

WELLINGHOFF, Commissioner, *dissenting in part:*

On rehearing, the American Gas Association (AGA) continues to recommend that the Commission require pipelines to provide shipper-supplied gas information reported on Sheets 521a/b by function and to include, by function, the amount of fuel that has been waived, discounted or reduced as part of a negotiated rate agreement. The Commission rejects AGA's proposals. I disagree.

In denying the request for shipper-supplied gas information reported on Sheets 521a/b by function, the majority acknowledges that the detail sought by AGA would bring additional clarity to fuel costs. However, the majority states that the additional information is not needed to assess the justness and reasonableness of the pipeline's rates. The majority further states that the additional reporting would be too burdensome.

The Commission recognizes that shipper-supplied gas information is critical to the clarity and transparency needed to support a reasonable analysis of fuel gas costs.³⁵ Sheets 521a/b operate in tandem with Sheet 520. Sheet 520 provides fuel gas costs by function. A shipper pays for fuel costs by function whether the fuel rate is fixed or tracked. Sheets 521a/b provide the volume and revenue from the disposition of excess shipper-supplied gas. However, unless Sheets 521a/b are broken out by function, a shipper cannot match the revenues generated by the sale of excess fuel with the functionalized costs. Thus, because the fuel rate would include both gas costs and excess gas revenues, the information sought by AGA is critical to assessing the justness and reasonableness of the pipeline's fuel rates.

In denying the request for the amount of fuel by function that has been waived, discounted or reduced as part of a negotiated rate agreement, the majority states that it is unlikely that all pipelines would have this information readily available. The majority also asserts that it is not apparent that the level of fuel associated with these types of transactions is significant enough to warrant additional reporting.

With most pipeline expansions backstopped with negotiated rate contracts, I believe that the fuel associated with these types of transactions is not insignificant. Regardless of the level of fuel, the

Commission has a strict policy that existing shippers must not subsidize the negotiated rate program.³⁶ In fact, in this proceeding, the Commission has stated that because pipelines may provide services from the same facilities using different rates—negotiated, discounted or recourse rates—it is important to know the level of services provided under each rate structure in order to protect against cross-subsidization. Therefore, fuel costs and revenues of the different types of rate structures broken down by function are critical to assessing the justness and reasonableness of a pipeline's fuel rates.

With regard to the reporting burden, the information requested by AGA is readily available. The pipeline maintains this information by function in order to change its fuel rate either in a tracking mechanism or its next section 4 rate filing, and to assure that its existing customers are not subsidizing the negotiated rate program.³⁷ The increased burden is related solely to inputting the data in the Form 2. I believe that the increased burden is justified by the utility of the information.

For these reasons, I respectfully dissent in part from today's order.

Jon Wellinghoff,
Commissioner.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9404]

RIN 1545-BE97

Capital Costs Incurred To Comply With EPA Sulfur Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the deduction provided under section 179B of the Internal Revenue Code (Code) for qualified capital costs paid or incurred by a small business refiner to comply with the highway diesel fuel sulfur control requirements of the Environmental Protection Agency

(EPA). The regulations implement changes to the law made by the American Jobs Creation Act of 2004, the Energy Policy Act of 2005, and the Tax Technical Corrections Act of 2007. The text of these temporary 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 in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on June 27, 2008.

Applicability Date: For dates of applicability, see § 1.179B-1T(f).

FOR FURTHER INFORMATION CONTACT: Nicole Cimino, (202) 622-3110 (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 1545-2104. 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 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 in 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 26 CFR part 1 providing temporary regulations under section 179B of the Code. Section 179B was added to the Code by section 338(a) of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418), and was modified by section 1324(a) of the

³⁵ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 73 FR 19389 (Apr. 10, 2008), FERC Stats. & Regs. ¶ 31,267 (2008).

³⁶ See *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,242 (1996), and *NorAm Gas Transmission Company*, 77 FERC ¶ 61,011 (1996).

³⁷ See *Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 at 61,241 (1996).

Energy Policy Act of 2005, Public Law 109–58 (119 Stat. 594), and the Tax Technical Corrections Act of 2007, Public Law 110–172 (121 Stat. 2473).

