

List of Subjects

18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 390

Administrative practice and procedure, Electronic filing, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas, Secretary.

In consideration of the foregoing, the Commission grants rehearing and clarification in part, denies the request for a stay, and amends Parts 385 and 390, Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C. 791a-825r, 2601-2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85 (1988).

2. Amend § 385.2010 by removing the word "written" from paragraph (c)(2) and revising paragraph (f) to read as follows:

§ 385.2010 Service (Rule 2010).

(f) Methods of service. (1) Except as provided in paragraph (g) of this section, service of any document in proceedings commenced prior to March 21, 2005, must be made by:

- (i) Electronic means where the sender and recipient agree to such means;
(ii) United States mail, first class or better; or
(iii) Delivery in a manner that, and to a place where, the person on whom service is required may reasonably be expected to obtain actual and timely receipt.

(2) Except as provided in paragraph (g) of this section, service of any document in proceedings commenced on or after March 21, 2005, must be made by electronic means unless the sender and recipient agree otherwise or the recipient's e-mail address is unavailable from the official service list, except in the case of a recipient who has secured a waiver under the provisions of § 390.3 of this chapter, or is exempt under the provisions of § 390.4 of this chapter, or in the case of a protected or confidential document the security of which might be jeopardized by

electronic service, in which case service upon that recipient or of that document only shall be made by:

- (i) United States mail, first class or better; or
(ii) Delivery in a manner that, and to a place where, the person on whom service is required may reasonably be expected to obtain actual and timely receipt.

(3) Service of a document by electronic means shall be made by the transmission of a link to that document in the Commission's eLibrary system or by alternate means reasonably calculated to make the document available to required recipients. Alternate means may include but are not limited to, attachment of an electronic copy of the document to an e-mail or transmission of a link to an Internet site containing the document. It is the sender's responsibility to take reasonable steps to ensure that the means employed for service will be within the technological capabilities of the recipients.

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PART 390—ELECTRONIC REGISTRATION

3. The authority citation for Part 390 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C. 791a-825r, 2601-2645; 28 U.S.C. 2461; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85 (1988).

4. Amend § 390.3

- A. By revising paragraph (a); and
B. By removing the phrase "using the paper form prescribed under" and adding in its place, the phrase, "pursuant to".

The revision reads as follows:

§ 390.3 Waiver applications.

(a) A person may satisfy the requirement of Sec. 390.1 by submitting a written statement showing good cause why the person is unable to register electronically, and including the name and address of the person serving as a contact. The statement must be mailed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, or hand delivered to Room 1A at the same address.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 48 and 602

[TD 9199]

RIN 1545-BE44

Diesel Fuel and Kerosene Excise Tax; Dye Injection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the diesel fuel and kerosene excise tax. These regulations reflect changes made by the American Jobs Creation Act of 2004 regarding mechanical dye injection systems for diesel fuel and kerosene. These regulations affect certain enterers, refiners, terminal operators, and throughputters. The text of the temporary regulation also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject elsewhere in this issue of the Federal Register.

DATES: Effective Date: These regulations are effective October 24, 2005.

Applicability Dates: For dates of applicability, see §§ 48.4082-1T(e) and 48.4101-1T(h)(3)(iv).

FOR FURTHER INFORMATION CONTACT: William Blodgett at (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1418. Responses to this collection of information are required to obtain a tax benefit.

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 OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed

rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

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

Background

Section 4081 of the Internal Revenue Code (Code) imposes a tax on certain removals, entries, and sales of diesel fuel and kerosene. However, section 4082(a) provides that the tax is not imposed if the diesel fuel or kerosene (1) is destined for a nontaxable use (as defined in section 4082(b)), (2) is indelibly dyed in accordance with regulations that the Secretary shall prescribe, and (3) meets such marking requirements (if any) as may be prescribed by the Secretary in regulations.

Section 4082(a)(2) was amended by the American Jobs Creation Act of 2004 (the Act) to provide that the diesel fuel and kerosene must be indelibly dyed "by mechanical injection." The Act also requires the Secretary to issue regulations regarding mechanical dye injection systems and to include in the regulations standards for making such systems tamper resistant. The amendments to section 4082(a)(2) are effective on the 180th day after the date on which the Secretary issues such regulations.

The Act also adds new section 6715A, which imposes a penalty on any person that tampers with a mechanical dye injection system and any operator of a mechanical injection system that fails to maintain the security standards for such system in accordance with the regulations.

Explanation of Provisions

Under these temporary regulations, diesel fuel or kerosene that is removed from a refinery, terminal, or blending facility is exempt from tax under section 4082(a) only if the required type and amount of dye is added to the fuel by means of a mechanical injection system that is approved by the IRS. Manual (or splash) dyeing is not allowed, even in the case of a malfunction of the mechanical injection system.

Application for approval of mechanical injection systems will be made in the form and manner prescribed by the IRS. It is anticipated that the application process will be similar to the process now in place for applications for registrations under

section 4101. It is also anticipated that the IRS will act on such applications within a reasonable time.

