

PG is currently used in at most 5 percent of semimoist cat foods and at most 10 percent of cat snacks, which are similar in texture and content to semimoist foods. These usage rates continue to decline.

FDA estimates of 1993 sales of semimoist cat foods and snacks to U.S. households are \$85 million and \$53 million, respectively (Neilsen Marketing Research data). Those sales representing semimoist cat foods and cat snacks which contain PG are approximately \$9,550 million (5 percent of \$85 million plus 10 percent of \$53 million). The effect of this rule would be to replace these sales with other cat foods and cat snacks not containing PG. Most of the industry has already substituted glycerin for PG in semimoist foods and snacks. It is likely that the remaining portion of the industry would make the substitution of glycerin for PG rather than surrender their share of the semimoist cat food and cat snack market. The cost of this substitution to the production process is expected to be small.

Purchases of PG by semimoist cat food and cat snack manufacturers represent a very small percentage of total PG sales, estimated at less than 1 percent. Demand for semimoist cat foods has declined considerably since 1987. Although demand for cat snacks continues to grow, its sales are still a small part of the total pet food industry. Thus, the effect of this final rule on PG manufacturers would also be small. The effects of this final rule on small businesses would not be substantial. Although more small sized companies are involved in manufacturing cat snack foods than in semimoist foods, their costs of compliance would not be significant.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. For the above reasons, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Federalism

FDA has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 12612 and has determined that this rule does not warrant the preparation of a Federalism Assessment.

List of Subjects

21 CFR Part 500

Animal drugs, Animal feeds, Cancer, Labeling, Polychlorinated biphenyls (PCB's).

21 CFR Parts 582 and 589

Animal feeds, Animal foods, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 500, 582, and 589 are amended as follows:

PART 500—GENERAL

1. The authority citation for 21 CFR part 500 continues to read as follows:

Authority: Secs. 201, 301, 402, 403, 409, 501, 502, 503, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371).

2. New § 500.50 is added to subpart B to read as follows:

§ 500.50 Propylene glycol in or on cat food.

The Food and Drug Administration has determined that propylene glycol in or on cat food is not generally recognized as safe and is a food additive subject to section 409 of the Federal Food, Drug, and Cosmetic Act (the act). The Food and Drug Administration also has determined that this use of propylene glycol is not prior sanctioned.

PART 582—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR part 582 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

4. Section 582.1666 is amended by revising paragraph (b) to read as follows:

§ 582.1666 Propylene glycol.

* * * * *

(b) *Conditions of use.* This substance is generally recognized as safe (except in cat food) when used in accordance with good manufacturing or feeding practice.

PART 589—SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED

5. The authority citation for 21 CFR part 589 continues to read as follows:

Authority: Secs. 201, 402, 409, 701, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

6. New § 589.1001 is added to subpart B to read as follows:

§ 589.1001 Propylene glycol in or on cat food.

The Food and Drug Administration has determined that propylene glycol in or on cat food has not been shown by adequate scientific data to be safe for use. Use of propylene glycol in or on cat food causes the feed to be adulterated and in violation of the Federal Food, Drug, and Cosmetic Act (the act), in the absence of a regulation providing for its safe use as a food additive under section 409 of the act, unless it is subject to an effective notice of claimed investigational exemption for a food additive under § 570.17 of this chapter, or unless the substance is intended for use as a new animal drug and is subject to an approved application under section 512 of the act or an effective notice of claimed investigational exemption for a new animal drug under part 511 of this chapter.

Dated: April 23, 1996.
William K. Hubbard,
Associate Commissioner for Policy
Coordination.
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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8663]

RIN 1545-AT43

Transfers to Investment Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations amending regulations under section 351(e) of the Internal Revenue Code relating to transfers to investment companies. The final regulations concern the treatment of certain transfers to a controlled corporation. Generally, the final regulations amend the regulations to provide when certain transfers will not cause a diversification of the transferors' interests.

