

the amount of the specified premiums minus the advance credit payments attributable to the specified premiums.

(b) *Additional guidance.* The Secretary may provide by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) additional guidance on coordinating the deduction allowed under section 162(l) and the credit provided under section 36B.

(c) *Applicability date.* This section applies for taxable years beginning after December 31, 2013.

#### § 1.162(l)–1T [Removed]

■ **Par. 11.** Section 1.162(l)–1T is removed.

**Kirsten B. Wielobob,**

*Deputy Commissioner for Services and Enforcement.*

Approved: July 14, 2017.

**Thomas West,**

*Tax Legislative Counsel.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 51

[TD 9823]

RIN 1545–BM26

#### Branded Prescription Drug Fee

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

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations that define the term *controlled group* for purposes of the branded prescription drug fee. The final regulations supersede and adopt the text of temporary regulations that define the term *controlled group*. The final regulations affect persons engaged in the business of manufacturing or importing certain branded prescription drugs.

**DATES:**

*Effective Date:* The final regulations are effective July 24, 2017.

*Applicability Date:* For dates of applicability, see § 51.11(b) of the final regulations.

**FOR FURTHER INFORMATION CONTACT:** Rachel S. Smith at (202) 317–6855 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The branded prescription drug fee was enacted by section 9008 of the

Patient Protection and Affordable Care Act, Public Law 111–148, 124 Stat. 119 (2010), as amended by section 1404 of the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, 124 Stat. 1029 (2010) (collectively the ACA). Section 9008 did not amend the Internal Revenue Code (Code) but cross-references specific Code sections.

On July 28, 2014, temporary regulations (TD 9684) relating to the fee on branded prescription drugs were published in the **Federal Register** (79 FR 43631) (2014 temporary regulations). A notice of proposed rulemaking (REG–123286–14) cross-referencing the temporary regulations was published in the **Federal Register** on the same day (79 FR 43699). The 2014 temporary regulations provided a definition of the term *controlled group* that was broader than the definition of the term *controlled group* in § 51.2T(e)(3) of the temporary regulations (TD 9544) published in the **Federal Register** (76 FR 51245) on August 18, 2011 (2011 temporary regulations).

Neither the Department of the Treasury (Treasury Department) nor the Internal Revenue Service (IRS) received any written comments with respect to the notice of proposed rulemaking and no public hearing was requested or held. The final regulations adopt the proposed regulations without change and the 2014 temporary regulations are removed.

**Explanation of Provisions**

The 2011 temporary regulations defined the term *controlled group* to mean a group of at least two covered entities that are treated as a single employer under section 52(a), 52(b), 414(m), or 414(o) of the Code. The 2014 temporary regulations defined the term *controlled group* more broadly to mean a group of two or more persons, including at least one person that is a covered entity, that is treated as a single employer under section 52(a), 52(b), 414(m), or 414(o) of the Code. These final regulations adopt the definition of *controlled group* contained in the 2014 temporary regulations without change.

The broader definition of the term *controlled group* in the 2014 temporary regulations and these final regulations is supported by the statutory language and is consistent with the way in which controlled group rules based on similar statutory language are applied, including how the term *controlled group* is defined in § 57.2(c)(1) for purposes of the health insurance providers fee under section 9010 of the ACA. Consistent with the preamble to the 2014 temporary regulations, the

Treasury Department and the IRS continue to expect that the broader definition of the term *controlled group* in the final regulations will primarily affect the scope of joint and several liability for the fee and will not otherwise affect the administration of the fee.

The 2014 temporary regulations applied beginning on January 1, 2015 (*i.e.*, starting with 2015 sales years), and are effective until July 24, 2017. These final regulations apply on and after July 24, 2017. Because both the 2014 temporary regulations and these final regulations provide the same definition of *controlled group* for purposes of section 9008 of the ACA, that definition applies continuously beginning with the 2015 sales year and 2017 fee year.

**Special Analyses**

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. Because the final regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received on the proposed regulations.

**Drafting Information**

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

**List of Subjects in 26 CFR Part 51**

Drugs, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 51 is amended as follows:

**PART 51—BRANDED PRESCRIPTION DRUG FEE**

■ **Paragraph 1.** The authority citation for part 51 is revised to read as follows:

**Authority:** 26 U.S.C. 7805; sec. 9008, Pub. L. 111–148, 124 Stat. 119.

Section 51.8 also issued under 26 U.S.C. 6302(a).

Section 51.6302–1 also issued under 26 U.S.C. 6302(a).

■ **Par. 2.** Section 51.2 is amended by revising paragraph (e)(3) to read as follows:

**§ 51.2 Explanation of terms.**

\* \* \* \* \*

(e) \* \* \*

(3) *Controlled group.* The term *controlled group* means a group of two or more persons, including at least one person that is a covered entity, that is treated as a single employer under section 52(a), 52(b), 414(m), or 414(o).

