1.52–1 of this chapter; or

(v) Distributed or transferred assets to the applicant in a transaction in which the applicant's basis in the assets is determined by reference to the basis of the assets in the hands of the distributor or transferor.

(6) *Registrant.* A *registrant* is a person that the district director has, in accordance with paragraph (g)(3) of this section, registered under section 4101 and whose registration has not been revoked or suspended.

(c) *Persons required to be registered*—(1) *In general.* A person is required to be registered under section 4101 if the person is a—

(i) Blender;
(ii) Enterer;
(iii) Refiner;
(iv) Terminal operator; or
(v) Position holder.

(2) *Bus and train operators.* Every operator of a bus or train is required to be registered under section 4101 at any time it incurs any liability for tax under section 4041 at the bus rate (as described in § 48.4082–4(b)(3)(i)) or the train rate (as described in § 48.4082–4(b)(3)(ii)).

(3) *Consequences of failing to register.* For the criminal penalty imposed for failure to register, see section 7232. For the civil penalty imposed for failure to register, see section 7272.

(d) *Persons that may, but are not required to, be registered.* A person may, but is not required to, be registered under section 4101 if the person is a—

(1) Gasohol blender;
(2) Industrial user;
(3) Throughputter that is not a position holder; or
(4) Ultimate vendor of diesel fuel.

(e) *Application instructions.* Application for registration under section 4101 must be made in accordance with the instructions for Form 637 (or such other form as the Commissioner may designate).

(f) *Registration tests*—(1) *In general*—(i) *Persons other than ultimate vendors.* Except as provided in paragraph (f)(1)(ii) of this section, the district director will register an applicant only if the district director determines that the applicant meets the following three tests (collectively, the registration tests):

(A) The activity test of paragraph (f)(2) of this section.

(B) The acceptable risk test of paragraph (f)(3) of this section.

(C) The adequate security test of paragraph (f)(4) of this section.

(ii) *Ultimate vendors.* The district director will register an applicant as an ultimate vendor of diesel fuel only if the district director—

(A) Determines that the applicant meets the activity test of paragraph (f)(2) of this section; and

(B) Is satisfied with the filing, deposit, payment, and claim history for all federal taxes of the applicant and any related person.

(2) *The activity test.* An applicant meets the activity test of this paragraph (f)(2) only if the district director determines that the applicant—

(i) Is, in the course of its trade or business, regularly engaged as an operator of a bus or train or in the characteristic activity of a person described in paragraph (c)(1) or (d) of this section; or

(ii) Is likely to be (because of such factors as the applicant's business experience, financial standing, or trade connections), in the course of its trade or business, regularly engaged as an operator of a bus or train or in the characteristic activity of a person described in paragraph (c)(1) or (d) of this section within a reasonable time after becoming registered under section 4101.

(3) *Acceptable risk test*—(i) *In general.* An applicant meets the acceptable risk test of this paragraph (f)(3) only if—

(A) Neither the applicant nor a related person has been penalized for a wrongful act; or

(B) Even though the applicant or a related person has been penalized for a wrongful act, the district director determines, after review of evidence offered by the applicant, that the registration of the applicant does not create a significant risk of nonpayment or late payment of the tax imposed by sections 4041(a)(1) and 4081.

(ii) *Significant risk of nonpayment or late payment of tax.* In making the determination described in paragraph (f)(3)(i)(B) of this section, the district director may consider factors such as the following:

(A) The time elapsed since the applicant or related person was penalized for a wrongful act.

(B) The present relationship between the applicant and any related person that was penalized for any wrongful act.

(C) The degree of rehabilitation of the person penalized for any wrongful act.

(D) The amount of bond given by the applicant. In this regard, the district director may accept a bond under paragraph

(j) of this section, without regard to the limits on the amount of the bond set by paragraph (j)(2) of this section.

(4) *Adequate security test*—(i) *In general.* An applicant meets the adequate security test of this paragraph (f)(4) only if the district director determines that the applicant has both adequate financial resources and a satisfactory tax history, or the applicant gives the district director a bond (under the provisions of paragraph (j) of this section).

(ii) *Adequate financial resources*—(A) *In general.* An applicant has adequate financial resources only if the district director determines that the applicant is financially capable of paying—

(*1*) Its expected tax liability under sections 4041(a)(1) and 4081 for a representative 6-month period (as determined by the district director);

(*2*) In the case of a terminal operator, the expected tax liability under section 4081 of persons other than the terminal operator with respect to taxable fuel removed at the racks of its terminals during a representative 1-month period (as determined by the district director); and

(*3*) In the case of a gasohol blender, the gasohol bonding amount.

(B) *Basis for determination.* The determination under this paragraph (f)(4)(ii) must be based on financial information such as the applicant's income statement, balance sheet or bond ratings, or other information related to the applicant's financial status.

(iii) *Satisfactory tax history.* An applicant has a satisfactory tax history only if the district director is satisfied with the filing, deposit, and payment history for all federal taxes of the applicant and any related person.

(g) *Action on the application by the district director*—(1) *Review of application.* The district director may investigate the accuracy and completeness of any representations made by an applicant, request any additional relevant information from the applicant, and inspect the applicant's premises during normal business hours without advance notice.

