

separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in

response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Van Duuren, B. L., L. Langseth, B. M. Goldschmidt, and L. Orris, "Carcinogenicity of Epoxides, Lactones, and Epoxy Compounds. VI. Structure and Carcinogenic Activity," *Journal of the National Cancer Institute*, vol. 39, No. 6., pp. 1217-1228, 1967.

2. Memorandum from Executive Secretary of the Cancer Assessment Committee, FDA, to Quantitative Risk Assessment Committee, FDA, concerning "Potential Carcinogenicity of 1,2-epoxyhexadecane (EHD): Subject of Food Additive Petition No. 7B4550 (Goldschmidt Chemical Corp.)," dated January 8, 1998.

3. Tobin, Paul S. et al., "An Evaluation of Skin Painting Studies as Determinants of Tumorigenesis Potential Following Skin

Contact with Carcinogens," *Regulatory Toxicology and Pharmacology*, vol. 2, 22-37, 1982.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

**PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS**

1. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3725 is amended in the table by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

**§ 178.3725 Pigment dispersants.**

\* \* \* \* \*

Substances	Limitations
* * *	* * * * *
Siloxanes and silicones; cetylmethyl, dimethyl, methyl 11-methoxy-11-oxoundecyl (CAS Reg. No. 155419-59-3).	For use only at levels not to exceed 0.5 percent by weight of the pigment. The pigmented polymers may contact all foods under conditions of use C, D, E, F, and G described in Table 2 of § 176.170(c) of this chapter.

Dated: June 19, 1998.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 48, 145, and 602**

[T.D. 8774]

RIN 1545-AW15

**Kerosene Tax; Aviation Fuel Tax; Tax on Heavy Trucks and Trailers**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to the kerosene and aviation fuel excise taxes and the tax on the first retail sale of certain tractors and truck, trailer, and semitrailer chassis and bodies (heavy vehicles). The regulations provide rules

for the kerosene tax, the refund available to certain aviation producers, and the tax on heavy vehicles. The regulations relating to kerosene affect the tax liability of certain industrial users, refiners, terminal operators, throughputters, and persons that sell, buy, or use kerosene. The regulations relating to aviation fuel affect certain producers, retailers, and users of aviation fuel. The regulations relating to the tax on heavy vehicles affect vehicle manufacturers and dealers. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** These regulations are effective July 1, 1998. For dates of applicability, see §§ 48.4082-6T, 48.4082-7T(b), 48.4082-8T(f), 48.4082-9T(b), 48.4091-3T(f), 48.4101-3T(e), 48.6427-10T(c), 48.6427-11T(g), and 145.4052-1(a)(2)(ii).

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

**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 1545-1608. 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 notice of proposed rulemaking 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

This document contains amendments to excise tax regulations (26 CFR parts 48 and 145) that implement certain changes made by the Taxpayer Relief Act of 1997 (the 1997 Act) relating to taxes on kerosene, aviation fuel, and heavy vehicles.

#### *Kerosene; the 1997 Act*

Section 4081 imposes a tax on certain removals, entries, and sales of taxable fuel. Before July 1, 1998, taxable fuel means gasoline and diesel fuel. As of that date, however, the definition of taxable fuel is expanded by the 1997 Act to include kerosene. Thus, after June 30, 1998, tax is imposed on the removal of kerosene from a terminal at the terminal rack.

In addition, the 1997 Act extends the rules for the exemption of dyed diesel fuel to dyed kerosene. Thus, tax is not imposed on kerosene that (1) the IRS determines is destined for a nontaxable use (such as for heating), (2) is indelibly dyed in accordance with IRS regulations, and (3) meets any marking requirements that may be prescribed in regulations.