In general, the cost of property used in a trade or business or held for the production of income must be capitalized and, in the case of depreciable property, recovered through depreciation. Section 167 allows as a depreciation deduction a reasonable allowance for the exhaustion, wear, and tear of property used in a trade or business or held for the production of income. The depreciation allowable for tangible, depreciable property placed in service after 1986 generally is determined under section 168.

In lieu of deducting depreciation, section 179B(a) allows a small business refiner to deduct as an expense 75 percent of the qualified costs as defined in section 45H(c)(2) that are paid or incurred during the taxable year and are properly chargeable to capital account (“qualified capital cost”). Section 45H(c)(2) defines qualified costs as those costs paid or incurred during the applicable period to comply with the highway diesel fuel sulfur control requirements of the EPA (the “applicable EPA regulations”). The deduction is phased out for refiners whose production in calendar year 2002 exceeded a specified threshold. Section 179B applies to expenses paid or incurred after December 31, 2002, in taxable years ending after December 31, 2002.

In addition, section 45H allows a production credit of five cents per gallon for low sulfur diesel fuel produced by a small business refiner. The aggregate credit claimed by a small business refiner for all taxable years may not exceed 25 percent of the qualified costs paid or incurred by the small business refiner. The aggregate allowable credit is also phased out for refiners whose production in calendar year 2002 exceeded a specified threshold. The credit is not allowed unless Treasury certifies, after consultation with EPA, that the refiner’s qualified costs will result in compliance with the applicable EPA regulations. Section 280C(d) provides for the reduction, by the amount of the credit determined under section 45H(a) for the taxable year, in deductions otherwise allowable for the taxable year under subtitle A, Chapter 1 of the Internal Revenue Code (sections 1 through 1400T). Section 45H applies to expenses paid or incurred after December 31, 2002, in taxable years ending after December 31, 2002.

Section 45H(c) provides definitions of terms for purposes of both the section

179B deduction and the section 45H credit. Under section 45H(c)(1), a taxpayer is a small business refiner for a taxable year if (i) the taxpayer is a refiner of crude oil with respect to which not more than 1,500 individuals are engaged in the refinery operations of the business on any day during the taxable year, and (ii) the taxpayer’s average daily domestic refinery run or average retained production for all facilities of the taxpayer for the 1-year period ending on December 31, 2002, did not exceed 205,000 barrels. Under section 45H(c)(2), the qualified costs with respect to any facility of a small business refiner are, in general, costs that are paid or incurred by the small business refiner to comply with the applicable EPA regulations with respect to the facility during the period beginning on January 1, 2003, and ending on the earlier of the date that is one year after the date on which the small business refiner must comply with the applicable EPA regulations for that facility, or December 31, 2009.

The applicable EPA regulations are the regulations establishing the highway diesel fuel sulfur control program and apply to, among others, petroleum refiners that produce diesel fuel for heavy-duty highway vehicles. The regulations provide that these vehicles for the 2007 and later model years must be fueled with highway diesel fuel that meets a maximum sulfur standard of 15 parts per million (ppm). The regulations also require refiners to produce this new low sulfur diesel fuel beginning on June 1, 2006, but include several transition rules under which refiners are given additional time to comply with the 15 ppm sulfur standard (for example, the small refiner credit option for a refiner that is granted small refiner status by the EPA).

Explanation of Provisions

Scope

The temporary regulations provide rules prescribing how a small business refiner must determine the deduction allowable under section 179B(a) for any taxable year. The regulations also provide guidance for making the elections under section 179B.

Computation of Deduction Allowable Under Section 179B

The deduction under section 179B is allowable with respect to the qualified capital costs paid or incurred by a small business refiner during the taxable year. The temporary regulations make it clear that the deduction is allowable with respect to costs paid or incurred during a taxable year even if the property to

which the costs relate is not placed in service until a subsequent taxable year. The temporary regulations also make it clear that the deduction is allowable even if the small business refiner is not eligible for the credit under section 45H because of a failure to obtain the certification required by section 45H(e).

