emphasized that the classification of a substance under the policy would mean that the substance would have a higher priority for further staff evaluation than substances not so classified; that all applicable statutory procedures would be adhered to in any rulemaking proceeding commenced with respect to that substance; and that the scientific principles set forth in the policy would not be binding and would be fully subject to challenge before the Commission, both as to their general validity and their specific application in an individual rulemaking proceeding.

The Commission filed a motion for reconsideration of the order entering a preliminary injunction. After hearing arguments (by written submissions) of the parties, the District Court, on February 13, 1979, entered an order reaffirming its original decision that the statement of policy and procedure was a rule whose issuance violated the APA insofar as it would be implemented without prior notice and an opportunity to comment.

While this litigation has been proceeding, the Interagency Regulatory Liaison Group (IRLG), consisting of CPSC, the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the Occupational Safety and Health Administration (OSHA), has prepared and issued a document describing the scientific bases for identifying potential carcinogens and evaluating their risks. (The Food Safety and Quality Service (FSQS) of the U.S. Department of Agriculture has recently joined the IRLG.) The scientific principles in this document are similar to those in the Commission's interim statement of policy and procedure. The Commission has contributed to the development of this interagency document and is participating in its further refinement through scientific peer review. In addition, CPSC, EPA, and FDA intend shortly to publish the document for notice and comment.

Reasons for withdrawal of the Interim Statement of Policy and Procedure

After careful consideration of the events described above, and an evaluation of how it might best proceed to protect consumers from any unreasonable risks of injury with respect to carcinogens in consumer products, the Commission has decided to withdraw its interim statement of policy and procedure and to continue for the present time to regulate carcinogens in consumer products on a case by case basis as provided in the statutes it administers. It has proceeded in this manner before, and is prepared to take individual actions against carcinogens in the future. (See, for example, the ban on vinyl chloride aerosols, 43 FR 12308, March 24, 1978; the interpretation of the Federal Hazardous Substances Act as banning TRIS in children's sleepwear, 42 FR 61621, December 6, 1977; the ban of consumer patching compounds and artificial emberizing materials containing respirable free-form asbestos, 42 FR 63354, December 15, 1977; and the proposed ban of benzene in consumer products, 43 FR 21839, May 19, 1978.) Moreover, the Commission has recently granted, in part, a petition by the Environmental Defense Fund relating to the investigation of particular consumer product categories to see if they contain potential carcinogens to which consumers may be exposed.

The Commission's decision not to proceed further at this time with its own carcinogen policy is particularly influenced by the agreement among CPSC, EPA, and FDA to promptly publish for public comment the scientific risk assessment document mentioned above. The report describes the scientific bases for identifying and evaluating potential carcinogens. It also describes methods for estimating the risks such compounds may hold for people. The document was prepared by the "Work Group on Risk Assessment" of the IRLG with assistance from senior scientists at the National Cancer Institute and the National Institute of Environmental Health Sciences. The report represents the best judgments of the agencies' scientists at the present time and has been accepted by the Journal of the National Cancer Institute for publication and scientific peer review. Interested members of the public will shortly have an opportunity to comment on the report through a notice and comment proceeding following publication of the document in the **Federal Register.** This dual publication process will enable the broadest public and scientific review and comment on the risk assessment document.

The Commission has received many comments on the June 13, 1979 CPSC interim statement of policy and procedure. The Commission believes these comments will be useful to the group that evaluates the comments received on the interagency document, since many of the scientific issues are similar. The Commission has directed its staff to review the comments and intends to transmit the comments along with the product of the staff review to the interagency group for its consideration. The Commission expects its staff to continue to actively screen substances and consumer products for purposes of bringing to the Commission's attention those substances or products where available data suggest that more comprehensive further testing, investigation, or possible formal regulatory action is warranted to protect consumers from carcinogenic risks in consumer products under the applicable statutory standards.