(2) *Denial.* If the district director determines that an applicant does not meet all of the applicable registration tests described in paragraph (f) of this section, the district director must notify the applicant, in writing, that its application for registration is denied and state the basis for the denial.

(3) *Approval.* If the district director determines that an applicant meets all of the applicable registration tests described in paragraph (f) of this section, the district director must register the applicant under section 4101 and issue the applicant a letter of registration containing the effective date of the registration. The effective date of the registration must be no earlier than the date on which the district director signs the letter of registration. A copy of an application for registration (Form 637) is not a letter of registration.

(h) *Terms and conditions of registration*—(1) *Affirmative duties.* Each registrant must—

(i) Make deposits, file returns, and pay taxes required by the Internal Revenue Code and the regulations;

(ii) Keep records sufficient to show the registrant's tax liability under sections 4041(a)(1) and 4081 and payments or deposits of such liability;

(iii) Make all information reports required under section 4101(d) and § 48.4101–2;

(iv) Make available for inspection on demand by the Internal Revenue Service during normal business hours records relevant to a determination of tax liability under sections 4041(a)(1) and 4081; and

(v) Notify the district director of any change (such as a change in ownership) in the information the registrant submitted in connection with its application for registration, or previously submitted under this paragraph (h)(1)(v), within 10 days after the change occurs.

(2) *Prohibited actions.* A registrant may not—

(i) Sell, lease or otherwise allow another person to use its registration;

(ii) Make any false statement to the district director in connection with a submission under paragraph (h)(1) or (h)(3) of this section;

(iii) Make any false statement on, or violate the terms of—

(A) A notification certificate of a taxable fuel registrant (as described in § 48.4081–5(b)); or

(B) A certificate of a registered gasohol blender (as described in § 48.4081–6(c)(2)).

(3) *Additional terms and conditions for terminal operators*—(i) *Notice*

required with respect to dyed diesel fuel. A legible and conspicuous notice stating: *DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE* must be provided by each terminal operator to any person that receives dyed diesel fuel at a terminal rack of that operator. This notice must be provided by the time of the removal and must appear on all shipping papers, bills of lading, and similar documents that are provided by the terminal operator to accompany the removal of the fuel.

(ii) *Records to be maintained relating to removals of diesel fuel.* Each terminal operator must keep the following information with respect to each rack removal of diesel fuel at each terminal it operates:

(A) The bill of lading or other shipping document.

(B) The record of whether the fuel was dyed and marked in accordance with § 48.4082–1.

(C) The volume and date of the removal.

(D) The identity of the person, such as a common carrier, that physically received the fuel.

(E) Any other information required by the Commissioner.

(iii) *Records to be maintained relating to dye.* With respect to each of its terminals, a terminal operator must keep records relating to dye inventories and usage.

(iv) *Retention of information.* In addition to any other requirement relating to the retention of records, the terminal operator must—

(A) Maintain the information described in paragraph (h)(3)(ii) of this section at the terminal from which the removal occurred for at least 3 months after the removal to which it relates; and

(B) Maintain the information described in paragraph (h)(3)(iii) of this section at the terminal where the dye was received for at least 3 months after the receipt.

(v) *Prohibition on providing incorrect information.* In connection with the removal of diesel fuel that is not dyed and marked in accordance with § 48.4082–1, a terminal operator may not provide any person (including the position holder with respect to the fuel) with any bill of lading, shipping paper, or similar document indicating that the diesel fuel is dyed and marked in accordance with § 48.4082–1.

(i) *Adverse actions by the district director against a registrant*—(1) *Mandatory revocation or suspension.* The district director must revoke or suspend the registration of any registrant if the district director determines that the registrant, at any time—

(i) Does not meet one or more of the applicable registration tests under paragraph (f) of this section and has not corrected the deficiency within a reasonable period of time after notification by the district director;

(ii) Has used its registration to evade, or attempt to evade, the payment of any tax imposed by section 4041(a)(1) or 4081, or to postpone or in any manner to interfere with the collection of any such tax, or to make a fraudulent claim for a credit or payment;

(iii) Has aided or abetted another person in evading, or attempting to evade, payment of any tax imposed by section 4041(a)(1) or 4081, or in making a fraudulent claim for a credit or payment; or

(iv) Has sold, leased, or otherwise allowed another person to use its registration.

(2) *Remedial action permitted in other cases.* If the district director determines that a registrant has, at any time, failed to comply with the terms and conditions of registration under paragraph (h) of this section, made a false statement to the district director in connection with its application for registration or retention of registration, or otherwise used its registration in a manner that creates a significant risk of nonpayment or late payment of tax, then the district director may—

(i) Revoke or suspend the registrant's registration;

(ii) In the case of a registrant other than an ultimate vendor, require the registrant to give a bond under the provisions of paragraph (j) of this section as a condition of retaining its registration; and

(iii) In the case of a registrant other than an ultimate vendor, require the registrant to file monthly or semimonthly returns under § 40.6011(a)–1(b) of this chapter as a condition of retaining its registration.