Also, the 1997 Act provides that undyed kerosene that is destined for a nontaxable use may be removed, entered, or sold tax free in three situations. First, in the case of aviation-grade kerosene, dyeing is not required if the kerosene is received by a person that is registered by the IRS for purposes of the aviation fuel tax imposed by section 4091. Second, dyeing is not required for feedstock kerosene that is received from a pipeline or vessel by a registered kerosene feedstock user. Kerosene used as a feedstock by other persons is exempt from the dyeing requirement to the extent provided by regulations. Finally, to the extent prescribed by regulations, dyeing is not required if kerosene is received by a registered wholesale distributor that sells kerosene exclusively to ultimate vendors that sell kerosene from a pump that is not suitable for use in fueling any diesel-powered highway vehicle or train (a blocked pump).

The 1997 Act adds section 4101(e) to provide that a terminal for kerosene or diesel fuel cannot be an approved terminal unless the operator of the terminal offers dyed diesel fuel and

dyed kerosene for removal for nontaxable use. This provision is not applicable until July 1, 2000.

The 1997 Act generally applies to kerosene the credit and refund rules that apply to diesel fuel. Thus, a credit or refund is allowable to a registered ultimate vendor that sells taxed, undyed kerosene for use on a farm for farming purposes or for the exclusive use of a state or local government. In addition, a credit or refund is allowable to a registered ultimate vendor that sells taxed, undyed kerosene from a blocked pump or, to the extent provided by the Secretary of the Treasury, for blending with heating oil to be used during periods of extreme or unseasonable cold.

#### *Kerosene; Explanation of Provisions*

Because kerosene is classified as a taxable fuel as of July 1, 1998, the rules (including definitions) in the existing regulations that apply to taxable fuel generally apply to kerosene.

The temporary regulations define kerosene as the kerosene described in ASTM Specification D 3699 (No. 1-K and No. 2-K) and ASTM Specification D 1655 (kerosene-type jet fuel).

Under the temporary regulations, tax is not imposed on the removal, entry, or sale of kerosene that is dyed with dye of the same strength and composition that is now required for diesel fuel. Also, every retail pump where dyed kerosene is sold must display a prescribed notice similar to the one now required on dyed diesel fuel pumps.

Under the temporary regulations, tax generally is not imposed on aviation-grade kerosene if the person that receives the kerosene in a transaction otherwise subject to tax (such as a person that buys kerosene at a terminal rack) is registered with respect to the section 4091 tax and, for sales after September 30, 1998, certifies that the kerosene will be used as a fuel in an aircraft. These buyers include registered aviation fuel producers (that is, persons with IRS registration numbers with an "H" suffix) and registered commercial airlines.

Transitional rules provide that tax generally is not imposed on aviation-grade kerosene that is destined for use as aviation fuel if an unregistered person (such as a fixed-base operator) receives the kerosene at a terminal rack and certifies (for sales after September 30, 1998) that the kerosene will be used as a fuel in an aircraft. The Treasury Department is considering whether this provision should be made a part of the final regulations, or whether persons that are presently unregistered should be required to register in order to

receive aviation-grade kerosene tax free and requests comments on this issue. Comments may be submitted in the manner described under the **ADDRESSES** caption in the notice of proposed rulemaking on these subjects in the Proposed Rules section of this issue of the **Federal Register**.

The temporary regulations describe the conditions under which a registered ultimate vendor may be eligible for a credit or refund with respect to taxed kerosene that it sells from a blocked pump. A blocked pump is defined as a fuel pump that is at a fixed location and that cannot be used to fuel any diesel-powered highway vehicle or train. Also, blocked pumps must display a prescribed notice.

The temporary regulations do not provide rules for the following: (1) the exception from the dyeing requirement for kerosene that is removed from a terminal for use as a feedstock, (2) the exception from the dyeing requirement for kerosene that is received by a registered wholesale distributor that sells kerosene exclusively to ultimate vendors that sell kerosene from a blocked pump, (3) the availability of a credit or refund to a registered ultimate vendor that sells kerosene for blending with heating oil to be used during periods of extreme or unseasonable cold, and (4) the requirement that a terminal for kerosene or diesel fuel cannot be an approved terminal unless the operator of the terminal offers dyed diesel fuel and dyed kerosene for removal for nontaxable use. Comments are also requested on these issues. Comments may be submitted in the manner described under the **ADDRESSES** caption in the notice of proposed rulemaking on these subjects in the Proposed Rules section of this issue of the **Federal Register**.