\* \* \* \* \*

**§ 51.2T [Removed]**

■ **Par. 3.** Section 51.2T is removed.

■ **Par. 4.** Section 51.11 is amended by revising the section heading and paragraph (b) and removing paragraph (c) to read as follows:

**§ 51.11 Applicability date.**

\* \* \* \* \*

(b) Section 51.2(e)(3) applies on and after July 24, 2017.

**§ 51.11T [Removed]**

■ **Par. 5.** Section 51.11T is removed.

**Kirsten Wielobob,**

*Deputy Commissioner for Services and Enforcement.*

Approved: July 17, 2017.

**Tom West,**

*Tax Legislative Counsel.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket Number USCG–2017–0486]

RIN 1625–AA00

**Safety Zone; Kosciuszko Bridge Approach Spans Demolition, Newtown Creek, Brooklyn and Queens, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of Newtown Creek, NY within 2,000 feet of the existing Kosciuszko Bridge at mile 2.1. This action is necessary to provide for the safety of life on these navigable waters during the explosives demolition of the approach spans on each adjacent shoreline. This rulemaking prohibits

persons and vessels from being in the safety zones unless authorized by the Captain of the Port New York or a designated representative.

**DATES:** This rule is effective without actual notice from July 26, 2017 through December 31, 2017. For the purposes of enforcement, actual notice will be used from July 22, 2017 through July 26, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2017–0486 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Jeff Yunker, Sector New York Waterways Management Division; telephone 718–354–4195, email [jeff.m.yunker@uscg.mil](mailto:jeff.m.yunker@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR Code of Federal Regulations  
COTP Captain of the Port New York  
DHS Department of Homeland Security  
FDNY New York City Fire Department  
FR Federal Register  
NPRM Notice of proposed rulemaking  
NYSDOT New York State Department of Transportation  
OSHA Occupational Safety and Health Administration  
§ Section  
U.S.C. United States Code

**II. Background Information and Regulatory History**

The Coast Guard issued a Bridge Permit dated August 21, 2013 approving the location and construction of the Kosciuszko Bridge across Newtown Creek, mile 2.1, between the Boroughs of Queens and Brooklyn, NY. On April 25, 2017, NYSDOT notified the Coast Guard that the contractor requires a short term closure of Newtown Creek for the energetic felling of the existing Kosciuszko Bridge approach spans over land using shaped charges. The shaped charges make multiple precise cuts in the steel bridge spans at the same instant. This allows the approach spans to fall directly to the ground below. There will be no debris field outside of the limits of the bridge. The tentative, primary demolition dates are the early morning hours of July 22 or 23, 2017. The tentative back-up dates for these operations are the early morning hours of July 29 or 30, August 5 or 6, and August 12 or 13, 2017. To ensure public safety the contractor requested the USCG establish a safety zone within

600-feet of the existing bridge for a three-hour duration during these operations. NYSDOT stated FDNY was working with the explosives demolition subcontractor and would provide a final exclusion zone limit during these operations in early May 2017.

On May 15, 2017 the contractor notified the Coast Guard that the distance requested for the exclusion zone is 1,200 from the existing bridge during the explosives demolition. However, the subcontractor stated this is a preliminary distance for discussion purposes only. The final distance would not be provided until the contract is awarded and the subcontractor meets with NYSDOT, the general contractor, security forces, and other stakeholders. Due to this expanded distance and late notification the Coast Guard was unable to include this request within the existing bridge demolition rulemaking (Docket Number USCG–2016–1048) for this bridge replacement project. The safety zone distance is to ensure that persons are not exposed to air overpressure (noise) levels above the 140 decibel impact guidelines under OSHA regulations codified at 29 CFR 1910.95 Table G–16—PERMISSIBLE NOISE EXPOSURES, Footnote 1. The Coast Guard proposes to make this rule enforceable through December 31, 2017, and to a greater distance (2,000 feet) than currently requested (1,200 feet), as a contingency for any unforeseen delays or revisions to the bridge approach spans demolition schedule or safety requirements based upon the final FDNY safety requirements.

The Coast Guard is making this temporary rule effective less than 30 days after publication in the **Federal Register** pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(d)). This provision authorizes an agency to make a rule effective less than 30 days after publication for good cause. We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** because waiting 30 days would be impracticable and contrary to the public interest. It is impracticable and contrary to the public interest to provide a full 30-days notice because this rule must be effective on July 22 or 23, 2017 to limit delays to NYSDOT and contractor schedules as part of this \$555 million dollar infrastructure improvement project. FDNY requires the contractor to conduct the explosives demolition in the early morning hours on a weekend to reduce the impact to vehicle traffic on the bridge. This time frame is also expected