The Commission decision to proceed for the present in a case by case fashion as to potential carcinogens in consumer products and to join in the expeditious publication of the IRLG risk assessment document makes it duplicative, unnecessary, and unproductive for the Commission to proceed with its own carcinogen policy and to pursue the *Dow* litigation. In this regard the Commission believes that continued public uncertainty and confusion regarding the interim policy for the many months it would likely take for a final judicial determination of the pending litigation are not in the public interest. Moreover, the Commission concludes that the benefits to be derived from a favorable determination of that case are not such as to warrant continued litigation. In light of the Commission's decision to withdraw the interim policy, the Commission has decided also to withdraw its appeal, even though it continues to believe that implementation of the interim policy before the comments were considered and a final policy issued did not violate the APA, and that publication of a provisional classification under the policy would not have caused "irreparable injury."

Conclusion

For the foregoing reasons, and pursuant to the Consumer Product Safety Act, Pub. L. 92–573, 86 Stat. 1207 *et seq.*, as amended, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, Pub. L. 86–613, 84 Stat. 372 *et seq.*, as amended, 15 U.S.C. 1261 *et seq.*, the Consumer Product Safety Commission revokes Part 1040 of Title 16, Chapter II, Subchapter A, of the Code of Federal Regulations.

Effective Date: *April 23, 1979.*

Dated: *April 18, 1979.*

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79–12555 Filed 4–20–79; 8:45 am]

BILLING CODE 6355–01–M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 200

Employee Responsibilities and Conduct; Revisions in Conflict of Interest Requirements

AGENCY: United States International Trade Commission.

ACTION: Notice of Rulemaking.

SUMMARY: The Commission is exercising authority in conformity with section 208(b) of Title 18, United States Code, to exempt certain types of financial interests from the conflict of interest provisions of section 208(a) of Title 18, United States Code, as being too remote or inconsequential to affect Commission employees' integrity or services. The ownership of shares in widely-held, diversified mutual funds or regulated investment companies, regardless of their value, as well as ownership of state, local, or other noncorporate bonds, regardless of their value, are being exempted from these requirements. This notice of rulemaking is being issued by the Commission following receipt of written concurrence from the Office of Government Ethics.

EFFECTIVE DATE: May 23, 1979.

FOR FURTHER INFORMATION, CONTACT: The Honorable George M. Moore, Counselor for Employee Responsibilities and Conduct, United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, telephone (202) 523-0144.

Section 200.735-102(c) of Title 19, Part 200, of the *Code of Federal Regulations* is amended to read as follows:

§ 200.735-102(c) Definitions.

* * * * *

(c) "Employee" means a Commissioner, employee, or special government employee of the Commission, but, for the purpose of sections 200.735-114 through 200.735-114c and 200.735-116 through 200.735-123, the term does not include a Commissioner or a special Government employee.

* * * * *

Section 200.735-107 of Title 19, Part 200, of the *Code of Federal Regulations*, is amended through the addition of subsection (c) which reads as follows:

§ 200.735-107 Financial interests.

* * * * *

(c) Pursuant to the authority contained in 18 U.S.C. 208(b), the following types of financial interests are considered too remote or inconsequential to affect a Commission employee's integrity or services and do not constitute a conflict of interest under 18 U.S.C. 208(a):

(1) In widely-held, diversified mutual funds or regulated investment companies, regardless of their value; and

(2) In state or local government bonds, or other noncorporate bonds, regardless of their value.

Section 200.735-115 of Title 19, Part 200, of the *Code of Federal Regulations* is amended to read as follows:

§ 200.735-115 Forms—Interests not to be reported.

(a) Statements required to be submitted by the provisions of this subpart shall be prepared on forms (the format of which is prescribed by the Office of Government Ethics, Office of Personnel Management) available from the Deputy Counselor.

(b) Employees, GS-15 and below, who are required to file a statement of employment and financial interests under § 200.735-114 of this part, need not report to the Deputy Counselor those financial interests specified in §§ 200.735-107(c) (1) and (2) of this part. Commissioners and Commission employees, GS-16 and above, are required to report the financial interests specified in §§ 200.735-107(c) (1) and (2) of this part under section 202(a) of the Ethics in Government Act of 1978.

By Order of the Commission.

Issued: April 18, 1979.

Kenneth R. Mason,

Secretary.

[FR Doc. 79-12521 Filed 4-20-79; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

Manufacturers and Retailers Excise Taxes; Definition of Price for Purposes of Manufacturers Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 4216(b) of the Internal Revenue Code of 1954, relating to the definition of price, including constructive sale price, for the purpose of the manufacturers excise tax. These regulations adopt, in final form, the regulations that were reserved in T.D. 7536 (43 FR 13512). The regulations provide necessary guidance to the public for compliance with the law and affect all persons required to pay manufacturers and retailers excise taxes.

