

# Notice of Proposed Rulemaking by Cross Reference to Temporary Regulations and Notice of Public Hearing

## Diesel Fuel and Kerosene Excise Tax; Dye Injection

### REG-154000-04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations and notice of public hearing.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9199) relating to the mechanical dye injection of diesel fuel and kerosene. The text of those regulations also serves as the text of these proposed regulations. These regulations affect certain enterers, refiners, terminal operators, and throughputters.

DATES: Written and electronic comments must be received by June 27, 2005. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for July 19, 2005, must be received by June 27, 2005.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-154000-04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-154000-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or submitted electronically, via the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs) or via the Federal eRuling portal at [www.regulations.gov](http://www.regulations.gov) (IRS and REG-154000-04). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William Blodgett at (202)

622-3090; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent 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, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by June 27, 2005.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §§48.4082-1(d)(2), 48.4082-1(d)(4), 48.4082-1(d)(6) and 48.4101-1(h)(3). This collection of information is necessary to obtain a tax benefit. The likely

recordkeepers are terminal operators and enterers.

Estimated total annual reporting and/or recordkeeping burden: 1,400 hours.

Estimated average annual burden hours per recordkeeper: 7 hours.

Estimated number of respondents and/or recordkeepers: 200.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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

Temporary regulations in this issue of the Bulletin amend Manufacturers and Retailers Excise Taxes Regulations (26 CFR part 48) under sections 4082 and 4101. The temporary regulations set forth requirements regarding the mechanical dye injection systems for diesel fuel and kerosene and are required by the American Jobs Creation Act of 2004. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

##### Special Analyses

It has been determined that this notice of proposed rulemaking 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. 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 on the fact that the time required to maintain the required records and report to the IRS is minimal and will not have a significant impact on those small entities.

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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 19, 2005, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Ave., NW, Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area at the Constitution Avenue entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by June 27, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**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.

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**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 48 is proposed to be amended as follows:

**PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES**

Paragraph 1. The authority citation for part 48 continues to read, in part, as follows:

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

Par. 2. In §48.4082–1, paragraphs (d) and (e)(2) are revised to read as follows:

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

\* \* \* \* \*

(d) [The text of this proposed paragraph (d) is the same as the text of §48.4082–1T(d) published elsewhere in this issue of the Bulletin].

(e) \* \* \*

(e)(2) [The text of this proposed paragraph (e)(2) is the same as the text of §48.4082–1T(e)(2) published elsewhere in this issue of the Bulletin].

Par. 3. 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) [The text of this proposed paragraph (h)(3)(iv) is the same as the text of §48.4101–1T(h)(3)(iv) published elsewhere in this issue of the Bulletin].

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

(Filed by the Office of the Federal Register on April 25, 2005, 8:45 a.m., and published in the issue of the Federal Register for April 26, 2005, 70 F.R. 21361)