(3) *Action by the district director to revoke or suspend a registration.* If the district director revokes or suspends a registration, the district director must so notify the registrant in writing and state the basis for the revocation or suspension. The effective date of the revocation or suspension may not be earlier than the date on which the district director notifies the registrant.

(j) *Bonds*—(1) *Form.* Each bond given to the district director as a condition of registration under paragraph (f)(4)(i) or (i)(2)(ii) of this section must be executed in the form prescribed by the district director. Each bond must be—

(i) A public debt obligation of the United States Government;

(ii) An obligation the principal and interest of which are unconditionally guaranteed by the United States Government;

(iii) A bond executed by a surety company listed in Department of the Treasury Circular 570 as an acceptable surety or reinsurer of federal bonds (a surety bond); or

(iv) Any other bond with security (including liens under section 4101(b)(1)(B)) considered acceptable by the district director.

(2) *Amount of bond.* A bond given under this paragraph (j) must be in an amount that the district director determines will ensure timely collection of the taxes imposed by sections 4041(a)(1) and 4081, taking into account the applicant's financial capabilities, tax history, and expected liability under sections 4041(a)(1) and 4081. The district director may increase or decrease the amount of the required bond to take into account changes in the applicant's financial capabilities, tax history, and expected liability under sections 4041(a)(1) and 4081. However, in no case may the amount of the bond be greater than the amount that the district director determines is equal to—

(i) The applicant's expected tax liability under sections 4041(a)(1) and 4081 for a representative 6-month period (as determined by the district director);

(ii) In the case of a terminal operator, the expected tax liability of persons other than the terminal operator under section 4081 with respect to taxable fuel removed at the racks of its terminals (determined as if all removals of taxable fuel were taxable) during a representative 1-month period (as determined by the district director); and

(iii) In the case of a gasohol blender, the gasohol bonding amount.

(3) *Collection of taxes from a bond.* If a bonded registrant does not pay the amount of tax it incurs under section 4041(a)(1) or 4081 by the time prescribed in section 6151 for paying that tax, the district director may collect the amount of the unpaid tax (including penalties and interest with respect to that tax) from the bonded registrant's bond.

(4) *Termination of bonds*—(i) *Surety bonds.* A surety on a bond may give written notice to the district director and the bonded registrant that the surety desires to be relieved of liability under the bond after a certain date, which date must be at least 60 days after the receipt of the notice by the district director. The surety will be relieved of any liability that the bonded registrant incurs after the date named in the notice. However, the surety remains liable for the amount

of tax that the bonded registrant incurred under sections 4041(a)(1) and 4081 during the term of the bond and for penalties and interest with respect to that tax.

(ii) *Other bonds.* A bond (other than a surety bond) given to the district director may be returned to the bonded registrant only after the earlier of—

(A) The district director's determination that the bonded registrant has paid all taxes that the bonded registrant incurred under sections 4041(a)(1) and 4081 during the period covered by the bond and any penalties and interest with respect to the taxes;

(B) The expiration of the period for assessment of the taxes that the bonded registrant incurred under sections 4041(a)(1) and 4081 taxes during the period covered by the bond, as determined under the provisions of subchapter A of chapter 66 of the Internal Revenue Code; or

(C) The date that the district director receives from the registrant a substitute bond given under this paragraph (j).

(5) *Determination that bond is no longer required.* If the district director determines that the bonded registrant meets the adequate security test of paragraph (f)(4) of this section without a bond, the registrant is to be released from the obligation to give a bond as a condition of registration under section 4101.

(k) *Cross references.* For a rule relating to the filing of monthly and semimonthly returns by certain persons that are registered under section 4101, see § 40.6011(a)–1(b)(2) of this chapter. For rules relating to the tax on taxable fuel, see §§ 48.4081–1 through 48.4083–1. For rules relating to claims by registered ultimate vendors, see § 48.6427–9.

(l) *Effective dates.* (1) Except as otherwise provided in this paragraph (l), this section is applicable as of January 1, 1994.

(2) Paragraph (c)(1) of this section (relating to persons required to be registered) is applicable as of January 1, 1995.

(3) Paragraph (h)(3)(iii) of this section (relating to certain recordkeeping requirements) is applicable as of July 1, 1996.

Par. 30. Section 48.4101–2 is added to read as follows:

§ 48.4101–2 Information reporting.

(a) *In general*—(1) *Taxable fuel registrants.* Each taxable fuel registrant must make a return showing—

(i) The name and registration number (if any) of each person that is a position holder at each terminal it operates;

(ii) The amount of taxable fuel received at each terminal it operates;

(iii) The identity of each position holder with respect to—

(A) All rack removals of taxable fuel from each terminal it operates, and the volume and dates of the removals; and

(B) In the case of rack removals of diesel fuel, whether the fuel was dyed and marked at the operator's terminal in accordance with § 48.4082–1;

(iv) The amount of taxable fuel stored at each terminal it operates;

(v) The destination (by state) of all taxable fuel removed at a terminal rack of each terminal it operates, to the extent such information has been provided to the registrant;

(vi) The name and registration number (if any) of the operator of each terminal at which it is a position holder;

