

Order No. 500 was where we ultimately would determine the nature and address the take-or-pay issue. Now, some nine months later, the Full Commission has not received a single report of any kind from our own survey commissioned in Order No. 500. In fact, to date, the Full Commission has not even been provided access to the unaggregated data submitted by the individual interstate pipelines and individual producers. Unfortunately, as a result, the Full Commission, at this point, still is proceeding in a total analytical vacuum to consider the testimony received in April.

Furthermore, the Commission survey required the submission of take-or-pay data as of July 1, 1987. Much of the data submitted apparently reflects take-or-pay exposure, payments and resolution as of the end of 1986. Clearly, after the April testimony, our own survey is now woefully stale and largely out of date. And, whenever the Full Commission is finally presented a report of the data filed as of the first half of last year, any analytical results and conclusions will be of highly questionable value in the context of forming the basis for considering action under section 5, or any other authorities for that matter, in a final rule. Consequently, it appears inevitable that the Full Commission must act promptly to develop a revised approach to our take-or-pay data survey and subsequent consideration of action. At a minimum, it appears intuitively obvious that we should seek another round of take-or-pay data, which is as current and accurate as possible to reflect the take-or-pay realities in mid-1988. Put another way, it is now obvious that we must resolve the apparent tale of two take-or-pay surveys, before we attempt to fashion a Final Rule.

Chairman Jim Nugent of the Texas Railroad Commission perhaps put it best in his testimony. He stated that Commission's view that the AGD Court had vacated and remanded Order No. 436 to this Commission for reasoned decisionmaking on the take-or-pay issue. That reasoned decisionmaking, in the judgment of the Railroad Commission, requires this Commission to take the following analytical steps:

1. What is a clear definition of the magnitude and parameters of any existing contract problem?
2. Is the problem generic or quite specific to certain pipelines?
3. What is the appropriate remedy tailored to the specific problem?
4. Do the costs of the remedy exceed the perceived benefits?
5. Develop some form of streamlined regulatory approach to avoid unnecessary regulation of the industry.

In the context of that testimony from the Chairman of the Texas Railroad Commission, we now are faced with the serious dilemma that we are still locked in step 1. We are still trying to determine in some analytically acceptable fashion what the exact nature of the problem really is at this time.

Unless and until we can resolve that threshold issue, it is premature in my judgment to be debating the legality or the advisability of a generic section 5 action, just as we concluded last August. The exact nature of the take-or-pay problem in mid-1988 must be the analytical foundation on which the Full Commission must construct any Final Rule in the Order No. 500 docket. If voluntary renegotiation, which has been the centerpiece of our natural gas policies for the past four years, is as successful as claimed by NGSA and producers, we may get one analytical result and one related conclusion for action. If, in the alternative, the INGAA and interstate pipeline survey is persuasive, we may get a different analytical result and a related different conclusion as to necessary action. I, therefore, urge the Full Commission to resolve the "tale of two take-or-pay surveys" in the testimony received in April as the absolutely necessary first step in our prompt, future consideration of Order No. 500.

To that end, I have requested that the Full Commission receive a status report on the survey and a brief summary of the data submitted on a pipeline and producer specific basis. In any event, in light of the extended passage of time, the staff also should arrange for direct access to the individual pipeline and producer submissions for each Commissioner and his staff, in order that we may review the data directly if we choose to do so. For instance, I would plan to review the submissions of selected pipelines and producers under appropriate procedures respecting confidentiality, as we always do.

Additionally, I have recommended that the Commission require updated data from all participants to the take-or-pay survey.

The data should be updated to include (1) supplemental information on accrued take-or-pay exposure and liability and (2) any further resolution since July 1, 1987, of take-or-pay matters as of this time. The additional data should be submitted by June 15, 1988. Consequently, I also have requested that the Commission, as soon as possible, consider an order which would require all participants in the take-or-pay survey to make such a supplemental filing to update their original submissions.

I would conclude by expressing the serious concern that the Commission at this time appears to be adrift in a hostile sea of analytical ignorance and uncertainty, without a clear and certain course to resolution of the take-or-pay issue and a Final Rule under Order No. 500. Additionally, our action in this Order appears to lock in place the Interim Rule in its current form for the foreseeable future, without the direction to reach a Final Rule at a particular point on our regulatory chart. As Gibran stated in *The Prophet*, "If either your sails or your rudder be broken, you can but toss and drift, or else be held at a standstill in mid-sea." It is long since past time, in my judgment, that the Commission develop a course of action to obtain promptly the necessary data and analysis to define the actual take-or-pay problem, be it largely generic to most pipelines or quite specific to a few pipelines and be it largely resolved by voluntary renegotiation or continuing to grow despite the Interim Rule in Order No. 500.

As soon as that definition is complete, the Commission then must proceed promptly to complete action on the Final Rule with full consideration of all comments in the extensive record adduced from public comments, including the April hearings. The Commission has an obligation to the natural gas industry and the American consumer to complete action as soon as the required analysis is available. That obligation quite simply is not satisfied by continuing to "toss and drift or else be held at a standstill in mid-sea", as now, and allow the Interim Rule to remain in effect unmodified for the foreseeable future, as this Order would suggest.

Charles A. Trabandt,
Commissioner.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182, 184, and 186

[Docket No. 79N-0269]

Iron and Iron Salts; Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that

elemental iron (iron) and ferrous ascorbate, ferrous carbonate, ferrous citrate, ferrous fumarate, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric ammonium citrate, ferric chloride, ferric citrate, ferric phosphate, ferric pyrophosphate, and ferric sulfate (iron salts) are generally recognized as safe (GRAS) as direct human food ingredients. However, the agency is not taking any action on the listing of iron and several iron salts as GRAS substances in dietary supplements. FDA is also affirming that ferric oxide and oxides of iron are GRAS for use as indirect human food ingredients. FDA is not affirming that ferric sodium pyrophosphate, iron peptonate, iron polyvinylpyrrolidone, sodium ferric ethylenediamine tetraacetate (EDTA), and sodium ferricitropyrophosphate are GRAS as direct human food ingredients because of the lack of data on their safety and use. Additionally, FDA is not taking any action on the listing in Part 181 (21 CFR Part 181) of iron caprylate, iron tallate, iron linoleate, and iron naphthenate as prior-sanctioned driers that may migrate from food packaging. The safety of these ingredients has been evaluated under a comprehensive safety review conducted by the agency.

