

organizations. The final rule also establishes a funding distribution methodology called the Tribal Transportation Allocation Methodology (TTAM).

**FOR FURTHER INFORMATION CONTACT:**

LeRoy Gisha, Chief, Division of Transportation, Bureau of Indian Affairs, 1951 Constitution, NW., MS-320-SIB, Washington, DC 20240, telephone (202) 513-7711 or fax (202) 208-4696.

**SUPPLEMENTARY INFORMATION:** The public information and education meetings are not public hearings and are not public comment meetings. The meetings will consist of presentations on each part of the final rule with time for clarification questions at the end of the meeting. We will provide information packets on the final rule at the meeting. For more information on the location of the meetings visit the Federal Highway Administration, Federal Lands Highway Web site at: <http://www.fhwa.dot.gov/flh>. The meetings will begin at 8 a.m. and end at 4:30 p.m. local time and will be held on the dates and at the locations listed below:

Meeting date	Location
August 10, 2004 .....	Oklahoma City, OK
August 12, 2004 .....	Albuquerque, NM
August 24, 2004 .....	Las Vegas, NV
August 26, 2004 .....	Seattle, WA
September 8, 2004 ...	Anchorage, AK
September 10, 2004	Fairbanks, AK
September 21, 2004	Minneapolis, MN
September 23, 2004	Nashville, TN

**Meeting Agenda (all times local)**

- 8 a.m.–8:15 a.m. Welcome, Introductions, Ground Rules.
- 8:15 a.m.–8:30 a.m. Opening and Overview.
- 8:30 a.m.–11:45 a.m. Preamble.
  - Subpart A—Policies, Applicability, and Definitions.
  - Subpart B—IRR Program Policy and Eligibility.
  - Subpart D—Planning, Design, and Construction of IRR Program Facilities.
- 11:45 a.m.–12:45 p.m. Lunch.
- 12:45 p.m.–4 p.m.
  - Subpart E—Service Delivery For IRR.
  - Subpart F—Program Oversight and Accountability.
  - Subpart G—BIA Road Maintenance.
  - Subpart H—Miscellaneous Provisions.
  - Subpart C—IRR Program Funding.
- 4 p.m.–4:30 p.m. Clarification Questions.
- 4:30 p.m. Adjourn.

Dated: July 27, 2004.

**David W. Anderson,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 04-17418 Filed 7-29-04; 8:45 am]

BILLING CODE 4310-LH-M

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 48 and 602**

[TD 9145]

RIN 1545-BD29

**Entry of Taxable Fuel**

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

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations relating to the tax on the entry of taxable fuel into the United States. These regulations affect enterers of taxable fuel, other importers of record, and certain sureties. The text of the temporary regulations also serves as the text of the proposed regulations (REG-120616-03) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective September 28, 2004.

*Applicability Dates:* For dates of applicability, see §§ 48.4081-1T(b) and 48.4081-3T(c)(ii) and (iv).

**FOR FURTHER INFORMATION CONTACT:** Celia Gabrysh (202) 622-3130 (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 1545-1897. 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 shall 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**

*Present Law*

Section 4081(a)(1)(A)(iii) of the Internal Revenue Code (Code) imposes a tax on the entry into the United States of taxable fuel. Taxable fuel means gasoline, diesel fuel, and kerosene. Existing regulations provide that the enterer is liable for the tax imposed on the entry of taxable fuel.

The regulations currently define the term *enterer* as generally meaning 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.

The regulations require an enterer to be registered by the IRS. The IRS will register an applicant only if the IRS determines that the applicant meets several tests, including the adequate security test. An applicant meets the adequate security test only if the IRS determines that the applicant has both adequate financial resources and a satisfactory tax history, or the applicant gives the IRS a bond.

Section 142.4 of the Customs regulations (19 CFR) provides that merchandise shall not be released from Customs custody unless a bond on Customs Form 301, Customs Bond, has been filed. This bond, which is filed by the importer of record, secures the payment of any duty, tax, or charge, and compliance with Customs laws and regulations. Section 141.3 of the Customs regulations provides that the importer's liability for duties includes liability for any internal revenue taxes which attach upon the importation of merchandise, unless otherwise provided by law or regulation. Also, § 113.62(a)(1)(ii) of the Customs regulations provides, in part, that if merchandise is imported and released from Customs custody, the obligors on

a Customs bond (principal and surety, jointly and severally) agree to pay, as demanded by Customs, all additional duties, taxes, and charges subsequently found due, legally fixed, and imposed on any entry secured by the bond.