(vii) The volume and date of the removal with respect to all rack removals of taxable fuel for which it is the position holder;

(viii) In the case of nonbulk removals and entries of gasoline blendstocks for which it would be liable for tax but for the special rule in § 48.4081–4(c), the name and registration number of each operator of each refinery and terminal where the gasoline blendstocks are received;

(ix) The name and registration number (if any) of each person to which it sells (within the meaning of § 48.4081–1) taxable fuel located in the bulk transfer/terminal system;

(x) The name and registration number of each person from which it receives a certificate described in § 48.4081–6(c) (relating to certificate of registered gasohol blender);

(xi) With respect to any liability incurred under § 48.4081–3(e) (relating to tax on bulk transfers not received at an approved terminal or refinery)—

(A) The date on which the removal of the taxable fuel from a pipeline or vessel gave rise to the liability; and

(B) The location of the taxable fuel at the time of the removal; and

(xii) Any other information required by the Commissioner.

(2) *Gasohol blenders.* Each registered gasohol blender must make a return showing, with respect to each batch of gasohol it produced from gasoline it bought at the gasohol production tax rate—

(i) The name and registration number of the person that sold it the gasoline;

(ii) The date and location of the purchase of the gasoline;

(iii) The volume of the gasoline;

(iv) The name, address, and employer identification number of the person that sold it the alcohol;

(v) The date and location of the purchase of the alcohol;

(vi) The volume and type of the alcohol; and

(vii) Any other information required by the Commissioner.

(3) *Pipeline and vessel operators.* Each operator of a pipeline or vessel that makes a bulk transfer of taxable fuel to a terminal or refinery must make a return showing—

(i) The location of the terminal or refinery where the taxable fuel was delivered;

(ii) The date of the delivery; and

(iii) Any other information required by the Commissioner.

(b) *Form and time of return.* Each return required under this section must be made at the time and in the form required by the Commissioner.

(c) *Consequences for failure to make a return.* For the consequences for failing to make an information return required by this section, see § 48.4101–1(i) (relating to adverse actions against a registrant) and section 6721 (relating to a penalty for failure to file an information return).

(d) *Effective date.* This section is applicable as of April 1, 1996.

§§ 48.4101–2T, 48.4101–3, 48.4101–3T, and 48.4101–4T [Removed]

Par. 31. Sections 48.4101–2T, 48.4101–3, 48.4101–3T, and 48.4101–4T are removed.

Par. 32. Section 48.4102–1 is amended as follows:

1. Paragraph (a) is revised.

2. Paragraph (b)(1) is amended by removing the language ''on the sale or use of gasoline or lubricating oil, respectively,''.

3. Paragraph (b)(2) is amended by removing ''gasoline or lubricating oil'' each place it appears and adding ''taxable fuel or aviation fuel'' in its place.

The revision reads as follows:

§ 48.4102–1 Inspection of records by State or local tax officers.

(a) *Inspection of records maintained by taxpayer.* The records that a taxpayer is required to keep with respect to the taxes imposed by section 4081 or 4091 must be open to inspection by any officer of any State or political subdivision thereof, or of the District of Columbia, who is charged with the enforcement or collection of any tax on taxable fuel or aviation fuel.

* * * * *

§ 48.4221 [Removed]

Par. 33. Section 48.4221 is removed.

Par. 34. Section 48.4221–1 is amended as follows:

1. Paragraph (a) is revised.

2. Paragraph (b)(2)(iv) is amended by adding ''and'' at the end.

3. Paragraph (b)(2)(v) is revised.

4. Paragraphs (b)(2)(vi) through (b)(2)(xii) are removed.

5. Paragraph (b)(3) is removed and paragraphs (b)(4) and (b)(5) are redesignated as paragraphs (b)(3) and (b)(4), respectively.

The revised provisions read as follows:

§ 48.4221–1 Tax-free sales; general rule.

(a) *Application of regulations under section 4221*—(1) *In general.* The regulations under section 4221 provide rules under which the manufacturer, producer, or importer of an article subject to tax under chapter 32 (or the retailer of an article subject to tax under subchapter A or C of chapter 31) may sell the article tax free under section 4221.

(2) *Limitations.* The following restrictions must be taken into account in applying the regulations under section 4221:

(i) The exemptions under section 4221 (a)(4) and (a)(5) do not apply to the tax imposed by section 4064 (gas guzzler tax).

(ii) The exemptions under section 4221 do not apply to the tax imposed by section 4081 (gasoline and diesel fuel tax).

(iii) The exemptions under section 4221 do not apply to the tax imposed by section 4091 (aviation fuel tax). For rules relating to tax-free sales of aviation fuel, see section 4092 and the regulations thereunder.

(iv) The exemptions under section 4221 do not apply to the tax imposed by section 4121 (coal tax).

(v) The exemptions under section 4221 (a)(3) through (a)(5) do not apply to the tax imposed by section 4131 (vaccine tax). In addition, the exemption under section 4221(a)(2) applies to the vaccine tax only to the extent provided in § 48.4221–3(e) (relating to tax-free sales of vaccine for export).

(vi) The exemptions under section 4221(a) apply only in those cases where the exportation or use referred to is to occur before any other use.