DATES: Effective June 13, 1988. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 184.1296, 184.1301, 184.1304, 184.1307d, 184.1308, 184.1315, and 184.1375 effective on June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 21, 1987 (52 FR 13086), FDA published a proposal to affirm that elemental iron (iron) and ferrous ascorbate, ferrous carbonate, ferrous citrate, ferrous fumarate, ferrous gluconate, ferrous lactate, ferrous sulfate, ferric ammonium citrate, ferric chloride, ferric citrate, ferric phosphate, ferric pyrophosphate, and ferric sulfate (iron salts) are GRAS for use as direct human food ingredients in conventional food and in infant formula. (FDA is using the term "conventional food" to refer to food that would fall within any of the 43 categories listed in 21 CFR 170.3(n).) However, the agency did not propose to take any action on the listing of iron and several iron salts as GRAS substances in dietary supplements. FDA also proposed to affirm that ferric oxide and oxides of iron are GRAS for use as indirect human food ingredients. Also in this proposal, FDA proposed not to take

any action on the listing in Part 181 (21 CFR Part 181) of iron caprylate, iron tallate, iron linoleate, and iron naphthenate as prior-sanctioned driers that may migrate from food packaging material. Additionally, FDA proposed not to affirm that ferric sodium pyrophosphate, iron peptonate, iron polyvinylpyrrolidone, sodium ferric ethylenediamine tetraacetate (EDTA), and sodium ferricitropyrophosphate are GRAS as direct human food ingredients because of a lack of safety and use data. FDA published this proposal in accordance with its announced review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with 21 CFR 170.35, copies of the scientific literature review and of the report of the Select Committee on GRAS Substances (the Select Committee) on iron and iron salts are available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of the documents are also available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of iron and iron salts, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than for the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of these ingredients recognized by issuance of an appropriate regulation under Part 181—Specific Prior-Sanctioned Food Ingredients (21 CFR Part 181), or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for iron and iron salts were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for uses of these ingredients under conditions different from those set forth in this final rule has been waived.

FDA received three comments in response to the agency's proposal on iron and iron salts. Two comments were

from distributors and suppliers of iron and iron salts. The other comment was submitted on behalf of a chemical laboratory. A summary of each of these comments and the agency's responses follow:

1. One comment from a distributor and supplier expressed its support of the proposal.

The agency acknowledges this comment. Because this comment agrees with the proposal, the agency has not made any changes in the regulations as a result of this comment.

2. Another comment from a chemical laboratory addressed the description for the preparation of ferrous lactate in proposed § 184.1311. This comment asserted that ferrous lactate can also be prepared by reacting sodium lactate with ferrous sulfate. Additionally, this comment recommended that the Japanese Standards of Food Additives (JSFA-V; 1986) be consulted in developing specifications for ferrous lactate.

The agency has carefully evaluated this comment. The agency agrees that the comment describes a reaction that is used to produce food-grade ferrous lactate. Therefore, the agency has modified the regulation on ferrous lactate to include the reaction of sodium lactate plus ferrous sulfate in the manufacture of this substance. The agency will consider the specifications listed in the Japanese Standards of Food Additives in developing specifications for ferrous lactate.

3. One comment from a distributor objected to the agency's decision not to affirm as GRAS iron peptonate because of a lack of consumer exposure data and safety information. The company that submitted this comment stated that it has been importing iron peptonate and selling it in this country. The company stated that "during the last 1½ years [it had] sold a total of approximately 30,000 pounds." The company also stated that "the material is being used by our customers in dietary supplements, veterinary and possibly other uses." However, the comment provided no documentation to substantiate these claims.

In the preamble to the proposal, the agency stated that consumer exposure data and relevant safety information are necessary to evaluate the safety of a food ingredient. Unless such data and information are forthcoming, the agency has no basis on which to affirm that the use of a substance is GRAS. No safety information has been provided for iron peptonate, nor has documented evidence been submitted to show that this substance is being used as a food

ingredient and to provide a basis for developing consumer exposure data. In the absence of such information and evidence, the agency cannot affirm that the use of iron peptonate as a food ingredient is GRAS.

Persons seeking FDA approval for the direct food use of iron peptonate may submit a food additive or GRAS affirmation petition in accordance with 21 CFR 170.35 or 171.1.

In several of the regulations listed in the proposal, the agency inadvertently omitted the oxidation state for iron in the more formalized nomenclature for iron compounds. For example, in proposed § 184.1298 *Ferric citrate*, the term "iron citrate" should have been listed as "iron (III) citrate" in paragraph (a). Therefore, the agency is making this minor correction in this regulation, and in several others, to reflect the more formalized nomenclature. Additionally, FDA has edited paragraph (c) of the regulations to clarify it and to eliminate redundancies. Also, the agency has corrected the molecular formula in § 184.1304.

In the proposal, FDA stated that it would work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for several of the iron compounds being affirmed as GRAS for use as direct human food ingredients and would incorporate these specifications into the regulations when they were developed. To date, however, work on the specifications is still incomplete. Until the specifications are developed, those iron compounds for direct food use must comply with the description in the regulations and be of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

The agency has previously considered the environmental effects of this rule as announced in the proposed rule of April 21, 1987 (52 FR 13086). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Docket Management Branch (address above).

List of Subjects

21 CFR Part 182

Food ingredients, Spices and flavorings.

21 CFR Part 184

Food ingredients, Incorporation by reference.

21 CFR Part 186

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 182, 184, and 186 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 182 is revised to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

§ 182.90 [Amended]

2. Section 182.90 *Substances migrating to food from paper and paperboard products* is amended by removing the entries for "Ferric sulfate," "Ferrous sulfate," "Iron reduced," and "Oxides of iron."

§§ 182.8301, 182.8304, 182.8306, 182.8308, 182.8311, 182.8315, and 182.8375 [Removed]

3. Sections 182.8301 *Ferric phosphate*, § 182.8304 *Ferric pyrophosphate*, § 182.8306 *Ferric sodium pyrophosphate*, § 182.8308 *Ferrous gluconate*, § 182.8311 *Ferrous lactate*, § 182.8315 *Ferrous sulfate*, and § 182.8375 *Iron reduced* are removed.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

4. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

5. A new § 184.1296 is added to read as follows:

§ 184.1296 Ferric ammonium citrate.

(a) Ferric ammonium citrate (iron (III) ammonium citrate) is prepared by the reaction of ferric hydroxide with citric acid, followed by treatment with ammonium hydroxide, evaporating, and drying. The resulting product occurs in two forms depending on the stoichiometry of the initial reactants.

(1) Ferric ammonium citrate (iron (III) ammonium citrate, CAS Reg. No. 1332–98–5) is a complex salt of undetermined structure composed of 16.5 to 18.5 percent iron, approximately 9 percent ammonia, and 65 percent citric acid and occurs as reddish brown or garnet red scales or granules or as a brownish-yellowish powder.

(2) Ferric ammonium citrate (iron (III) ammonium citrate, CAS Reg. No. 1333–00–2) is a complex salt of undetermined structure composed of 14.5 to 16 percent iron, approximately 7.5 percent ammonia, and 75 percent citric acid and occurs as thin transparent green scales, as granules, as a powder, or as transparent green crystals.