#### *Aviation Fuel*

The 1997 Act added section 4091(d), which allows a registered aviation fuel producer (including a registered wholesale distributor) to obtain a refund of tax previously paid on aviation fuel that it buys. The temporary regulations describe the procedures to be followed for the allowance of this refund. These procedures are similar to the procedures under section 4081(e) for refunds relating to taxable fuel on which two taxes have been paid.

#### *Registration of Heavy Vehicle Manufacturers and Retailers*

The tax on the sale of heavy vehicles imposed by section 4051 is a tax that applies to the first retail sale by the manufacturer, importer, or retailer of a vehicle. The tax is not imposed if a

vehicle is sold for resale or for lease on a long-term basis. Under existing regulations, this tax-free treatment applies only if both the seller and the buyer are registered by the IRS. Under the 1997 Act, however, the Treasury Department is to revise those regulations so that those sales may be made tax free even if the parties have not been registered by the IRS.

These temporary regulations generally provide that a person, such as a vehicle manufacturer, may sell a vehicle tax free if it accepts from its buyer, such as a vehicle retailer, a prescribed statement, signed under penalties of perjury, stating that the buyer will resell the vehicle or lease it on a long-term basis. Neither party will be required to be registered.

The temporary regulations do not affect the registration requirements for tax-free sales under section 4221, such as sales for the exclusive use of a state or local government.

### 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) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the time required to prepare and submit the exemption certificates described in these regulations (many of which are similar to certificates that are already in use) is minimal and will not have a significant impact on those small entities that choose to provide the certificates. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue 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 Frank Boland, Office of the Assistant 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 Parts 48 and 145

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, 145, and 602 are amended as follows:

## PART 48—MANUFACTURERS AND RETAILERS EXCISE TAX REGULATIONS

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

**Authority:** 26 U.S.C. 7805 \* \* \* Sections 48.4082-6T, 48.4082-7T, and 48.4082-8T also issued under 26 U.S.C. 4082 \* \* \*

Section 48.4101-3 also issued under 26 U.S.C. 4101(a) \* \* \*

Sections 48.6427-10T and 48.6427-11T also issued under 26 U.S.C. 6427(n) \* \* \*

**Par. 2.** Section 48.4081-1T is added to read as follows:

#### § 48.4081-1T Taxable fuel; definitions (temporary).

(a) [Reserved]

(b) *Definitions.*

*Kerosene* means, after June 30, 1998,—

(1) The two grades of kerosene (No. 1-K and No. 2-K) described in ASTM Specification D 3699; and

(2) Kerosene-type jet fuel described in ASTM Specification D 1655 and military specifications MIL-T-5624R and MIL-T-83133D (Grades JP-5 and JP-8). For availability of ASTM and military specification material, see § 48.4081-1(c)(2)(i).

**Par. 3.** Sections 48.4082-6T, 48.4082-7T, 48.4082-8T, 48.4082-9T, and 48.4082-10T are added to read as follows:

#### § 48.4082-6T Kerosene; treatment as diesel fuel in certain cases (temporary).

For purposes of §§ 48.4081-1(b) (the definition of taxable fuel), 48.4081-2(c), 48.4082-1, 48.4082-4, and 48.4082-5, after June 30, 1998, diesel fuel includes kerosene.

#### § 48.4082-7T Kerosene; notice required with respect to dyed kerosene (temporary).

(a) *In general.* A legible and conspicuous notice stating: “*DYED KEROSENE, 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 kerosene 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 kerosene is, for purposes of the penalty imposed by section 6715, presumed to know that the fuel will not be used for a nontaxable use.

(b) *Effective date.* This section is applicable after June 30, 1998.

#### § 48.4082-8T Kerosene; exemption for aviation-grade kerosene (temporary).

(a) *Overview.* This section provides rules for exempting aviation-grade kerosene from the tax imposed by section 4081. Generally, under prescribed conditions, tax is not imposed on a removal, entry, or sale of aviation-grade kerosene if the kerosene is destined for use as a fuel in an aircraft.