(b) * * *

(2) * * *

(v) Section 4221(e)(3) relating to the sale of tires used on intercity, local, or school buses (see § 48.4221–8).

* * * * *

Par. 35. Section 48.4221–2 is amended by:

1. Removing from the first sentence of paragraph (a)(1) the language ''(other than a tire or inner tube taxable under section 4071, which are given special treatment under sections 4221(e) (2) and (4), and §§ 48.4221–7 and 48.4221–8)'' and adding ''(other than a tire taxable under section 4071, which is given special treatment under section 4221(e)(2) and § 48.4221–7)'' in its place.

2. Removing paragraph (a)(2) and redesignating paragraph (a)(3) as paragraph (a)(2).

3. Revising paragraph (b).

The revision reads as follows:

§ 48.4221–2 Tax-free sale of articles to be used for, or resold for, further manufacture.

* * * * *

(b) *Circumstances under which an article is considered to have been sold for use in further manufacture.* (1) An article shall be treated as sold for use in further manufacture if the article is sold for use by the buyer as material in the manufacture or production of, or as a component part of, another article taxable under chapter 32 of the Internal Revenue Code.

(2) An article is used as material in the manufacture or production of, or as a component of, another article if it is incorporated in, or is a part or accessory of, the other article when the other article is sold by the manufacturer. In addition, an article is considered to be used as material in the manufacture of another article if it is consumed in whole or in part in testing such other article. However, an article that is consumed in the manufacturing process other than in testing, so that it is not a physical part of the manufactured article, is not considered to have been used as material in the manufacture of, or as a component part of, another article.

* * * * *

Par. 36. Section 48.4221–5 is amended as follows:

1. Paragraph (c)(1) is amended by:

a. Removing the first sentence.

b. Removing the language ''If a State or local government is not registered, the'' and adding ''The'' in its place in the new first sentence.

2. In paragraph (d), the first sentence is amended by:

a. Removing the language ''(whether on the basis of a registration number or an exemption certificate)''.

b. Removing the language ''(such as gasoline that is'' and adding ''(such as tires that are'' in its place.

§§ 48.4221–8, 48.4221–9, 48.4221–10 [Removed]

Par. 37. Sections 48.4221–8, 48.4221–9, and 48.4221–10 are removed.

§ 48.4221–11 [Redesignated as § 48.4221–8]

Par. 38. Section 48.4221–11 is redesignated as § 48.4221–8.

§ 48.4221–12 [Removed]

Par. 39. Section 48.4221–12 is removed.

Par. 40. In § 48.4222(a)–1, paragraphs (a) and (b) are revised to read as follows:

§ 48.4222(a)–1 Registration.

(a) *General rule.* Except as provided in § 48.4222(b)–1, tax-free sales under section 4221 may be made only if the manufacturer, first purchaser, and second purchaser, as the case may be, have been registered by the Internal Revenue Service.

(b) *Application instructions.* Application for registration under section 4222 must be made in accordance with instructions for Form 637 (or such other form as the Commissioner may designate).

* * * * *

Par. 41. In § 48.4222(b)–1, paragraph (a) is revised to read as follows:

§ 48.4222(b)–1 Exceptions to the requirement for registration.

(a) *State and local governments.* The Internal Revenue Service will not register State or local governments under section 4222. To establish the right to sell articles tax free to a State or local government, the manufacturer must obtain the information described in § 48.4221–5(c).

* * * * *

§ 48.4222(d)–1 [Amended]

Par. 42. Section 48.4222(d)–1 is amended by:

1. Removing paragraphs (a), (b), and (c).

2. Redesignating paragraph (d) as paragraph (a).

3. Removing paragraphs (e) and (f).

4. Redesignating paragraph (g) as paragraph (b).

§ 48.6206–1 [Removed]

Par. 43. Section 48.6206–1 is removed.

§ 48.6416(b)(2)–2 [Amended]

Par. 44. In § 48.6416(b)(2)–2, paragraphs (g) through (k) are removed.

§ 48.6416(g)–1 [Removed]

Par. 45. Section 48.6416(g)–1 is removed.

§ 48.6421–3 [Amended]

Par. 46. In § 48.6421–3, paragraph (d)(2) is amended by removing from the first sentence the language ''Form 843'' and adding ''Form 8849 (or on such other form as the Commissioner may designate)'' in its place.

§§ 6424–0 through 48.6424–6 [Removed]

Par. 47. Sections 48.6424–0 through 48.6424–6 are removed.

§ 48.6427–3 [Amended]

Par. 48. In § 48.6427–3, paragraph (d)(2) is amended by removing from the first sentence the language ''Form 843'' and adding ''Form 8849 (or on such other form as the Commissioner may designate)'' in its place.

§ 48.6427–7 [Amended]

Par. 49. In § 48.6427–7, paragraph (g)(4) is amended by removing the language ''Form 843 (Claim)'' and adding ''Form 8849 (or such other form as the Commissioner may designate)'' in its place.

Par. 50. Sections 48.6427–8 and 48.6427–9 are added to read as follows:

§ 48.6427–8 Claims by ultimate purchasers with respect to diesel fuel taxed after December 31, 1993.