Elections

Section 179B provides two elections. The first election is provided under section 179B(a), which allows a small business refiner to elect to deduct an amount equal to 75 percent of the qualified capital costs paid or incurred by the small business refiner during the taxable year. These temporary regulations provide that this election is made for each taxable year in which the taxpayer seeks to deduct qualified capital costs under section 179B. The election for a taxable year applies to all qualified capital costs paid or incurred by the small business refiner during the taxable year. The election for a taxable year must be made by the due date (including extensions) for filing the small business refiner’s Federal income tax return for the taxable year.

The second election is provided under section 179B(e). Section 179B(e) provides that if a small business refiner is a cooperative and makes an election under section 179B(a), the small business refiner may elect to allocate part or all of the deduction allowable under section 179B(a) for the taxable year to its owners that are themselves cooperatives. If a cooperative small business refiner makes the section 179B(e) election, the temporary regulations provide that the deduction amount allocated to an owner is equal to the owner’s ratable share of the total deduction amount allocated, determined on the basis of ownership interests in the cooperative small business refiner. The temporary regulations provide that in cases in which ownership interests vary during the year, the small business refiner must determine ratable shares under a consistently applied method that reasonably takes into account the varying interests during the taxable year. Further, the temporary regulations clarify that, in computing its taxable income under section 1382, the cooperative small business refiner must reduce its section 179B deduction by the deduction amount allocated to its owners.

The section 179B(e) election for a taxable year is made by the due date (including extensions) for filing the cooperative small business refiner’s Federal income tax return for the taxable year. In addition, section

179B(e)(3) requires the electing cooperative small business refiner to notify, in writing, each cooperative owner of the amount of the section 179B(a) deduction that is allocated to that cooperative owner. This written notice must be mailed to the cooperative owner before the due date (including extensions) of the cooperative small business refiner's Federal income tax return.

Effective/Applicability Date

These temporary regulations apply to taxable years ending on or after *June 26, 2008*. However, a taxpayer may apply the temporary regulations to taxable years ending after December 31, 2002, and before *June 26, 2008* provided that the taxpayer applies all provisions in these regulations (other than those relating to elections) to the taxable year. A taxpayer applying the regulations to those years may make the election under section 179B(a) for such years under the rules provided in Notice 2006-47 (2006-20 IRB 892). In addition, the taxpayer's election under section 179B(e) for those years will be accepted if made using any reasonable method consistent with the principles of section 179B(e). See § 601.601(d)(2)(ii)(b) of this chapter.

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 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 applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please 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 regulations have been submitted to the Chief Counsel for Advocacy of Small Business Administration for comment on their impact on small business.

Drafting Information

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

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.179B-1T is added to read as follows:

§ 1.179B-1T Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations (temporary).

(a) *Scope and definitions*—(1) *Scope.* This section provides the rules for determining the amount of the deduction allowable under section 179B(a) for qualified capital costs paid or incurred by a small business refiner to comply with the highway diesel fuel sulfur control requirements of the Environmental Protection Agency (EPA). This section also provides rules for making elections under section 179B.

(2) *Definitions.* For purposes of section 179B and this section, the following definitions apply:

(i) *The applicable EPA regulations* are the EPA regulations establishing the highway diesel fuel sulfur control program (40 CFR part 80, subpart I).

(ii) *The average daily domestic refinery run* for a refinery is the lesser of—

(A) The total amount of crude oil input (in barrels) to the refinery's domestic processing units during the 1-year period ending on December 31, 2002, divided by 365; or

(B) The total amount of refined petroleum product (in barrels) produced by the refinery's domestic processing units during such 1-year period divided by 365.

(iii) *The aggregate average domestic daily refinery run* for a refiner is the sum of the average daily domestic refinery runs for all refineries that were owned by the refiner or a related person on April 1, 2003.

(iv) *Cooperative owner* is a person that—

(A) Directly holds an ownership interest in a cooperative small business refiner, as defined in paragraph (a)(2)(v) of this section; and

(B) Is a cooperative to which part 1 of subchapter T of the Internal Revenue Code (Code) applies.