DATE: These regulations are generally effective for sales made after December 31, 1958. It should be noted, however, that the tax on bus chassis and bodies was repealed as of November 10, 1978 by section 231 of the Energy Act of 1978 (Pub. L. 95-618, 92 Stat. 3187).

FOR FURTHER INFORMATION CONTACT: Stephen J. Small of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224. Attention: CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION: On November 3, 1976, proposed amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) were published in the **Federal Register** (41 FR 48346). These amendments were under sections 4054 through 4058, 4216, 4217, and 4221-4227 of the Internal Revenue Code of 1954. The principal purpose of those amendments was to supersede all not previously superseded Manufacturers Excise Tax Regulations issued under the Internal Revenue Code of 1939.

Written comments were received and a public hearing was held on April 22, 1977. Because of continuing discussions between industry, Treasury and Service personnel on section 4216(b), and in order to facilitate the adoption of the rest of the proposed regulations, this separate project was established for the adoption of final regulations under section 4216(b). The remainder of the proposed regulations were adopted by T.D. 7536 and published in the **Federal Register** on March 31, 1978 (43 FR 13512).

The policy change under consideration at the time the proposed regulations on section 4216(b) were reserved involved an element of the computation of constructive sale price. Under prior law (Rev. Rul. 54-61, 1954-1 C.B. 259; Rev. Rul. 68-519, 1968-2 C.B. 513), the constructive sale price for excise tax purposes on certain retail sales was deemed to be 75 percent of the established retail price, but not less than the manufacturer's actual cost. Various industry representatives had been urging that the cost floor alternative be eliminated and that a higher percentage of the retail price be used. Additionally, revenue agents have also said that the formula was unsatisfactory because examinations of excise taxpayers using this constructive sale price can turn into exercises in cost accounting.

The pending question of a possible policy change in the regulations was superseded in part by the passage of Pub. L. 95–458, signed on October 14, 1978. The new law requires that constructive sale price for the retail sale of articles taxable under section 4061(a), that is, certain trucks, highway tractors, and trailers, be based on a percentage of the actual retail selling price. Pub. L. 95–458 prohibits the alternate use of the cost floor base. Accordingly, the final regulation includes at § 48.4216(b)–2(c) this new statutory rule for section 4061(a). A number of the written comments raised questions about the computation of constructive sale price and were addressed by the passage of Pub. L. 95–458.

In accordance with the mandate of Pub. L. 95–458, it is the intention of Treasury and the Internal Revenue Service to publish constructive sale price percentages for appropriate industries as the necessary pricing information becomes available. For percentages with respect to truck, truck trailer, and semitrailer chassis and bodies and truck tractors sold at retail, see Rev. Rul. 79–32, 1979–4 I.R.B. 12 and Rev. Rul. 79–33, 1979–4 I.R.B. 12.

The final draft incorporates two additional changes from the proposed regulation. A rule has been deleted from proposed section 48.4216(b)–2(b) dealing with articles that in the ordinary course of trade are not sold by manufacturers to wholesale distributors. As proposed, the rule would have negated retroactively the prior position of the Service in such situations (see Rev. Rul. 68–519, 1968–2 C.B. 513). Further, with the provisions of Pub. L. 95–458, the deleted rule has no current significance.

Finally, § 48.4216 (b)-2(d)(1), relating to the definition of sales not at arm's length, has been clarified to indicate that where control exists by the nature of the relationship of the parties, it is immaterial whether the control is potential or is exercised. The transactions are deemed to be at less than arm's length.

The regulation will affect only manufacturers who are subject to the Manufacturers and Retailers Excise Tax. The effectiveness of this regulation will be evaluated on the basis of comments received from the public and from the various offices of the Internal Revenue Service responsible for administration of the regulation and collection of the appropriate excise taxes.