(a) *Overview.* This section provides the rules for obtaining a credit or payment with respect to undyed diesel fuel that was taxed after December 31, 1993, and that was used in a nontaxable use (other than on a farm for farming purposes or by a State). A credit or payment for undyed diesel fuel used on a farm for farming purposes or by a State is allowable only to a registered ultimate vendor under the rules of § 48.6427–9.

(b) *Conditions to allowance of credit or payment*—(1) *In general.* Except as provided in section 6427(l)(5), a claim for credit or payment with respect to diesel fuel is allowable under section 6427(l) only if—

(i) Tax was imposed by section 4081 on the diesel fuel to which the claim relates;

(ii) The claimant produced or bought the fuel and did not resell it in the United States;

(iii) The claimant has filed a timely claim for a credit or payment that contains the information required under paragraph (d) of this section;

(iv) The fuel was not bought under a certificate described in § 48.6427–9(e)(2) (relating to certificate of farmer or State to support claim of ultimate vendor);

(v) The fuel was not used on a farm for farming purposes (as defined in § 48.6420–4) or by a State; and

(vi) The fuel was either—

(A) Used in a use described in § 48.4082–4 (c)(3) through (c)(10);

(B) Exported;

(C) Used other than as a fuel in a propulsion engine of a diesel-powered highway vehicle or diesel-powered boat;

(D) Used as a fuel in a propulsion engine of a diesel-powered train; or

(E) Used as a fuel in the propulsion engine of a diesel-powered bus if the bus was used in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)).

(2) *Examples.* The following examples illustrate this paragraph (b).

Example 1. (i) In September 1996, F bought 250 gallons of undyed diesel fuel. In October 1996, F used 200 gallons of the fuel in a farm tractor. This use qualifies as use on a farm for farming purposes (as defined in § 48.6420–4). The farm tractor is not a diesel-powered highway vehicle (as defined in § 48.4081–1(h)). F used the remaining 50 gallons to heat F's residence. F filed a complete and timely claim for a credit relating to the 250 gallons.

(ii) A credit or payment is not allowable to F with respect to the 200 gallons of diesel fuel used in the farm tractor. Even though this fuel was used other than as a fuel in a propulsion engine of a diesel-powered highway vehicle (thus meeting the condition in paragraph (b)(1)(vi)(C) of this section), the condition in paragraph (b)(1)(v) of this section is not satisfied because the fuel was used on a farm for farming purposes.

(iii) A credit is allowable to F with respect to the 50 gallons F used for heating purposes because the conditions in paragraph (b)(1) of this section have been met. F used this fuel other than as a fuel in a propulsion engine of a diesel-powered highway vehicle and the use of the fuel for residential heating is not use on a farm for farming purposes.

Example 2. (i) In September 1996, W, a wholesale distributor, sold 3,500 gallons of diesel fuel on which tax has been imposed to C, a construction company located in the United States. W's selling price to C did not include an amount equal to the federal excise tax on the fuel. C used the fuel other than as a fuel in a propulsion engine of a diesel-powered highway vehicle or diesel-powered boat. Both W and C file a complete and timely claim for a credit relating to the fuel.

(ii) Because W resold the fuel in the United States, the condition of paragraph (b)(1)(ii) of this section is not met. Thus, W is not allowed a credit or payment with respect to the fuel.

(iii) C is eligible for a credit or payment with respect to the fuel because the conditions to allowance in paragraph (b)(1) of this section have been met. The conditions to allowance do not include a requirement that C buy the fuel at a price that includes the amount of the tax.

(c) *Form of claim.* Each claim for an income tax credit under this section must be made on Form 4136 (or on such other form as the Commissioner may designate) in accordance with the instructions for that form. Each claim for a payment under this section must be made on Form 8849 (or on such other form as the Commissioner may designate) in accordance with the instructions for that form.

(d) *Content of claim.* Each claim for a credit or payment under this section must contain the following information with respect to all the diesel fuel covered by the claim:

(1) The total number of gallons covered by the claim.

(2) A statement by the claimant that tax has been imposed on the diesel fuel covered by the claim.

(3) The use made of the diesel fuel covered by the claim described by reference to specific categories listed in paragraph (b)(1)(vi) of this section (such as use in a boat employed in commercial fishing or the exclusive use of a nonprofit educational organization).

(4) If the diesel fuel covered by the claim was exported, a declaration that the claimant has proof of exportation (as described in § 48.4221–3(d)(1)).

(5) A declaration that the claimant has in its possession the name and address of the person(s) that sold the diesel fuel to the claimant and the date(s) of the purchase(s).

(e) *Time and place for filing claim.* For rules relating to the time for filing a claim under section 6427, see section 6427(i). A claim under this section is not filed unless it contains all the information required by paragraph (d) of this section and is filed at the place required by the form.

(f) *Effective date.* This section is effective January 1, 1994, except for paragraph (b)(1)(v) of this section, which is effective for diesel fuel bought by ultimate purchasers after June 30, 1994.

§ 48.6427–9 Claims by registered ultimate vendors with respect to diesel fuel taxed after December 31, 1993.