EFFEFCITVE DATE: These regulations are effective May 2, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew M. Eisenberg, (202) 622-7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. Background

This document contains final regulations under section 351. The final regulations provide for the treatment of

certain transfers to a controlled corporation. Section 351(a) provides that no gain or loss will be recognized if one or more persons transfer property to a corporation solely in exchange for stock in the corporation and immediately after the exchange such person or persons are in control of the corporation. Section 351(e)(1) provides that section 351(a) will not apply to a transfer of property to an investment company.

On August 10, 1995, the Federal Register published a notice of proposed rulemaking (CO-19-95), amending regulations under section 351 of the Internal Revenue Code relating to transfers of property to an investment company (60 FR 40794). The proposed rules were based on the conclusion that transfers of diversified portfolios are not inconsistent with the Congressional purpose of section 351(e)(1).

2. Public Comments and the Final Regulations

The IRS received comments from the public on the proposed regulations. No public hearing was requested and none was held. The comments received were generally supportive of the proposed regulations. After consideration of all the comments, the regulations proposed by CO-19-95 are adopted as revised by this Treasury decision. The principal comments on the proposed regulations are discussed below.

Government securities are not treated as securities of an issuer for purposes of the 25 and 50-percent tests. Several commentators suggested that the final regulations include specific assurance that Government securities are not treated as securities of an issuer in applying the 25 and 50-percent tests contained in section 368(a)(2)(F)(ii). The proposed regulations generally adopt the section 368(a)(2)(F)(ii) tests for purposes of determining whether a portfolio of stocks and securities is diversified. However, the proposed regulations modify the 25 and 50-percent tests of section 368(a)(2)(F)(ii) by including Government securities in total assets (clause (iv) of section 368(a)(2)(F) excludes Government securities from total assets for purposes of the 25 and 50-percent tests in clause (ii) of section 368(a)(2)(F)). The final regulations clarify that Government securities, while included in total assets, are not treated as securities of an issuer for purposes of the numerator of the 25 and 50-percent tests of section 368(a)(2)(F)(ii).

The transfer of a diversified portfolio of stocks and securities by any transferor satisfies the modified diversification test. One commentator

suggested that the final regulations should clarify that any person, rather than corporate transferors only, may satisfy the modified diversification test. The commentator is concerned that the use of the section 368(a)(2)(F)(ii) tests, which are adopted from a provision that applies only to transfers by corporations, may imply that the tests as applied in section 351 are limited to corporate transferors.

The Treasury and IRS do not intend to limit application of the final regulations solely to corporate transferors. The final regulations provide that a portfolio will be diversified if it satisfies the 25 and 50-percent tests of section 368(a)(2)(F)(ii) (as modified), rather than section 368(a)(2)(F)(ii), generally.

Transfers of interests in real property to an investment company. One commentator suggested that the final regulations adopt a rule whereby transfers of real property would not result in the diversification of the transferors' interests if each transferor transfers a diversified portfolio of real property to a Real Estate Investment Trust. The subject of real property transfers is beyond the scope of these final regulations.

Retroactive effect of the final regulations. Several commentators suggested that the final regulations include a retroactive effective date. The final regulations allow taxpayers who transfer diversified, but nonidentical, portfolios of stocks and securities before May 2, 1996, to choose to treat the transfers consistent with the final regulations or as transfers resulting in diversification. However, transfers completed on or after May 2, 1996, are subject to the final regulations.

Special Analyses. It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal author of these regulations is Andrew M. Eisenberg, Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and

Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read as follows:

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

Section 1.351-1 also issued under 26 U.S.C. 351. * * * .

Par. 2. Section 1.351-1 is amended by:

1. Redesignating paragraph (c)(6) as paragraph (c)(7).
2. Adding new paragraph (c)(6) to read as follows:

§ 1.351-1 Transfer to corporation controlled by transferor.

* * * * *

(c) * * *

(6)(i) For purposes of paragraph (c)(5) of this section, a transfer of stocks and securities will not be treated as resulting in a diversification of the transferors' interests if each transferor transfers a diversified portfolio of stocks and securities. For purposes of this paragraph(c)(6), a portfolio of stocks and securities is diversified if it satisfies the 25 and 50-percent tests of section 368(a)(2)(F)(ii), applying the relevant provisions of section 368(a)(2)(F). However, Government securities are included in total assets for purposes of the denominator of the 25 and 50-percent tests (unless the Government securities are acquired to meet the 25 and 50-percent tests), but are not treated as securities of an issuer for purposes of the numerator of the 25 and 50-percent tests.