(b) *Definition.*

*Aviation-grade kerosene* means kerosene-type jet fuel described in ASTM Specification D 1655 and military specifications MIL-T-5624R and MIL-T-83133D (Grades JP-5 and JP-8). For availability of ASTM and military specification material, see § 48.4081-1(c)(2)(i).

(c) *Removals and entries not in connection with sales.* Tax is not imposed by section 4081 on the removal or entry not in connection with a sale of aviation-grade kerosene 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 kerosene will be used as fuel in an aircraft and—

(i) The person otherwise liable for tax subsequently delivers the kerosene into the fuel supply tank of an aircraft or is registered under section 4101 with respect to the tax imposed by section 4091; or

(ii) The section 4091 tax has been imposed on the kerosene.

(d) *Removals and entries in connection with sales.* Tax is not imposed under section 4081 on the removal or entry of aviation-grade kerosene in connection with a sale 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 kerosene will be used as fuel in an aircraft and—

(i) The buyer is registered under section 4101 with respect to the tax imposed by section 4091;

(ii) The buyer is buying for its use in a nontaxable use (as defined in section 4092(a)); or

(iii) The section 4091 tax is, or has been, imposed on the kerosene.

(e) *Evidence under paragraph (d)(3)*—(1) *In general*—(i) *Sales before October 1, 1998*. For sales before October 1, 1998, the requirements of paragraph (d)(3) of this section will be considered to have been met if the person otherwise liable for tax has an unexpired certificate (described in this paragraph (e)) from the buyer and has no reason to believe that any information in the certificate is false.

(ii) *Sales after September 30, 1998*. For sales after September 30, 1998, the requirements of paragraph (d)(3) of this section are met only if the person otherwise liable for tax has an unexpired certificate (described in this paragraph (e)) from the buyer and has no reason to believe that any information in the certificate is false.

(2) *Certificate*. The certificate to be provided by a buyer of aviation-grade kerosene is a statement signed under penalties of perjury by a person with authority to bind the buyer, in substantially the same form as the model certificate provided in paragraph (e)(4) of this section, and that contains all information necessary to complete the model certificate. A new certificate or notice that the correct certificate is invalid 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 earliest of the following dates:

(i) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(ii) The date the buyer provides a new certificate or notice that the current certificate is invalid to the seller.

(iii) The date the seller is notified by the Internal Revenue Service or the buyer that the buyer's right to provide a certificate has been withdrawn.

(3) *Withdrawal of the right to provide a certificate*. The Internal Revenue Service may withdraw the right of a buyer of aviation-grade kerosene to provide a certificate under this section if the buyer uses or disposes of aviation-grade kerosene to which a certificate applies other than as a fuel in an aircraft. The Internal Revenue Service may notify any seller to whom the buyer has provided a certificate that the buyer's right to provide a certificate has been withdrawn.

(4) *Model certificate*.

**Certificate of Person Buying Aviation-Grade Kerosene for Use as a Fuel in an Aircraft**

(To support tax-free removals and entries of aviation-grade kerosene under section 4081 of the Internal Revenue Code.)

Name, address, and employer identification number of seller ("Buyer") certifies the following under penalties of perjury:

Name of Buyer: \_\_\_\_\_

The aviation-grade kerosene to which this certificate relates will be used as fuel in an aircraft.

Buyer is (check one):

\_\_\_\_\_ Registered under section 4101 of the Internal Revenue Code with respect to the tax imposed by section 4091 with a registration number of \_\_\_\_\_.

\_\_\_\_\_ Buying the kerosene for its use in a nontaxable use (as defined in section 4092(a)).

\_\_\_\_\_ Buying the kerosene for its use (other than a nontaxable use) in commercial aviation (as defined in section 4092(b)).

\_\_\_\_\_ Buying the kerosene for its use (other than a nontaxable use) in noncommercial aviation (as defined in section 4041(c)(2)).

\_\_\_\_\_ Buying the kerosene for resale.

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 seller if any information in this certificate changes.