(a) *Overview.* This section provides the rules for obtaining a credit or payment with respect to undyed diesel fuel that was taxed after December 31, 1993, and that was used on a farm for farming purposes or by a State.

(b) *Definitions.* (1) An *ultimate vendor,* as used in this section, is a person that sells undyed diesel fuel to—

(i) The owner, tenant, or operator of a farm for use by such person on a farm for farming purposes (as defined in § 48.6420–4);

(ii) A person other than the owner, tenant, or operator of a farm for use by such person for any of the purposes described in § 48.6420–4(d) (relating to cultivating, raising, or harvesting); or

(iii) Any State for its exclusive use.

(2) A *registered ultimate vendor* is—

(i) An ultimate vendor that is registered under section 4101 as an ultimate vendor; or

(ii) With respect to a claim filed before January 1, 1995, an ultimate vendor that is registered as a producer of diesel fuel on December 31, 1993, if the registration has not been revoked or suspended.

(c) *Conditions to allowance of credit or payment.* A claim for a credit or payment with respect to diesel fuel is

allowable under section 6427(l)(5) only if—

(1) Tax was imposed by section 4081 on the diesel fuel to which the claim relates;

(2) The claimant sold the diesel fuel to—

(i) The owner, tenant, or operator of a farm for use by such person on a farm for farming purposes (as defined in § 48.6420–4);

(ii) A person other than the owner, tenant, or operator of a farm for use by such person for any of the purposes described in § 48.6420–4(d) (relating to cultivating, raising, or harvesting); or

(iii) Any State for its exclusive use;

(3) The claimant is a registered ultimate vendor; and

(4) The claimant has filed a timely claim for a credit or payment that contains the information required under paragraph (e) of this section.

(d) *Form of claim.* Each claim for an income tax credit under this section must be made on Form 4136 (or on such other form as the Commissioner may designate) in accordance with the instructions for that form. Each claim for a payment under this section must be made on Form 8849 (or on such other form as the Commissioner may designate) in accordance with the instructions for that form.

(e) *Content of claim*—(1) *In general.* Each claim for credit or payment under this section must contain the following information with respect to all the diesel fuel covered by the claim:

(i) The total number of gallons covered by the claim.

(ii) A statement by the claimant that tax has been imposed on the diesel fuel covered by the claim.

(iii) The claimant's registration number.

(iv) The name and taxpayer identification number of each person that bought diesel fuel from the claimant in a transaction described in paragraph (c)(2) of this section and the number of gallons that the claimant sold to that person.

(v) A statement that the claimant—

(A) Has not included the amount of the tax in its sales price of the diesel fuel and has not collected the amount of tax from its buyer;

(B) Has repaid the amount of the tax to the ultimate purchaser of the fuel; or

(C) Has obtained the written consent of its buyer to the allowance of the claim.

(vi) For claims relating to sales by the claimant after March 31, 1994, a statement that the claimant has in its possession an unexpired certificate described in paragraph (e)(2) of this section and the claimant has no reason to believe any information in the certificate is false.

(vii) For claims relating to sales by the claimant before April 1, 1994, either the statement described in paragraph (e)(1)(vi) of this section or a statement that—

(A) The claimant has in its possession an unexpired exemption certificate relating to tax-free sales of diesel fuel for use on a farm for farming purposes or for the exclusive use of a State;

(B) The certificate was received from the buyer before January 1, 1994; and

(C) The claimant has no reason to believe any information in the certificate is false.

(2) *Certificate*—(i) *In general.* The certificate to be provided to the ultimate vendor consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (e)(2)(ii) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earlier of the following dates:

(A) The date one year after the effective date of the certificate.

(B) The date a new certificate is provided to the seller.

(ii) *Model certificate.*

Certificate of Farming Use or State Use

(To support vendor's claim for a credit or payment under section 6427 of the Internal Revenue Code.)

_____

_____

Name, address, and employer identification number of vendor

The undersigned buyer (''Buyer'') hereby certifies the following under penalties of perjury:

Buyer will use the diesel fuel to which this certificate relates—(check one)

_____ On a farm for farming purposes (as defined in § 48.6420–4(c) of the Manufacturers and Retailers Excise Tax Regulations) and Buyer is the owner, tenant, or operator of the farm on which the fuel will be used;

_____ On a farm (as defined in § 48.6420–4(c)) for any of the purposes described in paragraph (d) of that section (relating to cultivating, raising, or harvesting) and Buyer is a person that is not the owner, tenant, or operator of the farm on which the fuel will be used; or

_____ For the exclusive use of a State or local government, or the District of Columbia.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here _____ and enter:

1. Invoice or delivery ticket number _____

2. _____ (number of gallons)

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____

2. Expiration date _____ (period not to exceed 1 year after the effective date)

3. Buyer account or order number _____

Buyer will provide a new certificate to the vendor if any information in this certificate changes.

If Buyer uses the diesel fuel to which this certificate relates for a purpose other than stated in the certificate Buyer will be liable for tax.