(ii) Paragraph (c)(6)(i) of this section is effective for transfers completed on or after May 2, 1996. Transfers of diversified (within the meaning of paragraph (c)(6)(i) of this section), but nonidentical, portfolios of stocks and securities completed before May 2, 1996, may be treated either—

(A) Consistent with paragraph (c)(6)(i) of this section; or

(B) As resulting in diversification of the transferors' interests.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: March 6, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury.

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26 CFR Part 1

[TD 8662]

RIN 1545-AQ64

Diversification of Common Trust Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the diversification of common trust funds at the time of a combination or division. The final regulations affect common trust funds and their participants.

EFFECTIVE DATE: May 2, 1996.

FOR FURTHER INFORMATION CONTACT: Steven Schneider, (202) 622-3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1995, a notice of proposed rulemaking (PS-29-92) was published in the Federal Register (60 FR 40796) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 584 of the Internal Revenue Code. Written comments responding to this notice were received. No public hearing was held because no hearing was requested. After consideration of all comments received, the proposed regulations under section 584 are adopted as revised by this Treasury decision.

Explanation of Provisions

The final regulations modify the diversification test applied to combining, dividing, and resulting common trust funds at the time of a combination or division. Under the existing regulations, which incorporate the diversification test of section 368(a)(2)(F)(ii), Government securities are excluded in determining total assets. These final regulations modify the diversification test so that Government securities are included in determining total assets when applying section 368(a)(2)(F)(ii).

This modified diversification test is the same as that in the final regulations under section 351(e), which deals with transfers to investment companies. These corresponding modifications ensure that a uniform diversification test will be applied to common trust funds and similar investment entities.

The final regulations also update the regulations under section 584 to conform to changes in the law.

Changes to the Proposed Regulations in Response to Comments

I. Clarification That Government Securities Are Not Treated as Securities of an Issuer

Two commentators suggested that the final regulations include specific assurance that Government securities are not treated as securities of an issuer in applying the 25 and 50-percent tests contained in section 368(a)(2)(F)(ii) to mergers and divisions of common trust funds. The proposed regulations provide that Government securities are included in total assets in applying the 25 and 50-percent tests to common trust fund combinations and divisions, but do not specifically state that Government securities are not treated as securities of an issuer. The final regulations clarify that Government securities, while included in total assets, are not treated as securities of an issuer for purposes of the numerator of the 25 and 50-percent tests of section 368(a)(2)(F)(ii).

II. Clarification of the Definition of Government Securities

One commentator suggested that the regulations broaden the definition of the term *Government securities* to include state and local government obligations. The final regulations do not adopt the suggestion.

Effective Date

These regulations apply to combinations and divisions of common trust funds completed on or after May 2, 1996.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was

submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Brian J. O'Connor, formerly of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

§ 1.584-2 [Amended]

Par. 2. Section 1.584-2 is amended by:

1. Removing paragraph (b)(1).
2. Removing the paragraph designation (b)(2).

Par. 3. Section 1.584-4 is amended by:

1. Removing paragraphs (a)(1) and (a)(2).
2. Removing the last sentence in paragraph (a) and adding 6 sentences in its place.
3. Adding paragraph (e).

The additions read as follows:

§ 1.584-4 Admission and withdrawal of participants in the common trust fund.

(a) * * * When a participating interest is transferred by a bank, or by two or more banks that are members of the same affiliated group (within the meaning of section 1504), as a result of the combination of two or more common trust funds or the division of a single common trust fund, the transfer to the surviving or divided fund is not considered to be an admission or a withdrawal if the combining, dividing, and resulting common trust funds have diversified portfolios. For purposes of this paragraph (a), a common trust fund has a diversified portfolio if it satisfies the 25 and 50-percent tests of section 368(a)(2)(F)(ii), applying the relevant provisions of section 368(a)(2)(F). However, Government securities are included in total assets for purposes of the denominator of the 25 and 50-percent tests (unless the Government