(v) *Cooperative small business refiner* is a small business refiner that is a cooperative to which part 1 of subchapter T of the Code applies.

(vi) *Low sulfur diesel fuel* has the meaning prescribed in section 45H(c)(5).

(vii) *Qualified capital costs* are qualified costs as defined in section 45H(c)(2) that are properly chargeable to capital account.

(viii) *Related person* has the meaning prescribed in section 613A(d)(3) and the regulations under section 613A(d)(3).

(ix) *Small business refiner* has the meaning prescribed in section 45H(c)(1).

(b) *Section 179B deduction*—(1) *In general.* Section 179B(a) allows a deduction with respect to the qualified capital costs paid or incurred by a small business refiner (the section 179B deduction). The deduction is allowable with respect to the qualified capital costs paid or incurred during a taxable year only if the small business refiner makes an election under paragraph (d) of this section for the taxable year. The certification requirement in section 45H(e) (relating to the certification required to support a credit under section 45H) does not apply for purposes of the section 179B deduction. Accordingly, the section 179B deduction is allowable with respect to the qualified capital costs of an electing small business refiner even if the refiner never obtains a certification under section 45H(e) with respect to those costs.

(2) *Computation of section 179B deduction*—(i) *In general.* Except as provided in paragraphs (b)(2)(ii) and (c)(3) of this section, a small business refiner that makes an election under paragraph (d) of this section for a taxable year is allowed a section 179B deduction in an amount equal to 75 percent of qualified capital costs that are paid or incurred by the small business refiner during the taxable year.

(ii) *Reduced percentage.* A small business refiner's section 179B deduction is reduced if the refiner's aggregate average daily domestic refinery run is in excess of 155,000 barrels. In that case, the number of percentage points used in computing the deduction under paragraph (b)(2)(i) of this section (75) is reduced (not below zero) by the product of 75 and the ratio of the excess barrels to 50,000 barrels.

(3) *Example.* The application of this paragraph (b) is illustrated by the following example:

Example. (i) A, an accrual method taxpayer, is a small business refiner with a

taxable year ending December 31. On April 1, 2003, A owns a refinery with an average daily domestic refinery run (that is, an average daily run during calendar year 2002) of 100,000 barrels and a person related to A owns a refinery with an average daily domestic refinery run of 85,000 barrels.

These are the only domestic refineries owned by A and persons related to A. A's aggregate average daily domestic refinery run for the two refineries is 185,000 barrels. A incurs qualified capital costs of \$10 million in the taxable year ended December 31, 2007. The costs are incurred with respect to property that is placed in service in year 2008. A makes the election under paragraph (d) of this section for the 2007 taxable year.

(ii) Because A's aggregate average daily domestic refinery run is 185,000 barrels, the percentage of the qualified capital costs that is deductible under section 179B(a) is reduced from 75 percent to 30 percent (75 percent reduced by 75 percent multiplied by 0.6 ((185,000 barrels minus 155,000 barrels)/50,000 barrels)). Thus, for 2007, A's deduction under section 179B(a) is \$3,000,000 (\$10,000,000 qualified capital costs multiplied by .30).

(c) *Effect on basis*—(1) *In general.* If qualified capital costs are included in the basis of property, the basis of the property is reduced by the amount of the section 179B deduction allowed with respect to such costs.

(2) *Treatment as depreciation.* If qualified capital costs are included in the basis of depreciable property, the amount of the section 179B deduction allowed with respect to such costs is treated as a depreciation deduction for purposes of section 1245.

(d) *Election to deduct qualified capital costs*—(1) *In general*—(i) *Section 179B election.* This paragraph (d) prescribes rules for the election to deduct the qualified capital costs paid or incurred by a small business refiner during a taxable year (the section 179B election). A small business refiner making the section 179B election for a taxable year consents to, and agrees to apply, all of the provisions of section 179B and this section to qualified capital costs paid or incurred by the refiner during the taxable year. The section 179B election for a taxable year applies with respect to all qualified capital costs paid or incurred by the small business refiner during that taxable year.