Drafting Information

The principal author of this regulation is Stephen J Small of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of amendments to the regulations

Accordingly, §§ 48.4216(b)-1 through 48.4216(b)-4 of the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48), as proposed on November 3, 1976, (41 FR 48346) are hereby adopted, subject to the following changes:

Paragraph 1. Section 48.4216 (b)-2 is amended as follows:

1. Paragraph (a) is revised to read as set forth below.

2. Paragraph (b) is revised to read as set forth below.

3. Paragraphs (c) and (d) are amended by deleting the phrase "or his delegate" wherever it appears.

4. Paragraphs (c) and (d) are redesignated (d) and (e).

5. Clauses (1) and (2) of paragraph (e), as redesignated, are revised to read as set forth below.

6. A new paragraph (c) is inserted, as set forth below.

§ 48.4216(b)-2 Constructive sale price; basic rules.

(a) *In general.* Section 4216(b)(1) sets forth the conditions that require the Secretary to construct a sale price on which to compute a tax imposed under chapter 32 on the price for which an article is sold. The section requires a constructive sale price to be established where a taxable article is (1) sold at retail, (2) sold while on consignment, or (3) sold otherwise than through an arm's-length transaction at less than fair market price. See § 48.4216(b)-2(c) for the treatment of articles taxable under section 4061(a).

(b) *Sales at retail.* Section 4216(b)(1)(A) relates to the determination of a constructive sale price for sales of taxable articles sold at arm's length and at retail. In the case of such sales, the constructive sale price is the highest price for which such articles are sold to wholesale distibutors in the ordinary course of trade by manufacturers or producers thereof as determined by the Secretary. If the constructive sale price is less than the actual sale price the constructive sale price shall be used as the tax base. If the constructive sale price is not less than the actual sale price, the actual sale price shall be considered as not less than fair market and shall be used as the tax base. In determining the highest price for which articles are sold by manufacturers to wholesale distributors there must be taken into consideration the normal industry practices with respect to section 4216(a) and (f) inclusions and exclusions. However, once a constructive sale price has been determined by the Secretary, no further adjustment of such price shall be made. The provisions of section 4216(b)(1)(A) and this paragraph shall not apply in those instances where the provisions of section 4216(b)(2) and § 48.4216(b)-3 apply.

(c) *Sales of articles taxable under section 4061(a).* With respect to sales made after December 31, 1978, in the case of an article the sale of which is taxable under section 4061 (a) and which is sold at retail, the tax under this chapter shall be computed on a percentage (as determined by the Secretary but not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade. The constructive sale price under this section shall be determined without regard to any individual manufacturer's or producer's cost.

* * * * *

(e) *Sales not at arm's length.* * * *

(1) One of the parties is controlled (in law or in fact) by the other, or there is common control, whether or not such control is actually exercised to influence the sale price, or

(2) The sale is made pursuant to special arrangements between a manufacturer and a purchaser.

* * * * *

Par. 2. Section 48.4216(b)-3 is amended by deleting "to retailers" at the end of the third sentence of paragraph (b)(6).

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; (26 U.S.C. 7805)).)

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: April 12, 1979.

Donald C. Lubick,
Assistant Secretary of the Treasury

§ 48.4216(b)–1 Constructive sale price; scope and application.

(a) *In general.* Section 4216(b) pertains to those taxes imposed under chapter 32 that are based on the price for which an article is sold, and contains the provisions for constructing a tax base other than the actual sale price of the article, under certain defined conditions.

(b) *Specific applications.* (1) Section 4216(b)(1) applies to—

(i) Arm's-length sales at retail or on consignment, other than those sales at retail and to retailers to which section 4216(b)(2) and § 48.4216(b)–3 apply; and

(ii) Sales otherwise than at arm's length, and at less than fair market price.

(2) Section 4216(b)(2) applies generally to arm's-length sales of an article at retail or to retailers, or both, where the manufacturer also sells the same article to wholesale distributors.

(3) Section 4216(b)(3) provides a formula for determining a constructive sale price for sales of taxable articles between members of an affiliated group of corporations (as "affiliated group" is defined in section 1504(a)) in those instances where the purchasing corporation regularly resells to retailers but does not regularly resell to wholesale distributors, and except for situations where section 4216(b) (4) or (5) applies.

(4) Section 4216(b)(4) provides a special method for computing a constructive sale price for sales of taxable articles between affiliated corporations where the purchasing corporation sells only to retailers, and the normal method of selling within the industry is for manufacturers to sell to wholesale distributors.