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

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Buyer

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

(f) *Time and place for filing claim.* For rules relating to the time for filing a claim under section 6427, see section 6427(i). A claim under this section is not filed unless it contains all the information required by paragraph (e) of this section and is filed at the place required by the form.

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

§§ 48.6427–8T and 48.6427–9T [Removed]

Par. 51. Sections 48.6427–8T and 48.6427–9T are removed.

§ 48.6675–1 [Removed]

Par. 52. Section 48.6675–1 is removed.

Par. 53. Section 48.6714–1 is added to read as follows:

§ 48.6714–1 Penalty for misuse of dyed diesel fuel.

(a) *In general.* If any person willfully alters, or attempts to alter, the strength or composition of any dye or marking done pursuant to § 48.4082–1 in any dyed fuel, then section 6714(a)(3) provides that such person shall pay a penalty in addition to any tax. The penalty imposed by section 6714(a)(3) will not apply in the following cases:

(1) Diesel fuel that satisfies the dyeing and marking requirements of § 48.4082–1 (b) and (c) is blended with any undyed liquid and the resulting product satisfies the dyeing and marking requirements of § 48.4082–1 (b) and (c).

(2) Diesel fuel that satisfies the dyeing and marking requirements of § 48.4082–1 (b) and (c) is blended with any other liquid (other than diesel fuel) that contains the type and amount of dye and marker required for diesel fuel dyed and marked in accordance with § 48.4082–1 (b) and (c).

(3) Diesel fuel that is dyed one color in accordance with § 48.4082–1(b) is blended with diesel fuel that is dyed another color in accordance with § 48.4082–1(b).

(4) Diesel fuel that does not satisfy the dyeing and marking requirements of § 48.4082–1 (b) and (c) is blended with diesel fuel that satisfies the dyeing and marking requirements of § 48.4082–1 (b) and (c) and the blending occurs as part of a use described in § 48.4082–4(c) or § 48.6427–8(b)(vi) (C), (D), or (E).

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

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 54. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 55. In § 602.101, paragraph (c) is amended as follows:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
42.5(b)	1545–1206
* * * * *	
48.4041–2T	1545–0143
* * * * *	
48.4082–2T	1545–1418
48.4101–1	1545–0023 1545–0725 1545–0014
48.4101–2T	1545–0725
48.4101–3T	1545–1418
48.4101–4T	1545–1418
* * * * *	
48.6427–8T	1545–1418
48.6427–9T	1545–1418
* * * * *	

2. Adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
48.4082–2	1545–1418
48.4101–1	1545–1418
48.4101–2	1545–1418
* * * * *	
48.6427–8	1545–1418
48.6427–9	1545–1418
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 18, 1995.

Leslie Samuels.

Assistant Secretary of the Treasury.

[FR Doc. 96–5586 Filed 3–13–96; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Subchapter D and Part 81

[CGD 95–053]

RIN 2115–AF16

Removal of 72 Colregs Text From CFR and Revision of Subchapter D Note

AGENCY: Coast Guard, DOT.

ACTION: Direct Final rule; confirmation of effective date.

SUMMARY: On January 2, 1996, the Coast Guard published a direct final rule (61 FR 8) which notified the public of the Coast Guard's intent to remove the text of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) from the CFR, which merely duplicates text found in the United States Code. This rule also updates the note containing a list of U.S. territories and possessions where the 72 COLREGS apply. The Coast Guard has not received any adverse comments or any notice of an intent to submit adverse comments objecting to this rule as written. Therefore, this rule will go into effective as scheduled.

DATES: The effective date of the direct final rule is confirmed as April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Diane Schneider-Appleby, Vessel Traffic Management Division (G–MVO), at 202–267–0352.

Dated: March 7, 1996.

G.N. Naccara,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 96–6157 Filed 3–13–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD09–95–022]

RIN 2115–AE47

Drawbridge Operation Regulations; Buffalo River, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing regulations governing the operation of the Michigan Avenue bridge, mile 1.3, Ohio Street bridge, mile 2.1, South Park Avenue bridge, mile 5.3, and the Conrail railroad bridges at miles 4.02 and 4.39 across the Buffalo River, all at Buffalo, NY, by not requiring drawtenders to be in constant attendance at these bridges. This action will relieve the bridge owners of the burden of having drawtenders in constant attendance at their bridges and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This rule becomes effective on March 22, 1996.

ADDRESSES: Documents concerning this regulation are available for inspection and copying at 1240 East Ninth Street, Room 2083D, Cleveland, OH 44199–2060 between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 522–3993.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Bridge Branch at (216) 522–3993.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, good cause exists for making this final rule effective less than 30 days after publication in the Federal Register. A delay in effective date is impracticable and contrary to the public interest because the schedule changes set forth in this rule will be implemented by the City of Buffalo on March 22, 1996. A delay is also unnecessary because a notice of proposed rulemaking was published and the Coast Guard queried the affected navigation interests prior to this action and received no objections.

Regulatory History

On October 26, 1995, the Coast Guard published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulations; Buffalo River, NY'' in the Federal Register (60 FR 54823). No comments were received. A public hearing was not requested and therefore, was not held.

Background and Purpose

The City of Buffalo requested and received approval to remove drawtenders from its bridges during the