

Memorandum

245.1295

To: Ms. Jennifer Lukavic
San Rafael Branch Office Supervisor

Date: June 1, 1989

From: Mary C. Armstrong
Legal Office

Subject: Spirulina Products - [X]

This is in response to your memorandum of April 3, 1989 to Audit Evaluation and Planning. You have requested our guidance regarding the correct application of tax to [X] Spirulina which is sold in powder, granule and tablet form. You note that spirulina is a type of seaweed and that currently powdered kelp is considered both an exempt and taxable food product.

We have previously determined that spirulina does qualify as an exempt food product under Regulation 1602 provided it is not labeled as a food supplement or dietary adjunct and does not purport to make any claims concerning medicinal or dietary benefits (see letters dated April 27, 1981 and March 21, 1983, copies enclosed). Like the annotations regarding kelp, spirulina which is labeled as a dietary supplement would not be considered an exempt "food product" under Regulation 1602. The fact that the nutritional information is included on the label does not result in a finding that the product is a dietary supplement.

We have examined the three labels submitted. We are of the opinion that all three qualify as exempt food products under Regulation 1602.

MCA:cl
Enclosures

cc: Audit Evaluation and Planning (---)