(5) Section 4216(b)(5) provides a special method for computing a constructive sale price for sales of articles subject to a tax imposed by section 4061(a) (trucks, buses, tractors, etc.) between affiliated corporations, where the purchasing corporation regularly sells such articles in arm's-length transactions to independent retailers.

(c) *Definitions.* For purposes of section 4216(b) and the regulations thereunder and unless otherwise indicated—

(1) *Sale at retail.* A "sale at retail," or a "retail sale", is a sale of an article to a purchaser who intends to use or lease the article rather than resell it. The fact that articles are sold in wholesale lots, or at wholesale prices, will not change the character of such sales as "sales at retail" if the purchaser is not engaged in the business of reselling such articles, and acquires them for the purpose of using them rather than reselling them.

(2) *Retail dealers.* A "retail dealer", or "retailer", is a person engaged in the business of selling articles at retail.

(3) *Wholesale distributor.* The term "wholesale distributor" means a person engaged in the business of selling articles to persons engaged in the business of reselling such articles.

§ 48.4216(b)-2 Constructive sale price; basic rules.

(a) *In general.* Section 4216(b)(1) sets forth the conditions that require the Secretary to construct a sale price on which to compute a tax imposed under chapter 32 on the price for which an article is sold. The section requires a constructive sale price to be established where a taxable article is (1) sold at retail, (2) sold while on consignment, or (3) sold otherwise than through an arm's-length transaction at less than fair market price. See § 48.4216 (b)-2 (c) for the treatment of articles taxable under section 4061(a).

(b) *Sales at retail.* Section 4216(b)(1)(A) relates to the determination of a constructive sale price for sales of taxable articles sold at arm's length and at retail. In the case of such sales, the constructive sale price is the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. If the constructive sale price is less than the actual sale price, the constructive sale price shall be used as the tax base. If the constructive sale price is not less than the actual sale price, the actual sale price shall be considered as not less than fair market, and shall be used as the tax base. In determining the highest price for which articles are sold by manufacturers to wholesale distributors, or the lowest price for which articles are sold by manufacturers to retail dealers, there must be taken into consideration the normal industry practices with respect to section 4216 (a) and (f) inclusions and exclusions. However, once a constructive sale price has been determined by the Secretary or his delegate, no further adjustment of such price shall be made. The provisions of section 4216(b)(1)(A) and this paragraph shall not apply in those instances where the provisions of section 4216(b)(2) and § 48.4216(b)-3 apply.

(c) *Sales of articles taxable under section 4061(a).* With respect to sales made after December 31, 1978, in the case of an article the sale of which is taxable under section 4061(a) and which is sold at retail, the tax under this chapter shall be computed on a percentage (as determined by the Secretary but not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade. The constructive sale price under this section shall be determined without regard to any individual manufacturer's or producer's cost.

(d) *Sales on consignment.* As in the case of sales at retail, the constructive sale price for sales on consignment shall be the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary or his delegate. For purposes of section 4216(b)(1)(B) and this paragraph, an article is considered to be sold on consignment if it is sold while it is on consignment to a person which has the right to sell, and does sell, such article in its own name, but never receives title to the article from the manufacturer. Ordinarily, the constructive sale price of an article sold on consignment is the net price received by the manufacturer from the consignee. The provisions of section 4216(b)(1)(B) and this paragraph shall not apply if the provisions of section 4216(b)(2) and § 48.4216(b)-3 apply.

(e) *Sales not at arm's length.* For purposes of section 4216(b)(1)(C) and this paragraph, a sale is considered to be made under circumstances otherwise than at "arm's length" if—

(1) One of the parties is controlled (in law or in fact) by the other, or there is common control, whether or not such control is actually exercised to influence the sale price, or

(2) The sale is made pursuant to special arrangements between a manufacturer and a purchaser.

In the case of an article sold otherwise than at arm's length, and at less than fair market price, the constructive sale price shall be the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. Once such a constructive sale price has been determined, no further adjustment of such price shall be made. See sections 4216(b) (3), (4), and (5), and § 48.4216 (b)-4, for specific methods for determining constructive sale prices for intercompany sales under certain defined conditions.