(b) The ingredients meet the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 116–117 (Ferric ammonium citrate, brown) and p. 117 (Ferric ammonium citrate, green), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredients are used in food as nutrient supplements as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredients may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for these ingredients different from the uses established in this section do not exist or have been waived.

6. A new § 184.1297 is added to read as follows:

§ 184.1297 Ferric chloride.

(a) Ferric chloride (iron (III) chloride, FeCl₃, CAS Reg. No. 7705–08–0) may be

prepared from iron and chlorine or from ferric oxide and hydrogen chloride. The pure material occurs as hygroscopic, hexagonal, dark crystals. Ferric chloride hexahydrate (iron (III) chloride hexahydrate, $\text{FeCl}_3 \cdot 6\text{H}_2\text{O}$, CAS Reg. No. 10025-77-1) is readily formed when ferric chloride is exposed to moisture.

(b) The Food and Drug Administration is developing food-grade specifications for ferric chloride in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1) the ingredient is used in food as a flavoring agent as defined in § 170.3(o)(12) of this chapter, with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

7. A new § 184.1298 is added to read as follows:

§ 184.1298 Ferric citrate.

(a) Ferric citrate (iron (III) citrate, $\text{C}_6\text{H}_5\text{FeO}_7$, CAS Reg. No. 2338-05-8) is prepared from reaction of citric acid with ferric hydroxide. It is a compound of indefinite ratio of citric acid and iron.

(b) The Food and Drug Administration is developing food-grade specifications for ferric citrate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

(8) A new § 184.1301 is added to read as follows:

§ 184.1301 Ferric phosphate.

(a) Ferric phosphate (ferric orthophosphate, iron (III) phosphate, $\text{FePO}_4 \cdot x\text{H}_2\text{O}$, CAS Reg. No. 10045-86-0) is an odorless, yellowish-white to buff-colored powder and contains from one to four molecules of water of hydration. It is prepared by reaction of sodium phosphate with ferric chloride or ferric citrate.

(b) The ingredient meets the specifications of the Food Chemicals

Codex, 3d Ed. (1981), pp. 118-120, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

9. A new § 184.1304 is added to read as follows:

§ 184.1304 Ferric pyrophosphate.

(a) Ferric pyrophosphate (iron (III) pyrophosphate, $\text{Fe}_4(\text{P}_{207})_3 \cdot x\text{H}_2\text{O}$, CAS Reg. No. 10058-44-3) is a tan or yellowish white colorless powder. It is prepared by reacting sodium pyrophosphate with ferric citrate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 120, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

10. A new § 184.1307 is added to read as follows:

§ 184.1307 Ferric sulfate.

(a) Ferric sulfate (iron (III) sulfate, $\text{Fe}_2(\text{SO}_4)_3$, CAS Reg. No. 10028-22-5) is a yellow substance that may be prepared by oxidizing iron (II) sulfate or by treating ferric oxide or ferric hydroxide with sulfuric acid.

(b) The Food and Drug Administration

is developing food-grade specifications for ferric sulfate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a flavoring agent as defined in § 170.3(o)(12) of this chapter, with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

11. A new § 184.1307a is added to read as follows:

§ 184.1307a Ferrous ascorbate.

(a) Ferrous ascorbate (CAS Reg. No. 14536-17-5) is a reaction product of ferrous hydroxide and ascorbic acid. It is a blue-violet product containing 16 percent iron.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous ascorbate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

12. A new § 184.1307b is added to read as follows:

§ 184.1307b Ferrous carbonate.

(a) Ferrous carbonate (iron (II) carbonate, FeCO_3 , CAS Reg. No. 563-71-3) is an odorless, white solid prepared by treating solutions of iron (II) salts with alkali carbonate salts.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous carbonate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act

(the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

13. A new § 184.1307c is added to read as follows:

§ 184.1307c Ferrous citrate.

(a) Ferrous citrate (iron (II) citrate, $C_6H_6FeO_7$), CAS Reg. No. 23383-11-1) is a slightly colored powder or white crystals. It is prepared from the reaction of sodium citrate with ferrous sulfate or by direct action of citric acid on iron filings.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous citrate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1) the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

14. A new § 184.1307d is added to read as follows:

§ 184.1307d Ferrous fumarate.

(a) Ferrous fumarate (iron (II) fumarate, $C_4H_2FeO_4$), CAS Reg. No. 141-01-5) is an odorless, reddish-orange to reddish-brown powder. It may contain soft lumps that produce a yellow streak when crushed. It is prepared by admixing hot solutions of ferrous sulfate and sodium fumarate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 120-122, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1) the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient

may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)), or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

15. A new § 184.1308 is added to read as follows:

§ 184.1308 Ferrous gluconate.

(a) Ferrous gluconate (iron (II) gluconate dihydrate, $C_{12}H_{22}FeO_{14} \cdot 2H_2O$), CAS Reg. No. 6047-12-7) is a fine yellowish-gray or pale greenish-yellow powder or granules. It is prepared by reacting hot solutions of barium or calcium gluconate with ferrous sulfate or by heating freshly prepared ferrous carbonate with gluconic acid in aqueous solution.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 122-123, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1200 L Street NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

16. A new § 184.1311 is added to read as follows:

§ 184.1311 Ferrous lactate.

(a) Ferrous lactate (iron (II) lactate, $C_6H_{10}FeO_6$), CAS Reg. No. 5905-52-2) in the trihydrate form is a greenish-white powder of crystalline mass. It is prepared by reacting calcium lactate or sodium lactate with ferrous sulfate or by direct reaction of lactic acid with iron filings.

(b) The Food and Drug Administration is developing food-grade specifications for ferrous lactate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(o)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

17. A new § 184.1315 is added to read as follows:

§ 184.1315 Ferrous sulfate.

(a) Ferrous sulfate heptahydrate (iron (II) sulfate heptahydrate, $FeSO_4 \cdot 7H_2O$), CAS Reg. No. 7782-63-0) is prepared by the action of sulfuric acid on iron. It occurs as pale, bluish-green crystals or granules. Progressive heating of ferrous sulfate heptahydrate produces ferrous sulfate (dried). Ferrous sulfate (dried) consists primarily of ferrous sulfate monohydrate (CAS Reg. No. 17375-41-6) with varying amounts of ferrous sulfate tetrahydrate (CAS Reg. No. 20908-72-9) and occurs as a grayish-white to buff-colored powder.

(b) The ingredients meet the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 123 (Ferrous sulfate heptahydrate) and p. 124 (ferrous sulfate, dried), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave., NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredients are used in food as nutrient supplements as defined in § 170.3(o)(20) of this chapter and as a processing aid as defined in § 170.3(o)(24) of this chapter, with no limitation other than current good manufacturing practice. The ingredients may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(a)(2)).

(d) Prior sanctions for these ingredients different from the uses established in this section do not exist or have been waived.