Reason for Change

The IRS has found that abusive situations exist with regard to the entry of taxable fuel into the United States. For example, some enterers are not registered and are not paying the tax on their fuel entries. This not only gives noncompliant enterers a competitive advantage over their compliant competitors, but it also deprives the United States Treasury of revenue intended for the Highway Trust Fund.

When Congress enacted the present fuel tax regime, it noted that the Treasury Department is permitted "to prescribe rules and administrative procedures for determining liability for payment of tax." H.R. Conf. Rep. No. 101-964, at 1052 (1990).

Explanation of Provisions

Pursuant to these temporary regulations, the importer of record (under Customs law) is jointly and severally liable with the enterer for the tax if the importer of record is not the enterer of the taxable fuel (that is, the importer of record is a customs broker engaged by the enterer) and the enterer is not a taxable fuel registrant. Thus, an importer of record engaged by an enterer and seeking assurance that it will not be jointly and severally liable for the enterer's tax liability should verify that the enterer is registered by the IRS. This temporary regulation is similar to § 48.4081-2(c)(2) of the regulations, which provides that a terminal operator generally is jointly and severally liable for the tax imposed on the removal of taxable fuel from the rack if the terminal operator allows an unregistered position holder to operate in its terminal.

Customs laws and regulations provide that the importer of record is liable for any duties or taxes that attach upon the importation of merchandise. Therefore, an importer of record's Customs bond secures not only the payment of duties, but also the payment of taxes that are imposed on the entry of merchandise, including taxable fuel. Consequently, under existing law, a surety could be compelled to meet a demand on a Customs bond if the excise tax on the entry of taxable fuel is not paid when due. However, the IRS will not charge a surety bond for this tax until the effective date of these temporary regulations. It should be noted, however, that under these temporary regulations the Customs bond posted for

the entry of taxable fuel will not be charged for the section 4081 tax if the enterer is a taxable fuel registrant.

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 Celia Gabrysh, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS, the Treasury Department, and the Bureau of Customs and Border Protection, Department of Homeland Security, 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 continues to read, in part, as follows:

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

Par. 2. In § 48.4081-1, paragraph (b) is amended by adding a new sentence to the end of the definition of enterer to read as follows:

§ 48.4081-1 Taxable fuel; definitions.

\* \* \* \* \*

(b) \* \* \* This definition of enterer does not apply with respect to an entry

if the definition of enterer in § 48.4081-1T(b) is applicable with respect to that entry.

\* \* \* \* \*

Par. 3. Section 48.4081-1T is added to read as follows:

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

(a) [Reserved]. For further guidance, see § 48.4081-1(a).

(b) Definitions.

Definitions of approved terminal or refinery through diesel-powered train [Reserved].

Enterer generally means, in the case of an entry of taxable fuel on or after September 28, 2004, the importer of record (under customs law) with respect to the taxable fuel, except that—

(1) If the importer of record is a customs broker engaged by the owner of the taxable fuel, the person for whom the broker is acting is the enterer; and

(2) 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.

Definition of entry through (f)(2) [Reserved]. For further guidance, see § 48.4081-1(b) definition of entry through (f)(2).

Par. 4. In § 48.4081-3, revise paragraph (c)(2) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(2) Liability for tax—(i) In general.

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

(ii) through (iv) For further guidance, see § 48.4081-3T(c)(2)(ii) through (iv).

\* \* \* \* \*

Par. 5. Section 48.4081-3T is added to read as follows:

§ 48.4081-3T Taxable fuel; taxable events other than removal at the terminal rack (temporary).

(a) through (c)(2)(i) [Reserved]. For further guidance, see § 48.4081-3(a) through (c)(2)(i).

(c)(2)(ii) Joint and several liability of the importer of record. In the case of an entry of taxable fuel on or after September 28, 2004, the importer of record with respect to the taxable fuel is jointly and severally liable with the enterer for the tax imposed under § 48.4081-3(c)(1) if—

(A) The importer of record is not the enterer of the taxable fuel; and

(B) The enterer is not a taxable fuel registrant.