§ 48.4216(b)-3 Constructive sale price; special rule for arm's-length sales.

(a) *In general.* Section 4216 (b)(2) provides a special rule under which a manufacturer shall determine a constructive sale price for his sales of taxable articles at retail, and to retail dealers, under certain conditions. The rule is applicable where—

(1) The manufacturer regularly sells such articles at retail, or to retailers, or both, as the case may be,

(2) The manufacturer also regularly sells such articles to one or more wholesale distributors in arm's-length transactions, and the manufacturer establishes that its prices in such cases are determined without regard to any benefit to be derived under section 4216(b)(2),

(3) The transactions are arm's-length transactions, and

(4) With respect to articles to which the tax imposed by section 4061(a) applies (relating to trucks, buses, tractors, etc.), the normal method of sales for such articles within the industry is not to sell such articles at retail or to retailers, or combinations thereof.

A manufacturer meeting the foregoing requirements shall base its tax liability for sales at retail and sales to retailers on the lower of its actual sale price or the highest price for which it sells the same articles under the same conditions to wholesale distributors.

(b) *Definitions.* For purposes of section 4216(b)(2) and this section—

(1) *Actual sale price.* "Actual sale price" means the actual selling price of an article determined in the same manner as sale price is determined for a taxable sale. Accordingly, such price must reflect the inclusions and exclusions set forth in sections 4216 (a) and (f), and any price adjustments described in section 6416(b)(1).

(2) *Highest price to wholesale distributors.* The "highest price" charged wholesale distributors for an article by a manufacturer, producer, or importer thereof, is the highest price at which the manufacturer, producer, or importer sells the article to wholesale distributors, determined without regard to quantity. Such price shall be determined in the same manner as sale price is determined for a taxable sale with respect to sections 4216 (a) and (f) inclusions and exclusions; however, since the price is to be a "highest" price, no further adjustment may be made for price readjustments under section 6416(b)(1).

(3) *Regular sales.* An article is considered to sold "regularly" at retail or to retailers if sales are made at retail or to retailers periodically and recurringly as a regular part of the seller's business. If a seller makes only isolated or casual sales of an article at retail or to retailers, it is not considered to be selling "regularly" at retail or to retailers. Similarly, a manufacturer is considered to be making regular sales for an article to one or more distributors if it sells the article to at least one distributor periodically and recurringly as a regular part of its business.

(4) *Normal method of sales in industry.* In the absence of a showing to the Commissioner of Internal Revenue of a more appropriate manner of determining the normal method of sales within an industry which is practical in application, the normal method of sales within an industry shall be regarded as not being at retail or to retailers, or both, if the industry dollar volume of sales which are at retail or to retailers, or both, is less than half the total industry dollar volume of sales at all levels of distribution by manufacturers, producers, or importers, including sales to other manufacturers, producers, or importers.

(5) *Industry.* Each of the following categories of articles upon which tax is imposed by section 4061(a) constitutes a separate "industry"—

(i) Taxable automobile trucks (consisting of automobile truck bodies and chassis);

(ii) Taxable automobile buses (consisting of automobile bus bodies and chassis);

(iii) Taxable truck and bus trailers and semitrailers (consisting of chassis and bodies of such trailers and semi-trailers); and

(iv) Taxable tractors of the kind chiefly used for highway transportation in combination with a trailer or semi-trailer.

(6) *Application of section 4216(b)(2) to certain sales before June 22, 1965.* In the case of sales before June 22, 1965, of articles then taxable under section 4121 (relating to electric, gas, and oil appliances), section 4216(b)(2) also applied in the case of a sale of such an article to a special dealer. The applicability of section 4216(b)(2) to such a sale may be determined by inserting "or to a special dealer" following "or to a retailer" in so much of section 4216(b)(2) as precedes subparagraph (A); by inserting "or to special dealers" following "retailers" in section 4216(b)(2)(A); and by inserting "(other than special dealers)" after "wholesale distributors" in section 4216(b)(2)(B) and so much of section 4216(b)(2) as follows section 4216(b)(2)(D). A "special dealer" was a distributor of articles taxable under section 4121 who did not maintain a sales force to resell the article whose constructive sale price was established under section 4216(b)(2) but relied on salesmen of the manufacturer, producer, or importer of the article. In the case of sales before June 22, 1965, of articles taxable under section 4191 (relating to business machines) or section 4211 (relating to matches), section 4216(b)(2) was applicable in the same manner as in the case of articles taxable under section 4061(a). With respect to sales after September 30, 1972, section 4216(b)(2)(C) applied only to articles taxable under section 4061(a), 4191, or 4211. Section 4216(b)(2)(C) was applicable to sales before October 1, 1962, of all articles subject to tax under Chapter 32.