18. A new § 184.1375 is added to read as follows:

§ 184.1375 Iron, elemental.

(a) Iron, elemental (CAS Reg. No. 7439-89-6) is metallic iron obtained by any of the following processes: reduced iron, electrolytic iron, and carbonyl iron.

(1) Reduced iron is prepared by reacting ground ferric oxide with hydrogen or carbon monoxide at an elevated temperature. The process results in a grayish-black powder, all of which should pass through a 100-mesh sieve. It is lusterless or has not more than a slight luster. When viewed under a microscope, it appears as an amorphous powder free from particles having a crystalline structure. It is stable in dry air.

(2) Electrolytic iron is prepared by electrodeposition. It is an amorphous, lusterless, grayish-black powder. It is stable in dry air.

(3) Carbonyl iron is prepared by the decomposition of iron pentacarbonyl. It occurs as a dark gray powder. When viewed under a microscope, it appears as spheres built up with concentric shells. It is stable in dry air.

(b) Iron, elemental (carbonyl, electrolytic, or reduced) meets the specifications of the Food Chemicals Codex, 3d Ed. (1981) (iron, carbonyl, p. 151; iron, electrolytic, pp. 151-152; iron, reduced; pp. 152-153), which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food as a nutrient supplement as defined in § 170.3(e)(20) of this chapter, with no limitation other than current good manufacturing practice. The ingredient may also be used in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a(g)) or with regulations promulgated under section 412(a)(2) of the act (21 U.S.C. 350a(2)).

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

19. The authority citation for 21 CFR Part 186 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046-1047 as amended, 1055-1056 as amended, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10 and 5.61.

20. A new § 186.1300 is added to read as follows:

§ 186.1300 Ferric oxide.

(a) Ferric oxide (iron (III) oxide, Fe_2O_3 , CAS Reg. No. 1309-37-1) occurs naturally as the mineral hematite. It may be prepared synthetically by heating brown iron hydroxide oxide. The product is red-brown to black trigonal crystals.

(b) In accordance with § 186.1(b)(1), the ingredient is used as an indirect human food ingredient with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as an indirect human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a constituent of paper and paperboard used for food packaging.

(2) The ingredient is used as levels not to exceed current good manufacturing practice.

(c) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

21. A new § 186.1374 is added to read as follows:

§ 186.1374 Iron oxides.

(a) Iron oxides (oxides of iron, CAS Reg. No. 97705-33-85) are undefined mixtures of iron (II) oxide (CAS Reg. No. 1345-25-1, black cubic crystals) and iron (III) oxide (CAS Reg. No. 1309-37-1, red-brown to black trigonal crystals).

(b) In accordance with § 186.1(b)(1), the ingredient is used as an indirect human food ingredient with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as an indirect human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a constituent of paper and paperboard used for food packaging.

(2) The ingredient is used as levels not to exceed current good manufacturing practice.

(c) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: May 4, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

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DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 145**

[T.D. 8200]

Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the excise tax imposed on the retail sale of heavy trucks, truck trailers and semitrailers, and tractors. Changes in the applicable tax law were made by sections 505 and 506 of the Highway Revenue Act of 1987 (Title V of the Surface Transportation and Uniform Relocation Assistance Act of 1987). These regulations affect manufacturers, producers, importers, dealers, and lessors of these articles and will provide them with the guidance needed to comply with the law. In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the *Federal Register*.

DATE: Generally, these regulations apply to heavy trucks, truck trailers and semitrailers, and tractors sold on or after October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Maurice B. Foley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Attention: CC:LR:T (LR-1-86). Telephone (202-566-4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:**Background**

This document contains amendments to the Temporary Excise Tax Regulations (26 CFR Part 145) under section 4052 of the Internal Revenue Code of 1986 (Code), as amended by sections 505 and 506 of the Highway Revenue Act of 1987 (Title V of the Surface Transportation and Uniform Relocation Assistance Act of 1987) (Pub. L. 100-17, 101 Stat. 256, 258-59) ("the Act"), relating to the excise tax on the sale of heavy trucks, truck trailers and semitrailers, and tractors. The amendments modify temporary regulations previously promulgated under section 512 of the Highway Revenue Act of 1982 (Title V of the

Surface Transportation Assistance Act). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

Section 4051(a) of the Code imposes a 12 percent tax on the first retail sale of heavy trucks, truck trailers and semitrailers, and tractors. Section 505(a) of the Act amended section 4052(a)(1) to provide that the term "first retail sale" means "the first sale, for a purpose other than for resale or leasing in a long-term lease, after manufacture, production, or importation".

Under section 4052(a)(1), the leasing of an article on a long-term basis is treated as the first retail sale, and the tax under section 4051 is imposed on such article at the time the article is leased, rather than at the time the manufacturer, producer, or importer sells the article to the lessor. Section 4052(f) provides that the term "long-term lease" means any lease with a term of 1 year or more. The leasing of an article on a short-term basis (*i.e.*, less than one year) before the first retail sale of such article is treated as a taxable use under section 4052(a)(3), and the tax under section 4051 is imposed at the time of that lease.

The tax imposed on either a long-term or short-term lease is computed on a price established by the Commissioner that is based on the retail sales price of similar articles (a constructive sales price). See discussion of "Presumptive retail sales price" below.

Definition of First Retail Sale

Temporary regulations § 145.4052-1, relating to the excise tax on heavy trucks, truck trailers and semitrailers, and tractors, were revised by temporary regulations published in the *Federal Register* on September 13, 1985 (T.D. 8050) (50 FR 37350). Those revised regulations provided that a sale by a manufacturer, producer, or importer is treated as the first retail sale unless either (a) the purchaser is not in the business of leasing and intends to resell the article, or (b) the seller and the purchaser are registered under section 4222 (prescribing rules relating to the registration required to make tax-free sales), and the seller receives a certificate indicating the purchaser's intent to resell the articles.

Section 4052, as amended by the Act, treats a long-term lease as a first retail sale. Sections 145.4052-1 (a)(1), (a)(2), and (a)(3) of these temporary regulations set forth certification requirements that determine when the first retail sale of an article occurs.

Certification Requirements

Section 145.4052-1(a)(2) of these temporary regulations provides that the sale of an article will be taxable as the first retail sale unless (a) the sale is a tax-free sale under section 4221, (b) the purchaser and seller are registered under § 48.4222(a)-1 and the seller in good faith accepts a proper certification from the purchaser that the purchaser intends either to lease the article on a long-term basis or to resell the article, or (c) there has been a prior taxable sale of the article. "Taxable sale" for these purposes includes a long-term lease or a taxable use, such as a short-term lease. If the purchaser does not meet one of the exceptions in § 145.4052-1(a)(2), the seller will be liable for the tax imposed on the sale.