(ii) *Year-by-year election.* A separate section 179B election must be made for each taxable year in which the taxpayer seeks to deduct qualified capital costs under section 179B. A small business refiner may make the section 179B election for some taxable years and not for other taxable years.

(iii) *Elections for cooperative small business refiners.* See paragraph (e) of this section for the rules applicable to

the election provided under section 179B(e), relating to the election to allocate the section 179B deduction to cooperative owners of a cooperative small business refiner (the section 179B(e) election).

(2) *Time and manner for making section 179B election*—(i) *Time for making election.* Except as provided in paragraph (d)(2)(iii) of this section, a taxpayer's section 179B election for a taxable year must be made by the due date (including extensions) for filing the taxpayer's Federal income tax return for the taxable year.

(ii) *Manner of making election*—(A) *In general.* Except as provided in paragraph (d)(2)(iii) of this section, the section 179B election for a taxable year is made by claiming a section 179B deduction on the taxpayer's original Federal income tax return for the taxable year and attaching the statement described in paragraph (d)(2)(ii)(B) of this section to the return. The section 179B election with respect to qualified capital costs paid or incurred by a partnership is made by the partnership and the section 179B election with respect to qualified capital costs paid or incurred by an S corporation is made by the S corporation. In the case of qualified capital costs paid or incurred by the members of a consolidated group (within the meaning of § 1.1502-1(h)), the section 179B election with respect to such costs is made for each member by the common parent of the group.

(B) *Information required in election statement.* The election statement attached to the taxpayer's return must contain the following information:

(1) The name and identification number of the small business refiner.

(2) The amount of the qualified capital costs paid or incurred during the taxable year for which the election is made.

(3) The aggregate average daily domestic refinery run (as determined under paragraph (a)(2)(iii) of this section).

(4) The date by which the small business refiner must comply with the applicable EPA regulations. If this date is not June 1, 2006, the statement also must explain why compliance is not required by June 1, 2006.

(5) The calculation of the section 179B deduction for the taxable year.

(6) For each property that will have its basis reduced on account of the section 179B deduction for the taxable year, a description of the property, the amount included in the basis of the property on account of qualified capital costs paid or incurred during the taxable year, and the amount of the basis reduction to that

property on account of the section 179B deduction for the taxable year.

(iii) Except as otherwise expressly provided by the Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin, a section 179B election is valid only if made at the time and in the manner prescribed in this paragraph (d)(2). For example, except as otherwise expressly provided, the 179B election cannot be made for a taxable year to which this section applies through a request under section 446(e) to change the taxpayer's method of accounting.

(3) *Revocation of election.* An election made under this paragraph (d) may not be revoked without the prior written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a private letter ruling (for further guidance, see, for example, Rev. Proc. 2008-1 (2008-1 IRB 1) and § 601.601(d)(2)(ii)(b) of this chapter).

(4) *Failure to make election.* If a small business refiner does not make the section 179B election for a taxable year at the time and in the manner prescribed in paragraph (d)(2) of this section, no deduction is allowed for the qualified capital costs that the refiner paid or incurred during the year. Instead these qualified capital costs are chargeable to a capital account in that taxable year, the basis of the property to which these costs are capitalized is not reduced on account of section 179B, and the amount of depreciation allowable for the property attributable to these costs is determined by reference to these costs unreduced by section 179B.

(5) *Elections for taxable years ending before June 26, 2008.* This section does not apply to section 179B elections for taxable years ending before June 26, 2008. The rules for making the section 179B election for a taxable year ending before June 26, 2008 are provided in Notice 2006-47 (2006-20 IRB 892). See § 601.601(d)(2)(ii)(b) of this chapter.

(e) *Election under section 179B(e) to allocate section 179B deduction to cooperative owners*—(1) *In general.* A cooperative small business refiner may elect to allocate part or all of its cooperative owners' ratable shares of the section 179B deduction for a taxable year to the cooperative owners (the section 179B(e) election). The section 179B deduction allocated to a cooperative owner is equal to the cooperative owner's ratable share of the total section 179B deduction allocated. A cooperative owner's ratable share is determined for this purpose on the basis of the cooperative owner's ownership interest in the cooperative small business refiner during the cooperative

small business refiner's taxable year. If the cooperative owners' interests vary during the year, the cooperative small business refiner shall determine the owners' ratable shares under a consistently applied method that reasonably takes into account the owners' varying interests during the taxable year.