§ 48.4216(b)-4 Constructive sale price; affiliated corporations.

(a) *In general.* Sections 4216(b) (3), (4), and (5) establish procedures for determining a constructive sale price under section 4216(b)(1)(C) for sales between corporations that are members of the same "affiliated group", as that term is defined in section 1504(a).

(b) *Sales to which section 4216(b)(3) applies.* Section 4216(b)(3), which applies to articles sold after December 31, 1969, provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) in those instances where—

(1) A manufacturer, producer or importer regularly sells a taxable article (other than an article subject to a tax imposed by section 4061(a) (trucks, buses, etc.)) to a wholesale distributor which is a member of the same affiliated group as the manufacturer, producer or importer, and

(2) The wholesale distributor regularly sells such article to one or more independent retailers, but does not regularly sell to wholesale distributors.

Under such circumstances the constructive sale price for the article shall be an amount equal to 90 percent of the lowest price for which the distributor regularly sells the article in arm's-length transactions to such independent retailers. Once the constructive sale price has been determined, no adjustment shall be made for sections 4216 (a) and (f) inclusions or exclusions or section 6416(b)(1) price readjustments. If both section 4216(b)(3) and section 4216(b)(4) apply with respect to the sale of an article, the constructive sale price for such article shall be the lower of the prices computed under section 4216(b)(3) and section 4216(b)(4).

(c) *Sales to which section 4216(b)(4) applies.* Section 4216(b)(4), which applies to articles sold after December 31, 1969, provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) in those instances where—

(1) A manufacturer, producer, or importer regularly sells (except for tax-free sales) a taxable article only to a wholesale distributor which is a member of the same affiliated group as the manufacturer, producer, or importer,

(2) The distributor regularly sells (except for tax-free sales) such article only to retail dealers, and

(3) The normal method of sales for such articles within the industry is to sell such articles in arm's-length transactions to wholesale distributors.

Section 4216(b)(4) applies with respect to articles taxable under section 4061(a) (relating to trucks, buses, etc.) only as to sales after December 31, 1969, and before January 1, 1971. Under section 4216(b)(4), the constructive sale price of such article shall be the median price at which the distributor, at the time of the sale by the manufacturer, resells the article to retail dealers, reduced by a percentage of such price equal to the percentage which—

(i) The difference between the median price for which comparable articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers of producers thereof, and the median price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers, is of

(ii) The median price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers.

For purposes of this paragraph, the "median price" for which an article is sold at a particular level of distribution is the price midway between the highest and lowest prices charged vendees at the particular level of distribution. Where only one price is charged at a level of distribution, "median price" is equivalent to "actual price". All sale prices referred to in paragraphs (b), (c), (d), and (e) of this section are prices that must reflect the inclusions and exclusions set forth in sections 4216(a) and (f). However, once a constructive sale price has been determined under these paragraphs, no further adjustment of such price is allowed.

(d) *Application of section 4216(b)(4).* The application of section 4216(b)(4) and paragraph (c) of this section may be illustrated by the following example:

Example. M, a corporation engaged in the manufacture of article *X,* sold 100 of such articles at $10.00 per article to a wholesale distributor *N,* a corporation engaged in the business of selling *X* articles to independent retail dealers. *N* is a member of the same affiliated group of corporations as *M. M* sells *X* articles only to *N.* The normal method of manufacturers' sales of *X* articles in the industry is to sell to independent wholesale distributors. *N* corporation sells *X* articles to retailers for $15.00 each. The price for which comparable *X* articles are sold to wholesale distributors in the ordinary course of trade by manufacturers thereof is $12.00 per article. Wholesale distributors sell *X* articles to retailers in the ordinary course of trade for $16.00 per article. Under the foregoing facts the constructive sale price determined under section 4216(b)(4) and this paragraph is $11.25, computed as follows:

$$\text{Constructive sale price} = \$15.00 \text{ minus } \left[\$15.00 \times \frac{(\$16.00 - \$12.00)}{\$16.00}\right] = \$11.25$$