Thus, § 145.4052-1(a)(2) allows a purchaser who intends either to lease on a long-term basis or to resell an article to purchase such article tax-free. In such cases the tax under section 4051 will be imposed on a subsequent taxable sale or use of the article.

Paragraphs (a)(4) and (d)(3)(ii) of § 145.4052-1 set forth special rules regarding imposition of the tax. Section 145.4052-1(a)(4) provides that in certain circumstances tax will be imposed on the resale or long-term lease of a tax-paid trailer or semitrailer and the seller of such trailer or semitrailer shall be liable for such tax. Under § 145.4052-1(a)(4) the seller may in such cases reduce the tax liability by the amount of tax previously paid with respect to the article.

Section 145.4052-1(d)(3)(ii) provides that the tax under section 4051 shall be computed on a price that includes a presumed markup when a person other than a manufacturer, producer, or importer is designated as the seller of an article but (a) such person does not perform significant activities relating to the processing of the sale of the article and (b) the principal purpose of processing the sale through such person is to avoid or evade the presumed markup imposed under section 4052(b)(4)(A)(ii).

Presumptive Retail Sales Price

In order to achieve comparable tax treatment among long-term leases, sales by manufacturers, producers, or importers, and retail sales by other persons, sections 505(b) and 506(a) of the Act amended section 4052(b) by adding new paragraphs (b) (3) and (4). These paragraphs were added to ensure that the tax base of most transactions considered to be taxable sales subject to section 4051 includes either an actual or a presumptive retail markup. As a result,

sections 4052(b) (3) and (4) provide that the tax imposed by section 4051 shall, under certain circumstances, be computed on a presumptive retail sales price (*i.e.*, a tax base that includes a presumed markup).

Section 4052(b)(3) provides that the tax imposed on any long-term lease that is treated as the first retail sale of an article shall be computed on a tax base that includes the price at which the article was sold to the lessor, the cost of any parts and accessories installed by the lessor, and an amount equal to a presumed markup. Section 145.4052-1(c)(5) of the regulations is amended to provide that the tax imposed on a short-term lease by a person other than a manufacturer, producer or importer shall also be computed on a tax base that includes the price at which the article was sold to the lessor, the cost of any parts and accessories installed by the lessor, and an amount equal to the presumed markup. However, the leasing of an article by a person other than a manufacturer, producer, or importer will not be subject to tax under section 4051 if such article was previously subject to tax under that section.

Similarly, section 4052(b)(4) provides that the tax imposed on a sale by a manufacturer, producer, or importer shall be computed on a tax base that includes an actual or constructive sales price of the article and an amount equal to a presumed markup.

For purposes of these temporary regulations, a single presumed markup percentage of four percent has been established for most articles subject to section 4051. However, truck trailers, semitrailers, and remanufactured trucks and tractors are subject to a zero percent markup. The imposition of a presumed markup percentage greater than zero percent on these articles is not necessary to carry out the purpose of the section 4051 retail tax because retail sales of trailers and semitrailers are generally made by trailer manufacturers. Similarly, remanufactured trucks and tractors generally are not sold through an established retail distribution network.

The presumed markup percentage is defined under section 4052(b)(3)(B) as "the average markup percentage of retailers of articles of the type involved." The Internal Revenue Service is currently examining whether it is appropriate to exercise its regulatory authority to establish additional markup percentages for different categories of articles. A tax system involving different markups raises a variety of problems relating to administration and enforcement. Therefore, the Service is

requesting comments and suggestions relating to this particular issue in order to administer this tax fairly and efficiently.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply, and no regulatory flexibility analysis is required for this rule. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Drafting Information

The principal author of these regulations is Maurice B. Foley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 145

Extended due date for payment of certain fuel taxes, Floor stocks refunds, Floor stocks tax, Highway Revenue Act of 1982.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 145 is amended as follows:

PART 145—TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1987 (PUB. L. 100-17)

Paragraph 1. The authority for Part 145 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 145.4052-1 also issued under 26 U.S.C. 4052 (d).

Par. 2. Section 145.4052-1 is amended as follows:

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

2. The heading and text for paragraph (b) are revised to read as set forth below.

3. Paragraph (c)(1) is amended by deleting the first sentence and inserting in its place "For purposes of this section and § 145.4051-1, the use of an article will be deemed to be a sale of the article." and by removing from the second sentence the words "unless such article is thereafter sold for resale".

4. Paragraph (c)(5) is amended by deleting the first sentence from paragraph (c)(5)(i) and inserting in its place "Except as provided in paragraphs

(c)(5)(ii) and (c)(5)(iii) of this section," and by adding a new paragraph (c)(5)(iii) as set forth below.

5. Paragraph (d) is amended by redesignating paragraphs (d)(2), (d)(3), and (d)(4) as paragraphs (d)(8), (d)(9), and (d)(10), respectively, and by adding new paragraphs (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), and (d)(7) to read as set forth below.

6. Paragraph (d)(2) is amended by removing the words "paragraph (d)(2)(iii)" from the second sentence of paragraph (d)(2)(iii) and by inserting, in their place, the words "paragraph (d)(8)(iii)".

7. Paragraph (f) is removed.

8. Paragraph (e) is redesignated as paragraph (f) and a new paragraph (e) is added to read as set forth below.

9. A new paragraph (g) is added to read as set forth below.

§ 145.4052-1 Special rules and definitions.

(a) *First retail sale*—(1) *General rule.* For purposes of section 4051(a)(1) and § 145.4051-1, the term "first retail sale" means a taxable sale described in paragraph (a)(2) of this section.

(2) *Taxable sale.* The sale of an article is a taxable sale unless—

(i) The sale is a tax-free sale under section 4221,

(ii) Both the purchaser and the seller are registered under section 4222 and § 48.4222(a)-1 and the seller has in good faith accepted from the purchaser a proper certification, as provided in paragraph (a)(6) of this section, executed in good faith, that the purchaser intends to lease such article on a long-term basis or resell such articles, or

(iii) There has been a prior taxable sale of the article. Notwithstanding the preceding clause, the sale of a chassis or body of a trailer or semitrailer ("trailer or semitrailer") less than six months after a taxable sale of the article shall be treated as a taxable sale.

(3) *Computation of tax*—(i) *In general.* If the sale of an article is a taxable sale under paragraph (a)(2) of this section, the tax shall be computed on the price as determined under paragraph (d) of this section.

(ii) *Exception.* If the taxable sale of an article is a taxable use of such article under paragraph (c) of this section, the tax shall be computed on the price as determined under paragraph (c) of this section.