(2) *Cooperative small business refiner denied section 1382 deduction for allocated portion.* In computing taxable income under section 1382, a cooperative small business refiner must reduce its section 179B deduction for the taxable year by an amount equal to the section 179B deduction allocated under this paragraph (e) to the refiner's cooperative owners for the taxable year.

(3) *Time and manner for making election*—(i) *Time for making election.* The section 179B(e) election for a taxable year must be made by the due date (including extensions) for filing the cooperative small business refiner's Federal income tax return for the taxable year.

(ii) *Manner of making election.* The section 179B(e) election for a taxable year is made by attaching a statement to the cooperative small business refiner's Federal income tax return for the taxable year. The election statement must contain the following information:

(A) The name and identification number of the cooperative small business refiner.

(B) The amount of the section 179B deduction allowable to the cooperative small business refiner for the taxable year (determined before the application of section 179B(e) and this paragraph (e)).

(C) The name and identification number of each cooperative owner to which the cooperative small business refiner is allocating all or some of the section 179B deduction.

(D) The amount of the section 179B deduction that is allocated to each cooperative owner listed in response to paragraph (e)(3)(ii)(C) of this section.

(4) *Irrevocable election.* A section 179B(e) election for a taxable year, once made, is irrevocable for that taxable year.

(5) *Written notice to owners.* A cooperative small business refiner that makes a section 179B(e) election for a taxable year must notify each cooperative owner of the amount of the section 179B deduction that is allocated to that cooperative owner. This notification must be provided in a written notice that is mailed by the cooperative small business refiner to its cooperative owner before the due date (including extensions) of the cooperative small business refiner's

Federal income tax return for the election year. In addition, the cooperative small business refiner must report the amount of the cooperative owner's section 179B deduction on Form 1099-PATR, "Taxable Distributions Received From Cooperatives," issued to the cooperative owner. If Form 1099-PATR is revised or renumbered, the amount of the cooperative owner's section 179B deduction must be reported on the revised or renumbered form.

(f) *Effective/applicability date*—(1) *In general.* This section applies to taxable years ending on or after June 26, 2008.

(2) *Application to taxable years ending before June 26, 2008.* A small business refiner may apply this section to a taxable year ending before June 26, 2008, provided that the small business refiner applies all provisions in this section, with the modifications described in paragraph (f)(3) of this section, to the taxable year.

(3) *Modifications applicable to taxable years ending before June 26, 2008.* The following modifications to the rules of this section apply to a small business refiner that applies those rules to a taxable year ending before June 26, 2008:

(i) *Rules relating to section 179B election.* The section 179B election for a taxable year ending before June 26, 2008 may be made under the rules provided in Notice 2006-47, rather than under the rules set forth in paragraph (d) of this section.

(ii) *Rules relating to section 179B(e) election.* A section 179B(e) election for a taxable year ending before June 26, 2008 will be treated as satisfying the requirements of paragraph (f) if the cooperative small business refiner has calculated its tax liability in a manner consistent with the election and has used any reasonable method consistent with the principles of section 179B(e) to inform the Internal Revenue Service that an election has been made under section 179B(e) and to inform cooperative owners of the amount of the section 179B deduction they have been allocated.

(4) *Expiration date.* The applicability of § 179B-1T expires on June 24, 2011.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 4.** In § 602.101, paragraph (b) is amended by adding the following 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.
* * *	* * *
1.179B-1T	1545-2076
* * *	* * *

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: June 15, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[Editorial Note: This document was received at the **Federal Register** on June 23, 2008.]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2008-0096]

RIN 1625-AA00

Safety Zone; Festival of Sail 2008 Ship's Parade; San Diego Harbor, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone, on the navigable waters of San Diego Bay in support of the Festival of Sail 2008 Ship's Parade. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 10 a.m. until 1 p.m. on August 20, 2008.

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-2008-0096 and are available online at <http://>