(iii) Conditions for avoidance of liability. The importer of record is not

liable for the tax under paragraph (c)(2)(ii) of this section if, at the time of the entry, the importer of record—

(A) Has an unexpired notification certificate (as described in § 48.4081-5) from the enterer; and

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

(iv) *Customs bond.* In the case of an entry of taxable fuel on or after September 28, 2004, the Customs bond posted with respect to the importation of the fuel will not be charged for the tax imposed on the entry of the fuel if the enterer is a taxable fuel registrant. A surety bond will not be charged for the tax imposed on the entry of the fuel covered by the bond, if at the time of entry, the surety—

(A) Has an unexpired notification certificate (as described in § 48.4081-5) from the enterer; and

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

(d) through (j) [Reserved]. For further guidance, see § 48.4081-3(d) through (j).

**§ 48.4081-5 [Amended]**

■ **Par. 6.** Section 48.4081-5 is amended as follows:

■ a. Paragraph (a) is amended by removing the language “48.4081-2(c)(3),” and by adding “48.4081-2(c)(2)(ii), 48.4081-3T(c)(2)(iii) and (iv),” in its place.

■ b. Paragraph (b)(2) is amended by removing the language “gasoline registrant” and adding “taxable fuel registrant” in its place.

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

■ **Par. 7.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 8.** In § 602.101, paragraph (b) is amended by adding an entry 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.
* * * * *	* * * * *
48.4081-3T .....	1545-1897
* * * * *	* * * * *

**Mark E. Matthews,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: July 14, 2004.

**Gregory Jenner,**  
*Acting Assistant Secretary of the Treasury.*  
[FR Doc. 04-17449 Filed 7-29-04; 8:45 am]  
**BILLING CODE 4830-01-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 175**

[USCG-2000-8589]

**RIN 1625-AA62 (Formerly 2115-AG04)**

**Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, with two changes, the interim rule published on June 24, 2002, which required certain children under the age of thirteen aboard recreational vessels to wear a personal flotation device (PFD). It changes the requirement from “each child” under the age of thirteen, to “certain children” under the age of thirteen, and addresses in more detail when Federal or State requirements apply. These changes clarify the Coast Guard’s enforcement of existing State standards. This final rule is intended to reduce the number of children who drown because they are not wearing PFDs.

**DATES:** This final rule is effective August 30, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket are part of docket USCG-2000-8589 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may obtain a copy of this rule by calling the U.S. Coast Guard Infoline at 1-800-368-5647 or by accessing either the Web site for the Office of Boating Safety at <http://www.uscgboating.org>, or the Internet site for the Docket Management Facility at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this Final Rule,

call Carlton Perry, U.S. Coast Guard, telephone: 202-267-0979. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202-366-0271.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

This rulemaking began with our publication of two notices requesting comment, both titled “Recreational Safety-Federal Requirements for Wearing Personal Flotation Devices,” in the **Federal Register**. We published the first notice in the **Federal Register** on September 25, 1997, CGD 97-059 [62 FR 50280]. It included questions about potential PFD-wearing requirements for recreational boaters. We extended the comment period in a notice published in the **Federal Register** on March 20, 1998, CGD 97-059 [63 FR 13586]. We published another notice, focusing on certain children, riders on personal watercraft, and persons being towed behind recreational vessels, in the **Federal Register** on October 5, 1999, USCG-1999-6219 [64 FR 53971].

We received approximately 600 comments for the first notice and another 600 comments for the second notice. We developed a Notice of Proposed Rulemaking (NPRM), after considering all the comments, proposing Federal requirements for certain children to wear personal flotation devices (PFDs).

We published an NPRM titled “Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels” in the **Federal Register** on May 1, 2001 [66 FR 21717]. The NPRM proposed that children under the age of thirteen be required to wear PFDs when they are above decks aboard recreational vessels that are under way. The NPRM discussed the approximately 1,200 comments that we received in response to the two requests for comments. No public hearing was requested and none was held.

By the close of the NPRM comment period on August 30, 2001, we had received 46 more comments. Of those, 22 comments supported the rule as proposed in the NPRM, 8 supported it with changes, and 16 opposed it. Most comments that supported the rule as proposed in the NPRM stated that it would be a positive step toward reducing drownings and toward uniform requirements across the States. Opposing comments expressed concern that Federal action would interfere with individual State efforts to mandate the use of PFDs.

After summarizing the comments received in response to the NPRM, we