(4) *Special rule for tax-paid trailer and semitrailer.* In the case of a taxable sale of a trailer or semitrailer less than six months after a taxable sale of the article, the seller in the subsequent sale ("the subsequent seller") may claim a credit equal to the amount of tax previously paid by another person ("the previous taxpayer") under section

4051(a)(1) with respect to the prior taxable sale of the article. The credit for such tax will be allowed to the subsequent seller only if the form on which the credit is claimed is accompanied by a statement, signed by the subsequent seller, indicating the amount of the credit being claimed under this paragraph (a)(4) and stating that—

(i) The subsequent seller has not been repaid any portion of such tax by the previous taxpayer,

(ii) The subsequent seller has not provided the previous taxpayer with written consent to allow the previous taxpayer to claim a credit or refund of such tax under section 6416 (a), and

(iii) The subsequent seller has records (e.g. invoices) substantiating the amount of tax paid by the previous taxpayer with respect to the prior taxable sale of such article.

In no case shall the amount of the credit allowable under this paragraph (a)(4) with respect to an article exceed the tax liability of the subsequent seller with respect to the sale of such article.

(5) *No installment payments of tax.* If a lease or an installment sale (or another form of sale under which the sales price is paid in installments) is, or is deemed to be, a taxable sale under this section, then the liability for the entire tax arises at the time of the lease or installment sale. No portion of the tax is deferred by reason of the fact that the sales price is paid in installments.

(6) *Certificate.* A certificate signed by the purchaser, or an officer or employee authorized by the purchaser to sign the certificate, may be accepted by a seller in support of a nontaxable sale to the purchaser. If it is impracticable to furnish a separate certificate for each sale because of the frequency of sales to such purchaser, a certificate covering all orders between given dates (such period not to exceed 12 calendar quarters) will be acceptable. The purchaser may revoke the certificate by sending a written revocation to the seller. The certificate and proper records of invoices, orders, etc., relating to sales made pursuant to such certificate, must be retained by the seller as provided in section 6001 and the regulations thereunder. The certificate shall be substantially in the following form:

Exemption Certificate

I hereby certify that I am _____ (Title) of _____, (Name of purchaser) that I am authorized to execute this certificate, and that:

(Check appropriate line)
_____ the article or articles specified in the accompanying order, or on the reverse side hereof, (or)

all orders placed by the purchaser for the period commencing _____

(Date) (period not to exceed 12 calendar quarters), are purchased either for resale or for lease on a long-term basis.

I have filed Form 637 and have received registration number _____

I understand that the fraudulent use of this certificate to secure exemption will subject me and all parties making such fraudulent use to a fine of not more than \$10,000, or to imprisonment for not more than 5 years, or both, together with costs of prosecution.

(Signature) _____

(Address) _____

(7) *Registration.* Section 4222 and the regulations thereunder shall apply to persons making sales which are not treated as taxable sales pursuant to paragraph (a)(2)(ii) of this section.

(b) *Tax treatment of leases—(1) Long-term lease.* For purposes of this section and § 145.4051-1, the leasing of an article on a long-term basis (as defined in paragraph (d)(6) of this section) will be deemed to be a sale of the article and will be deemed to be a taxable sale unless one of the exceptions contained in paragraph (a)(2) of this section applies. Thus, if a dealer purchases an article tax-free under an exception contained in paragraph (a)(2) of this section and then leases the article on a long-term basis, the leasing of the article will be treated as a taxable sale.

(2) *Short-term lease.* For purposes of this section and § 145.4051-1, the leasing of an article on a short-term basis (as defined in paragraph (d)(6) of this section) will be deemed to be a taxable use of such article under paragraph (c) of this section and will be deemed to be a taxable sale unless one of the exceptions contained in paragraph (a)(2) of this section applies.

(3) *Computation of tax—(i) Long-term lease by manufacturer, producer, or importer.* When a manufacturer, producer, or importer is the lessor of an article on a long-term basis (as defined in paragraph (d)(6) of this section) and such lease is deemed to be a taxable sale under paragraph (b)(1) of this section, the tax shall be computed on a presumptive retail sales price as determined under paragraph (d)(4)(i) of this section. The manufacturer, producer, or importer shall be liable for the tax as if the article were sold at retail by such manufacturer, importer, or retailer.

(ii) *Long-term lease by persons other than manufacturer, producer, or importer.* When a person other than a manufacturer, producer, or importer is the lessor of an article on a long-term basis (as defined in paragraph (d)(6) of

this section) and such lease is deemed to be a taxable sale under paragraph (b)(1) of this section, the tax shall be computed on a presumptive retail sales price as determined under paragraph (d)(5)(i) of this section. Such person shall be liable for the tax as if the article were sold at retail by such person.

* * * * *

(c) *Use treated as a sale.* * * *

(5) *Computation of tax—(i)* * * *

(iii) In the case of any short-term lease (as defined in paragraph (d)(6) of this section) by any person other than a manufacturer, producer, or importer (or related person as defined in paragraph (d)(2)(ii) of this section) of an article that is deemed to be a taxable use of such article under paragraph (b)(2) of this section, the tax imposed by section 4051(a)(1) shall be computed on a price equal to the sum of—

(A) The price (as determined under paragraph (d) of this section) at which such article was sold to the lessor plus the cost of any parts and accessories installed by the lessor (or an agent of the lessor) on such article before the first use or lease by the lessor, plus

(B) The product of the sum described in paragraph (c)(5)(iii)(A) of this section and the presumed markup percentage (as defined in paragraph (d)(7) of this section).

* * * * *

(d) *Determination of price—(1) In general.* * * *

(2) *Presumptive retail sales price where tax paid by manufacturer, producer, or importer—(i) In general.* In the case of a taxable sale (other than a taxable sale described in paragraph (b)(1) of this section) where a manufacturer, producer, importer, or related person is liable for the tax imposed by section 4051, such tax shall be computed on a price equal to the sum of—

(A) The price that would (but for this paragraph (d)(2)) be determined under this paragraph (d), and

(B) The product of the price determined under paragraph (d)(2)(i)(A) of this section and the presumed markup percentage (as defined in paragraph (d)(7) of this section).

(ii) *Related person defined—(A) In general.* Except as provided in paragraph (d)(2)(ii)(B) of this section, the term "related person" means any person that is a member of the same controlled group (within the meaning of section 5061(e)(3)) as the manufacturer, producer, or importer.

(B) *Exception for permanent retail establishment.* A person shall not be treated as a related person with respect to the sale of any article if—

(1) Such person sells the article through a permanent retail establishment in the normal course of business of being a retailer, and

(2) Such person has records (e.g., invoices) that substantiate that the article was sold for a price that included a markup equal to or greater than the presumed markup percentage (as defined in paragraph (d)(7) of this section).

(3) *Retail sales price where tax paid by person other than a manufacturer, producer, importer, or related person—*

(i) *In general.* In the case of a taxable sale (other than a taxable sale defined in paragraph (b)(1) of this section) where a person other than a manufacturer, producer, importer, or related person is liable for the tax imposed by section 4051, such tax shall be computed on a price determined under paragraph (d)(1) of this section.