(e) *Sales to which section 4216(b)(5) applies.* Section 4216(b)(5), which applies to articles sold after December 31, 1970, provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) in those circumstances where—

(1) A manufacturer, producer, or importer of an article subject to a tax imposed by section 4061(a) (trucks, buses, etc.) regularly sells such article to a wholesale distributor that is a member of the same affiliated group of corporations as the manufacturer, producer, or importer, and

(2) Such distributor regularly sells such articles to independent retail dealers.

Under such circumstances the constructive sale price of such articles shall be 98½ percent of the lowest price for which such distributor regularly sells the article in arms's-length transactions to the independent retail dealers. Once the constructive sale price has been determined, no adjustment shall be made for section 4216 (a) and (f) inclusions or exclusions or section 6416(b)(1) price readjustments.

(f) *Determination of "lowest price".* (1) In addition to other considerations, in determining a "lowest price" for purposes of section 4216(b) (1), (3), and (5) and §§ 48.4216(b)-2(b), 48.4216(b)-4(b), and 48.4216(b)-4(e), such price shall be determined—

(i) Without requiring that a given percentage of sales be made at that price (provided that the volume of sales made at that price is great enough to indicate that those sales have not been engaged in primarily to establish a lower tax base), and

(ii) Without including any charge for a fixed amount that the purchaser has an unconditional right to recover on the basis of a contractual arrangement existing at the time of sale.

(2) For purposes of applying section 4216(b)(1) and § 48.4216(b)-2, section 4216(b)(6) and this paragraph apply to articles sold after June 30, 1962. For purposes of applying section 4216(b)(3) and paragraph (b) of this section, section 4216(b)(6) and this paragraph apply to articles sold after December 31, 1969. For purposes of applying section 4216(b)(5) and paragraph (e) of this section, section 4216(b)(6) and this paragraph apply to articles sold after December 31, 1970.

(g) *Definitions.* For purposes of this section and paragraphs (3), (4), and (5) of section 4216(b), the term "regularly sells" has the same meaning as that accorded the term "regular sales" in subparagraph (3) of § 48.4216(b)-3(b), and the term "normal method of sales in the industry" has the same meaning as accorded that term in subparagraph (4) of § 48.4216(b)-3(b).

[T.D. 7613]

[FR Doc. 79-12512 Filed 4-20-79; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

Malden River, Mass.; Drawbridge Operation Regulations

AGENCY: Coast Guard, DOT.

ACTION: Correction.

SUMMARY: In FR Doc. 79-7957 appearing on page 15702 in the **Federal Register** of Thursday, March 15, 1979, in § 117.75, paragraph "(m)" should be designated as paragraph "(n)". Paragraph "(m)" has already been used in FR Doc. 78-7762 appearing on page 11983 in the **Federal Register** of Thursday, March 23, 1978.

EFFECTIVE DATE: April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-0942).

Dated: April 13, 1979.

J. B. Hayes,

Admiral, U.S. Coast Guard, Commandant.

[CGD 77-215]

[FR Doc. 79-12554 Filed 4-20-79; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

Safety Zones; Illinois River, Mile 0 to 187.3

AGENCY: Coast Guard, DOT.

ACTION: Final Rule (Safety Zone—Termination).

SUMMARY: This amendment to the Coast Guard's Safety Zone Regulations terminates the safety zone on the Illinois River, Mile 0 to Mile 187.3 (published in the April 5, 1979 issue of the **Federal Register** (44 FR 30536)). This safety zone is terminated as flood conditions requiring the safety zone have abated.

DATES: This amendment is effective on April 12, 1979.

FOR FURTHER INFORMATION CONTACT: Cdr. A. Cattalini, USCG, c/o Commander Second Coast Guard District, 1430 Olive Street, St. Louis, Mo. 63103, Tel: 314-425-4614.

DRAFTING INFORMATION: The principal persons involved in the drafting of this rule are Lt. G. W. Abrams, USCG,