Buyer understands that if Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any 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 \_\_\_\_\_

Employer identification number \_\_\_\_\_

Address of Buyer \_\_\_\_\_

Signature and date signed \_\_\_\_\_

(f) *Effective date*. This section is applicable after June 30, 1998.

**§ 48.4082-9T Kerosene; exemption for non-fuel feedstock purposes (temporary).**

(a) *In general*. Tax is not imposed under section 4081 and § 48.4081-3(e)(1) if, upon the removal of kerosene from a pipeline or vessel, the kerosene

is received by a taxable fuel registrant that is a kerosene feedstock user. For this purpose, a *kerosene feedstock user* is a person that receives kerosene by bulk transfer for its own use in the manufacture or production of any substance (other than gasoline, diesel fuel, or special fuels referred to in section 4041).

(b) *Effective date*. This section is applicable after June 30, 1998.

**§ 48.4082-10T Kerosene; additional exemption from floor stocks tax (temporary).**

The floor stocks tax imposed by section 1032(g) of the Taxpayer Relief Act of 1997 does not apply to kerosene that satisfies the dyeing requirements of § 48.4082-1(b) by the earlier of—

(a) September 30, 1998; or

(b) The time the kerosene is sold by the person otherwise liable for the floor stocks tax.

**Par. 4.** Section 48.4091-3T is added to read as follows:

**§ 48.4091-3T Aviation fuel; conditions to allowance of refunds of aviation fuel tax under section 4091(d) (temporary).**

(a) *Overview*. This section provides the conditions under which a refund of tax imposed by section 4091 is allowable with respect to taxed aviation fuel that is held by a registered aviation fuel producer. No credit against any tax imposed by the Internal Revenue Code is allowed under section 4091(d).

(b) *Conditions to allowance of refund*. A claim for refund of tax imposed by section 4091 with respect to aviation fuel is allowed under section 4091(d) and this section only if—

(1) A tax imposed by section 4091 with respect to the aviation fuel was paid to the government by an importer or producer (the first producer) and the tax has not been otherwise credited or refunded;

(2) After imposition of the tax, the aviation fuel is acquired by a person that is a registered aviation fuel producer (the second producer);

(3) The second producer has filed a timely claim for refund that contains the information required under paragraph (d) of this section; and

(4) The first producer and any person that owns the fuel after its sale by the first producer and before its purchase by the second producer (a subsequent seller) have met the reporting requirements of paragraph (c) of this section.

(c) *Reporting requirements*—(1) *In general*. The reporting requirements of this paragraph (c)(1) are met if the first producer files a report (the first producer's report) that—

(i) Is in substantially the same form as the model report provided in paragraph (c)(2) of this section (or such other model report as the Commissioner may prescribe);

(ii) Contains all information necessary to complete such model report; and

(iii) Is filed at the time and in the manner prescribed by the Commissioner.

(2) *Model first producer's report.*

#### First Producer's Report

First Producer's name, address, and employer identification number

Buyer's name, address, and employer identification number

Date and location of taxable sale

Volume and type of aviation fuel sold

Amount of federal excise tax paid on account of the sale

Under penalties of perjury, First Producer declares that First Producer has examined this statement, including any accompanying schedules and statements, and, to the best of First Producer's knowledge and belief, it is true, correct and complete.

Printed or typed name of the person signing

Title of person signing

Signature and date signed

(3) *Information provided to buyers.*

The reporting requirements of this paragraph (c)(3) are met if a first producer that filed a first producer's report under paragraph (c)(1) of this section gives a copy of the report to the person to whom the first producer sells the aviation fuel.

(4) *Statement of subsequent seller—(i) In general.* The reporting requirements of this paragraph (c)(4) are met if—

(ii)(A) Each subsequent seller gives to its buyer a copy of a statement that provides all information (whether or not in the same format) necessary to complete the model statement prescribed in paragraph (c)(4)(ii) of this section (or such other model statement as the Commissioner may prescribe); and

(B) The statement is provided at the bottom or on the back of the copy of the first producer's report (or in an attached document).