(ii) *Exception.* When a person other than a manufacturer, producer, importer, or related person is liable for the tax imposed by section 4051, such tax shall be computed on a price determined under paragraph (d)(2)(i) of this section if—

(A) Such person does not perform any significant activities relating to the processing of the sale of an article.

(B) The principal purpose for processing the sale through such person is to avoid or evade the presumed markup under paragraph (d)(2)(i)(B) of this section, and

(C) Such person does not have records (e.g., invoices) substantiating that the article was sold for a price that included a markup equal to or greater than the presumed markup percentage as defined in paragraph (d)(7) of this section.

(4) *Presumptive retail sales price in the case of a lease by a manufacturer, producer, or importer.* In the case of any long-term lease (as defined in paragraph (d)(6) of this section) by a manufacturer, producer, importer, or a related person (as defined in paragraph (d)(2)(ii) of this section) of an article that is deemed to be a taxable sale of such article under paragraph (b)(1) of this section, the tax imposed by section 4051(a)(1) shall be computed on a price equal to the sum of—

(i) A constructive sales price established by the Commissioner based on the price at which such article would be sold by a manufacturer, producer, or importer in a sale other than a taxable sale (e.g., a sale to which the exceptions contained in paragraph (a)(2)(ii) of this section applies) on the date the lease is made, and

(ii) The product of the constructive sales price referred to in paragraph

(d)(4)(i) of this section and the presumed markup percentage as defined in paragraph (d)(7) of this section.

(5) *Presumptive retail sales price in the case of a long-term lease by any other person.* In the case of any long-term lease (as defined in paragraph (d)(6) of this section) of an article in which any person other than a manufacturer, producer, or importer (or related person as defined in paragraph (d)(2)(ii) of this section) is the lessor and the long-term lease is deemed to be a taxable sale of such article under paragraph (b)(1) of this section, the tax imposed by section 4051(a)(1) shall be computed on a price equal to the sum of—

(i) The price (as determined under this paragraph (d)) at which such article was sold to the lessor plus the cost of any parts and accessories installed by the lessor (or an agent of the lessor) on such article before the first use by the lessee or leased in connection with such long-term lease, and

(ii) The product of the sum described in paragraph (d)(5)(i) of this section and the presumed markup percentage as defined in paragraph (d)(7) of this section.

(6) *Long-term and short-term lease defined.* For purposes of this section, the term "long-term lease" means any lease with a term of one year or more. The term "short-term lease" means any lease with a term of less than one year. In determining a lease term, options to renew shall be taken into account. In addition, two or more successive leases that are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar article, shall be treated as one lease.

(7) *Presumed markup percentage—(i) In general.* Except as provided in paragraph (d)(7)(ii) of this section, for purposes of this section the term "presumed markup percentage" shall be four percent.

(ii) *Exceptions.* For purposes of this section the "presumed markup percentage" for trailers, semitrailers, and remanufactured automobile truck chassis and bodies and tractors shall be zero percent. For purposes of this section an article is a remanufactured article if—

(A) The refurbishing, renovation, or repair of the article causes it to be subject to the tax imposed by section 4051, and

(B) Before remanufacture, such article was previously subject to the tax imposed by section 4051 (or section 4061 prior to its repeal).

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). M manufactures trucks that are taxable under section 4051. On July 11, 1988, D, a corporation that is a dealer, purchases one truck from M for \$50,000. M does not own any stock in D. Prior to this transaction, D gave M a certificate that meets the specifications detailed in paragraph (a)(6) of this section. The certificate states that the truck will be resold or leased on a long-term basis. M's sale to D is not a taxable sale of the truck (within the meaning of paragraph (a)(2) of this section). On July 20, 1988, D resells the truck to a purchaser, P, for \$52,000. The additional \$2,000 includes the dealer's mark-up, costs of transporting the truck from M to D, and overhead. No parts or accessories were added to the truck. P did not give D a certificate and did not have an agreement with D under which all vehicles purchased were to be resold. The sale of the truck by D to P is a taxable sale within the meaning of paragraph (a)(3) of this section. Therefore, D has a tax liability of \$6,240 ($12\% \times \$52,000$).

Example (2). Assume the same facts as in example (1) except that M owns 80 percent of D's stock. D and M are members of the same controlled group (within the meaning of section 5061(e)(3)). Therefore, D is a related person under paragraph (d)(2)(ii)(A) of this section. On July 20, 1988, D sells the truck to P for \$51,000. D does not have records substantiating that the truck was sold for a price that included a markup equal to or greater than the presumed markup percentage. The tax on the sale of the truck to P is determined under paragraph (d)(2)(i) of this section. Therefore, D has a tax liability of \$3,240 ($12\% \times (\$50,000 + (\$50,000 \times 4\%))$).

Example (3). Assume the same facts as in example (1) except that D does not perform any significant activities relating to the sale. Assume further that the principal purpose for processing the sale through D is to avoid the presumed markup and that D did not sell the truck for a price that included a markup equal to or greater than the presumed markup percentage. D, however, is designated the seller of the truck on the invoice. Pursuant to paragraph (d)(3)(ii) of this section, the price of the truck shall be computed on a price determined under paragraph (d)(2)(i). Therefore, D, the taxpayer, has a tax liability of \$6,240 ($12\% \times (\$50,000 + (\$50,000 \times 4\%))$).

Example (4). Assume the same facts as in example (1) except that on July 20, 1988, D leases the truck for a two-year period (i.e., on a long-term basis) to L, a lessee. D's leasing of the truck to L is treated as a taxable sale under paragraph (b)(1) of this section and the tax is computed on the price as determined under paragraph (d)(5)(i) of this section. D has a tax liability of \$6,240 ($12\% \times (\$50,000 + (\$50,000 \times 4\%))$).

Example (5). Assume the same facts as in example (1) except that on July 20, 1988, D leases the truck to L for a six-month period (i.e., a short-term lease). The lease is treated as a use under paragraph (b)(2) of this section. The tax is computed on the price as determined under paragraph (c)(5) of this section. D has a tax liability of \$6,240 ($12\% \times (\$50,000 + (\$50,000 \times 4\%))$).

Example (6). Assume the same facts as in example (1) except that D does not give M a certificate. The sale by M to D is a taxable sale of the truck under paragraph (a)(2) of this section. M's tax liability is \$6,240

($12\% \times (\$50,000 + (\$50,000 \times 4\%))$). On July 20, 1988, D leases the truck to L, a lessee. The lease has a two-year term. Since the lease to L occurred after a taxable sale of the truck, paragraph (b)(1) of this section does not apply, and the lease is not treated as a taxable sale under this section.