Under these temporary regulations, the IRS will approve a mechanical injection system only if it contains adequate calibrated measurement devices, shut-off devices, and security equipment to secure these devices and other access points.

Generally, the security equipment must consist of either a "seal" system or a "lock box" system. The "seal" system requires that a seal be attached to each measuring device, each shut-off device, and any other access point to the mechanical injection system. The seals must secure the devices from tampering and, if necessary, may be accompanied by locks to ensure the necessary security. The alternative to the "seal" system is the "lock box" system, which allows the operator to use one secured container, or box, to control access to each measuring device, each shut-off device, and any other access point to the mechanical injection system. Such container may be transparent for ease of satisfying the inspection requirements. If the "lock box" system is used, the container must be secured by a seal that satisfies all of the "seal" requirements. Each seal, whether it secures a "lock box" or attaches to an access point, must be separately identifiable by a numbering or coding system maintained by the terminal operator. In all cases, the type of allowable seal may be prescribed by the IRS.

These temporary regulations also set out ongoing duties of the operator of an approved mechanical injection system to maintain the system's security standards and to keep certain records. However, no particular form for the records is prescribed.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory flexibility assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for

comment on their impact on small business.

Drafting Information

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

List of Subjects

26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 48 is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *
Section 48.4082-1T also issued under 26 U.S.C. 4082(a). * * *

■ **Par. 2.** Section 48.4082-1 is amended by revising paragraphs (d) and (e) to read as follows:

§ 48.4082-1 Diesel fuel and kerosene; exemption for dyed fuel.

* * * * *

(d) [Reserved]. For further guidance, see § 48.4082-1T(d).

(e) *Effective date*—(1) Except as provided in paragraph (e)(2) of this section, this section is applicable March 14, 1996.

(2) [Reserved] For further guidance, see § 48.4082-1T(e)(2).

■ **Par. 3.** Section 48.4082-1T is added to read as follows:

§ 48.4082-1T Diesel fuel and kerosene; exemption for dyed fuel (temporary).

(a) through (c) [Reserved]. For further guidance, see § 48.4082-1(a) through (c).

(d) *Time and method for adding dye*—(1) *In general.* Except as provided by paragraph (d)(6) of this section, diesel fuel or kerosene satisfies the dyeing requirements of this paragraph (d) only if the dye required by § 48.4082-1(b) is combined with the diesel fuel or kerosene by means of a mechanical injection system that is approved by the Commissioner for use

at the facility where the dyeing occurs. Application for approval must be made in the form and manner required by the Commissioner. Rules similar to the rules of § 48.4101-1(g) apply to the Commissioner's action on the applications.

(2) *Mechanical injection system; requirements.* The Commissioner will approve a mechanical injection system only if—

(i) The system has features that automatically inject an amount of dye that satisfies the concentration requirements of § 48.4082-1(b) into diesel fuel or kerosene as the diesel fuel or kerosene is delivered from the bulk transfer/terminal system into the transport compartment of a truck, trailer, railroad car, or other means of nonbulk transfer;

(ii) The system has calibrated devices that accurately measure and record the amount of dye and the amount of diesel fuel and kerosene that is dispensed for each removal;

(iii) The system has automatic shut-off devices that prevent the removal of more than 100 gallons of undyed diesel fuel or kerosene in the case of a system malfunction;

(iv) The system is secured by either—
(A) Unbroken seals that are issued, installed, and maintained by the terminal operator and secure the measurement devices, shut-off devices, and other access points to the injection system; or

(B) A secured container that controls access to the measurement devices, shut-off devices, and other access points and is secured by an unbroken seal issued, installed, and maintained by the terminal operator;

(v) Each seal securing the system bears a unique identifying number or code and is produced in a manner that provides adequate assurance against duplication; and

(vi) The operator of the facility has written procedures in place for complying with its duty, described in paragraph (d)(4) of this section, to maintain the system's security standards.

(3) *Mechanical injection system; basis for approval.* In determining whether to approve a mechanical injection system, the Commissioner will take into account the individual circumstances of each facility, including local fire and safety codes, to ensure that the cost of acquiring and maintaining the appropriate levels of security are reasonable for that facility.

(4) *Mechanical injection system; duty of the operator of a mechanical injection system to maintain the system's security standards.* Each

operator of a mechanical injection system must—

(i) Maintain a record for each seal, including its identifying number or code, the location of the seal, the date(s) on which the seal was issued and installed, and the reason for the installation;

(ii) Visually inspect each installed seal not less than once during every 24 hour period to ascertain that each seal and lock mechanism, if applicable, has not been physically altered;

(iii) Check the identifying number or code for each seal against the records maintained by the terminal operator no less frequently than once during each seven day period and record each inspection and verification;

(iv) Promptly notify the Commissioner if inspection of a seal reveals any inconsistency in the records pertaining to that seal, or if the seal has been damaged or removed (other than a removal authorized by the operator for testing or maintenance);

(v) Maintain a record of each seal that has been replaced to include the seal number or code, the date the seal was issued, the location of the seal, the date the seal was replaced, and the reason the seal was replaced;