(iii) *Model statement describing subsequent sale.*

#### Statement of Subsequent Seller (Aviation Fuel)

Name, address, and employer identification number of seller in subsequent sale

Name, address, and employer identification number of buyer in subsequent sale

Date and location of subsequent sale

Volume and type of aviation fuel sold

The undersigned seller (the Seller) has received the copy of the first producer's report provided with this statement in connection with Seller's purchase of the aviation fuel described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, it is true, correct and complete.

Printed or typed name of person signing

Title of person signing

Signature and date signed

(5) *Sale to multiple buyers.* If a first producer's report relates to aviation fuel that is divided among more than one buyer, multiple copies of the first producer's report should be made at the stage that the aviation fuel is divided and a copy given to each buyer. The reporting requirements of this paragraph (c) will be met only with respect to the fuel purchased by buyers that are given a copy of the report including any statement required under paragraph (c)(4) of this section.

(d) *Form and content of claim—(1) In general.* The following rules apply to claims for refund under section 4091(d):

(i) The claim must be made by the second producer and must include all the information described in paragraph (d)(2) of this section.

(ii) The claim must be made on Form 8849 (or such other form as the Commissioner may designate) in accordance with the instructions on the form. The form should be marked *Section 4091(d) Claim* at the top. Section 4091(d) claims must not be included with a claim for a refund under any other provision of the Internal Revenue Code.

(2) *Information to be included in the claim.* Each claim for a refund under section 4091(d) must contain the following information with respect to the aviation fuel covered by the claim:

(i) Volume and type of aviation fuel.

(ii) Date on which the second producer acquired the aviation fuel to which the claim relates.

(iii) Amount of tax that the first producer paid to the government and a statement that the second producer has

not included the amount of that tax in the sales price of the aviation fuel to which the claim relates and has not collected that amount from the person that bought the aviation fuel from the second producer, if any.

(iv) Name, address, and employer identification number of the first producer that paid the tax to the government.

(v) A copy of the first producer's report that relates to the aviation fuel covered by the claim.

(vi) A copy of any statement of a subsequent seller that the second producer received with respect to that aviation fuel.

(e) *Time for filing claim.* A claim for refund under section 4091(d) may be filed any time after the first producer has filed the return of the tax to which the claim relates and before the end of the period prescribed by section 6511 for the filing of a claim for refund of that tax.

(f) *Effective date.* This section is applicable with respect to refunds of tax imposed by section 4091 after December 31, 1998.

**Par. 5.** Section 48.4101-2T is added to read as follows:

#### § 48.4101-2T Information reporting (temporary).

(a)(1) through (a)(3) [Reserved]

(a)(4) *Registered aviation fuel producers.* After June 30, 1999, each person that is registered under section 4101 as a producer of aviation fuel must make a return showing—

(i) The name and employer identification number of each unregistered person to whom it sold aviation fuel for resale;

(ii) The volume of the aviation fuel sold to such persons;

(iii) The date and location of such sales; and

(iv) Any other information required by the Commissioner.

(b) through (d) [Reserved]

**Par. 6.** Section 48.4101-3T is added to read as follows:

#### § 48.4101-3T Registration; special rules for kerosene (temporary).

(a) *Application of § 48.4101-1.* The references to diesel fuel in §§ 48.4101-1(a)(1) and (f)(1)(ii) are treated as references to either diesel fuel or kerosene, and the references in §§ 48.4101-1(b)(5)(i) and (f)(2) to paragraphs (c)(1) or (d) of § 48.4101-1 are treated as references also to paragraph (c) of this section.

(b) *Transitional registration rule—(1) In general.* A person is treated as a taxable fuel registrant if, on June 30, 1998, the person—

(i) Is an enterer, refiner, terminal operator, or throughputter of kerosene and is registered under section 4101 as a producer or importer of aviation fuel; or

(ii) Operates one or more terminals that store kerosene (and no other type of taxable fuel) and each position holder at each of its terminals is a taxable fuel registrant.

(2) *Termination.* A person treated as registered under this paragraph (b) is treated as registered until the earlier of—

(i) The effective date of a registration issued under § 48.4101-1(g)(3) with respect to kerosene;

(ii) The effective date of a revocation or suspension of registration under § 48.4101-1(i); or

(iii) April 1, 1999.