Example (7). M manufactures trucks that are taxable under section 4051. On July 11, 1988, M leases a truck to a lessee, L. The lease has a two-year term. The lease is treated as a taxable sale under paragraph (b)(1) of this section and the tax is computed on the price as determined under paragraph (d)(4)(i) of this section. The constructive sales price established by the Commissioner, pursuant to paragraph (d)(4)(i) of this section, is \$50,000. M has a tax liability of \$6,240 ($12\% \times (\$50,000 + (\$50,000 \times 4\%))$).

Example (8). Assume the same facts as in example (7) except that the lease has a six-month term. The lease is treated as a taxable use under paragraph (b)(2) of this section and the tax is computed under paragraph (c)(5) of this section. The constructive sales price established by the Commissioner, pursuant to paragraph (c)(5)(i) of this section, is \$52,000. M has a tax liability of \$6,240 ($12\% \times \$52,000$).

Example (9). M manufactures truck trailers and semitrailers that are taxable under section 4051. On July 5, 1988, D, a dealer, purchases a trailer from M for \$10,000. Prior to this transaction, D did not give M a certificate and D did not have an agreement with M to resell all articles purchased. The sale by M to D is a taxable sale of the trailer under paragraph (a)(2) of this section. M has a tax liability of \$1,200 ($12\% \times \$10,000 + (\$10,000 \times 0\%)$).

Example (10). Assume the same facts as in example (9) except that on July 12, 1988, D resells the trailer to P, a purchaser, for \$10,500 (the additional \$500 includes the dealer's markup, costs of transporting the trailer from M to D, and overhead). P did not give D a certificate and P did not have an agreement with D that stipulates that all articles purchased were to be leased on a long-term basis or resold. The sale of the trailer by D to P is a taxable sale within the meaning of paragraph (a)(3) of this section. Therefore, D has a tax liability of \$1,260 ($12\% \times \$10,500$). D, however, may file for a credit of \$1,200 under section 6402 provided that the requirements of paragraph (a)(4) of this section are met.

(g) *Effective date—(1) In general.* Except as provided below, the provisions of this section shall be effective for articles sold or leased on or after April 1, 1983.

(2) *Certain sales made prior to November 12, 1985.* If a sale to a lessor before November 12, 1985, was not taxable under § 145.4052-1 of the temporary regulations contained in 26 CFR Part 145 revised as of April 1, 1983, (the "prior regulations") and it was so treated by the parties, a subsequent sale or lease that was or would have been treated as the first retail sale of the article under the prior regulations will be treated as a taxable sale for purposes

of this section. The tax on such subsequent sale will be based on a price determined under paragraph (d) of this section. For example, if an article was sold to a purchaser who intended to lease such article long-term, the sale would not have been taxable under the prior regulations even though the seller did not receive a certificate of the purchaser's intent to lease the vehicle. If such a sale was treated as nontaxable by the parties, and the purchaser leases it long-term on or after October 1, 1987, the lease will be treated as a taxable sale of the article. The tax is to be computed under paragraph (b)(3)(ii) of this section and the price will be computed under paragraph (d)(5).

(3) *Certain sales made after November 11, 1985, and before October 1, 1987*—(i) *Sales not treated as taxable by purchaser and seller.* If a sale to a purchaser after November 11, 1985, and before October 1, 1987, was not treated as taxable by the parties, a subsequent sale or lease that was or would have been treated as the first retail sale of the article under the temporary regulations published in the September 13, 1985, issue of the *Federal Register* (50 FR 37350) ("the interim regulations") will be treated as a taxable sale for purposes of this section. The tax on a sale or lease after September 30, 1987, will be based on a price determined under paragraph (d) of this section. For example, if a vehicle was sold on January 3, 1987, to a purchaser who intended to resell the article and who was not in the business of leasing to any extent, the sale would not have been taxable under the interim regulations even though the seller did not receive a certificate indicating the purchaser's intent to resell the article. If such a sale was not treated as a taxable sale by the parties, and the purchaser resells the article, the resale will be treated as a taxable sale of the article under paragraph (a)(2) of this section.

(ii) *Sales treated as first retail sale by purchaser and seller.* If the sale of an article after November 11, 1985, and before October 1, 1987, was treated as a taxable sale by the parties and tax was paid with respect to the article under the interim regulations, the subsequent sale of the article by the purchaser will not be treated as a taxable sale under paragraph (a)(2) of this section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: April 19, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Ventilation Standards for Underground Coal Mines; Public Hearings

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold public hearings on its proposal to revise existing safety standards for ventilation at underground coal mines. The hearings will be held in Pittsburgh, Pennsylvania; Lexington, Kentucky; Birmingham, Alabama; Evansville, Indiana; Grand Junction, Colorado; and Charleston, West Virginia. Each hearing will cover the major issues raised by comments submitted in response to the proposed rule.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to each hearing date. Immediately before each hearing, and unallotted time will be made available to persons making late requests.

The public hearings will be held at the following locations on the dates indicated, beginning at 9:00 a.m.:

June 6, 1988, Pittsburgh, Pennsylvania.

June 7, 1988, Lexington, Kentucky.

June 9, 1988, Birmingham, Alabama.

June 16, 1988, Evansville, Indiana.

June 20, 1988, Grand Junction, Colorado.

June 22, 1988, Charleston, West Virginia.

ADDRESSES: The hearings will be held at the following locations:

June 6, 1988, Ramada Inn, Airport, Ballrooms A&B, 1412 Beers School Road, Coraopolis, Pennsylvania 15108.

June 7, 1988, Lexington Hilton Inn, Keeneland Hall, 1938 Stanton Way, Lexington, Kentucky 40511.

June 9, 1988, Birmingham-Jefferson Civic Center, No. 1 Civic Center Plaza, 21st Street and 10th Avenue North, Birmingham, Alabama 35203.

June 16, 1988, Evansville Executive Inn, Green Convention Center, Indiana C Room, 600 Walnut Street, Evansville, Indiana 47708.

June 20, 1988, Grand Junction Holiday Inn, Grand Mesa Room, 755 Horizon Drive, Grand Junction, Colorado 81506.

June 22, 1988, Holiday Inn, Heart of Town-House Room, Corner of Washington and Broad Streets, Charleston, West Virginia 25301.

Send requests to make oral presentations to: Mine Safety and

Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On January 27, 1988, MSHA published proposed revisions to its existing safety standards in 30 CFR Part 75 for ventilation in underground coal mines (53 FR 2382). The written comment period for this proposed rule will end on May 27, 1988. In the comments to the proposed rule, MSHA received requests for public hearings.

The purpose of the public hearings is to receive relevant comment and respond to questions about the proposed rule. The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of the hearings for rebuttal statements. A verbatim transcript of each proceeding will be taken and made part of the rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until July 22, 1988.

Issues

Commenters questioned many specific provisions contained in the proposal. However, some of the provisions raised issues of particular concern and are discussed below. MSHA will specifically address these issues at the public hearings and solicits comments on them in addition to any other aspects of the proposed rule.