(vi) Promptly destroy and replace seals that have been removed from the system;

(vii) Restrict access to unused seal inventory to individuals specifically designated by the operator and maintain a record of such individuals;

(viii) Maintain a record of each installation, inspection, and destruction described in this paragraph (d)(4), including the name of the individual who conducts the installation, inspection, or destruction;

(ix) Make available for the Commissioner's immediate inspection the seals and records described in this paragraph (d)(4); and

(x) Promptly notify the Commissioner if, and when, the dye injection system is placed out of service.
(5) *Mechanical injection system; revocation or suspension of approval.* The Commissioner may revoke or suspend its approval of a dye injection system if the Commissioner determines that the system does not meet the standards of paragraph (d)(2) of this section or if the operator of the system has not complied with the requirements of paragraph (d)(4) of this section.

(6) *Sales and entries.* For purposes of determining whether tax is imposed by section 4081 on a sale or entry of diesel fuel or kerosene, such fuel satisfies the dyeing requirements of this paragraph (d) only if the dye required by § 48.4082-1(b) is combined with the

fuel before the sale or entry and the seller or enterer has in its records evidence (such as a certificate from the terminal operator providing the fuel) establishing that the dye was combined with the fuel by means of a mechanical injection system. Thus, for example, diesel fuel or kerosene that is entered into the United States by means of nonbulk transfer (such as a railroad car) does not satisfy the requirements of this paragraph (d) if the required dye and marker are combined with diesel fuel or kerosene after the diesel fuel or kerosene has been entered into the United States.

(7) *Cross reference.* For the penalty relating to mechanical dye injection systems, see section 6715A.

(e) and (e)(1) [Reserved]. For further guidance, see § 48.4082-1(e) and (e)(1).

(2) This section is applicable on October 24, 2005.

■ **Par. 4.** Section 48.4101-1 is amended by revising paragraph (h)(3)(iv) to read as follows:

§ 48.4101-1 Taxable fuel; registration.

* * * * *

(h) * * *

(3) * * *

(iv) [Reserved]. For further guidance, see § 48.4101-1T(h)(3)(iv).

* * * * *

■ **Par. 5.** Section 48.4101-1T is added to read as follows:

§ 48.4101-1T Taxable fuel; registration (temporary).

(a) through (h)(3)(iii) [Reserved]. For further guidance, see § 48.4101-1(a) through (h)(3)(iii).

(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 § 48.4101-1(h)(3)(ii) at the terminal from which the removal occurred for at least 3 months after the removal to which it relates in the case of information relating to removals before January 1, 2006, and at least 12 months after the removal to which it relates in the case of information relating to removals after December 31, 2005; and

(B) Maintain the information described in § 48.4101-1(h)(3)(iii) at the terminal where the dye was received for at least 3 months after the receipt in the case of receipts before January 1, 2006, and at least 12 months after the receipt in the case of receipts after December 31, 2005.

(h)(3)(v) through (l) [Reserved] For further guidance see § 48.4101-1(h)(3)(v) through (l).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 6.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 7.** In § 602.101, paragraph (b) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *
(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
48.4082-1T	1545-1418
* * * * *	
48.4101-1T	1545-1418
* * * * *	

Cono R. Namorato,
Acting Deputy Commissioner for Services and Enforcement.

Approved: April 15, 2005.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05-8236 Filed 4-25-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05-05-024]

RIN 1625-AA08

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek and Severn River, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.511 during the Annapolis Yacht Club boat parade, a marine event to be held May 8, 2005, on the waters of Spa Creek and the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict

general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

DATES: 33 CFR 100.511 will be enforced from 10:30 a.m. to 1 p.m. on May 8, 2005.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Marine Events Coordinator, Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226-1971, and (410) 576-2674.

SUPPLEMENTARY INFORMATION: The Annapolis Yacht Club will sponsor a boat parade on the waters of Spa Creek and the Severn River at Annapolis, Maryland. The event will consist of approximately 60 boats traveling at slow speed along two separate parade routes in Annapolis Harbor. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.511 will be enforced for the duration of the event. Under the provisions of 33 CFR 100.511, from 10:30 a.m. to 1 p.m. on May 8, 2005 vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: April 11, 2005.

Ben R. Thomason, III,
Rear Admiral, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 05-8260 Filed 4-25-05; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05-05-023]

RIN 1625-AA08

Special Local Regulation for Marine Events; Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the "U.S. Naval Academy crew races", a marine event to be held on the waters of the Severn River at Annapolis, Maryland on May 8 and 29, 2005. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on the Severn River during the event.

DATES: This rule is effective from 5 a.m. on May 8, 2005 to 8 a.m. on May 29, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-05-023 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398-6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable and contrary to public interest because the event will take place before the comment period would end. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area. However advance notifications will be made to affected waterway users via marine information broadcasts and area newspapers.

Background and Purpose

On May 8 and 29, 2005, the U.S. Naval Academy will host crew races on the waters of the Severn River at Annapolis, Maryland. The event will consist of intercollegiate crew rowing teams racing along a 2000 meter course on the waters of the Severn River. A