(c) *Persons that may, but are not required to, be registered.* A person may, but is not required to, be registered under section 4101 with respect to the tax imposed by section 4081 if the person is a kerosene feedstock user (defined in § 48.4082-9T).

(d) *Additional terms and conditions of registration for certain terminal operators.* A legible and conspicuous notice stating: "DYED KEROSENE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be provided by each terminal operator to any person that receives dyed kerosene 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.

(e) *Effective date.* This section is applicable after June 30, 1998.

**Par. 7.** Sections 48.6427-10T and 48.6427-11T are added to read as follows:

**§ 48.6427-10T Claims with respect to kerosene (temporary).**

(a) *Claims under § 48.6427-8—(1) In general.* For purposes of § 48.6427-8, diesel fuel includes kerosene.

(2) *Blocked pumps.* Kerosene is treated as satisfying the conditions of § 48.6427-8(b)(1) only if it was not sold from a blocked pump (as described in § 48.6427-11T(b)).

(b) *Claims under § 48.6427-9.* For purposes of § 48.6427-9, diesel fuel includes kerosene.

(c) *Effective date.* This section is applicable to kerosene taxed after June 30, 1998.

**§ 48.6427-11T Special rules for claims by registered ultimate vendors of kerosene (blocked pump) (temporary).**

(a) *Overview.* This section provides rules relating to claims by registered ultimate vendors for payments and income tax credits with respect to kerosene that is sold from a blocked pump. For rules relating to claims by registered ultimate vendors for kerosene that is sold for farming use or use by a State, see §§ 48.6427-9 and 48.6427-10T.

(b) *Definition; blocked pump.* A blocked pump is a fuel pump that meets the following conditions:

(1) It is used to dispense undyed kerosene that is sold at retail for use by the buyer in a nontaxable use.

(2) It is at a fixed location and cannot (because, for example, of its distance from a road surface or train track or the length of its delivery hose) be used to dispense fuel directly into the fuel supply tank of a diesel-powered highway vehicle or train.

(3) It is identified with a legible and conspicuous notice stating: "UNDYED UNTAXED KEROSENE, NONTAXABLE USE ONLY".

(c) *Conditions to allowance of credit or payment.* Notwithstanding § 48.6427-9(c), a claim for a credit or payment with respect to undyed kerosene is allowable under section 6427(l)(5)(B)(i) if—

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

(2) The claimant sold the kerosene from a blocked pump;

(3) The claimant is a registered ultimate vendor of kerosene; 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.* The rules of § 48.6427-9(d) apply to claims filed under this section.

(e) *Content of claim.* Each claim for credit or payment under this section must contain the following information with respect to all the kerosene 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 kerosene covered by the claim.

(3) The claimant's registration number.

(4) A statement that the claimant has not included the amount of the tax in its sales price of the kerosene and has not collected the amount of tax from its

(f) *Time and place for filing claim.* The rules of § 48.6427-9(f) apply to claims filed under this section.

(g) *Effective date.* This section is applicable June 30, 1998.

**PART 145—TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1982 (PUB. L. 97-424)**

**Par. 8.** The authority citation for part 145 continues to read in part as follows:

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

**Par. 9.** Section 145.4052-1 is amended as follows:

1. Paragraph (a)(2)(ii) is redesignated as paragraph (a)(2)(ii)(A).

2. Paragraph (a)(2)(ii)(A), as redesignated, is amended by removing the language "Both" and adding "For a sale before July 1, 1998, both" in its place and removing the language "or" at the end.

3. Paragraph (a)(2)(ii)(B) is added to read as follows:

**§ 145.4052-1 Special rules and definitions.**

(a) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(B) For a sale after June 30, 1998, and regardless of the registration status of the seller or the purchaser, the seller has in good faith accepted from the purchaser a statement that the purchaser executed in good faith and that is in substantially the same form as the certificate described in paragraph (a)(6) of this section, except that the statement must be signed under penalties of perjury and need not contain a registration number, or

\* \* \* \* \*

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

**Par. 10.** The authority citation for part 602 continues to read as follows:

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

**Par. 11.** In § 602.101, paragraph (c) is amended by:

1. Removing the following entry from the table:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*

(c) \* \* \*

CFR part or section where identified and described	Current OMB control number
* * * * *	* * * * *
145.4052-1 .....	1545-0120 1545-0745 1545-1076

CFR part or section where identified and described	Current OMB control number
* * * *	*

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
* * * *	*
48.4082-7T .....	1545-1608
48.4082-8T .....	1545-1608
48.4091-3T .....	1545-1608
* * * *	*
48.4101-2T .....	1545-1608
48.4101-3T .....	1545-1608
* * * *	*
48.6427-11T .....	1545-1608
* * * *	*
145.4052-1 .....	1545-1608 1545-0120 1545-0745 1545-1076
* * * *	*

**Michael P. Dolan,**  
*Deputy Commissioner of Internal Revenue.*

Approved: June 17, 1998.

**Donald C. Lubick,**  
*Assistant Secretary of the Treasury.*  
[FR Doc. 98-17400 Filed 6-26-98; 2:02pm]  
BILLING CODE 4830-01-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 901**

[SPATS No. AL-065-FOR]

**Alabama Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving an amendment to the Alabama regulatory program (hereinafter referred to as the "Alabama program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alabama's revisions to and additions of statutes pertain to the small operator assistance program

(SOAP), the repair of homes and other structures materially damaged by underground coal mining, and the replacement of affected water supplies. The amendments is intended to revise the Alabama program to be consistent with SMCRA.

**EFFECTIVE DATE:** July 1, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290-7282.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Alabama Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

**I. Background on the Alabama Program**

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 901.15 and 901.16.

**II. Submission of the Proposed Amendment**

By letter dated April 14, 1998 (Administrative Record No. AL-0579), Alabama submitted an amendment to its program pursuant to SMCRA. Alabama submitted the amendment in response to a May 20, 1996, letter (Administrative Record No. AL-0555) that OSM sent to Alabama in accordance with 30 CFR 732.17(c). OSM announced receipt of the amendment in the April 29, 1998, **Federal Register** (63 FR 23403), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on May 29, 1998. Because no one requested a public hearing or meeting, none was held.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect

organizational changes resulting from this amendment.

**A. Section 9-16-83. Permits; Fee**

1. Alabama proposed to revise paragraph (c) to read as follows:

(c)(1) If the regulatory authority finds that the probable total annual production at all locations of any surface coal mining operator will not exceed 300,000 tons, the cost of the following activities, which shall be performed by a qualified public or private laboratory or such other public or private qualified entity designated by the regulatory authority, shall be assumed by the regulatory authority upon the written request of the operator in connection with a permit application, provided that funds are made available to the regulatory authority for such purposes by the Secretary of the U.S. Department of Interior.

(A) The determination of probable hydrologic consequences required by subsection (b)(10), including the engineering analyses and designs necessary for the determination.

(B) The development of cross-section maps and plans required by subsection (b)(13).

(C) The geologic drilling and statement of results of test borings and core samplings required by subsection (b)(14).

(D) The collection of archaeological information required by subsection (b)(12) and any other archaeological and historical information required by the regulatory authority, and the preparation of plans necessitated thereby.

(E) Pre-blast surveys required by subsection 9-16-90(b)(15)e.

(F) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the regulatory authority under this Act.

(2) The regulatory authority shall provide or assume the cost of training coal operators that meet the qualifications stated in paragraph (1) concerning the preparation of permit applications and compliance with the regulatory program, and shall ensure that qualified coal operators are aware of the assistance available under this subsection; provided that funds for such purposes are made available to the regulatory authority by the Secretary of the U.S. Department of Interior.

The Director is approving this revision because it is no less stringent than section 507(c)(1) of SMCRA.

2. Alabama proposed to add new paragraph (h) to read as follows:

(h) A coal operator that has received assistance pursuant to subsection (c) (1) or (2) shall reimburse the regulatory authority for the cost of the services rendered if the program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.