

# Rules and Regulations

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Part 774

[Docket No. 0907271167-0246-02]

RIN 0694-AE69

#### Export Administration Regulations: Technical Corrections

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** This rule corrects two typographical errors that appeared in a rule published on June 4, 2010. One error is in the License Requirements section of Export Control Classification Number 2B001 and the other is in the Technical Note on Adjusted Peak Performance (“APP”) found at the end of Category 4 on the Commerce Control List.

**DATES:** This rule is effective June 16, 2010.

**FOR FURTHER INFORMATION CONTACT:** William H. Arvin, Regulatory Policy Division, e-mail [warvin@bis.doc.gov](mailto:warvin@bis.doc.gov), telephone (202) 482-2440.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 4, 2010, the Bureau of Industry and Security published a final rule that, *inter alia*, clarified language regarding certain performance criteria of turning machines covered by Export Control Classification Number (ECCN) 2B001 and replaced a subscript with a superscript to properly express exponentiation in the definition of Adjusted Peak Performance in a technical note at the end of Category 4 on the Commerce Control List (75 FR 31678, June 4, 2010). That notice contained two typographical errors. The

first described the national security control for ECCN 2B001 as NS Column 1 on the EAR Country Chart (15 CFR part 738, Supp. No. 1). The correct national security control for ECCN 2B001 is NS Column 2. The second did not enclose the abbreviation “APP” in double quotation marks. This rule corrects both errors.

#### Rulemaking Requirements

1. This rule is not a significant rule for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information that has been approved by the OMB under control number 0694-0088, which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS believes that this rule will make no change to the number of submissions or to the burden imposed by this collection.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. BIS finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because these revisions are administrative in nature and do not affect the rights and obligations of the public; therefore allowing prior notice and comment on these rules is unnecessary. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable here because this rule is not a substantive rule, but merely makes technical changes to the regulations. No other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule; therefore, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

#### List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, the Export Administration Regulations (15 CFR parts 730-774) are amended as follows:

#### PART 774—[AMENDED]

■ 1. The authority citation for part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009 (74 FR 41,325 (August 14, 2009)).

■ 2. In Supplement No. 1 to part 774:

■ a. In Category 2, Export Control Classification Number 2B001, revise the “Controls” paragraph of the “License Requirements” section.

■ b. In Category 4, the Technical Note on “Adjusted Peak Performance” (“APP”) that appears at the end of Category 4, revise the definition of “APP” that appears under the heading “Abbreviations Used in This Technical Note”.

#### Supplement No. 1 to Part 774—The Commerce Control List

\* \* \* \* \*

2B001 Machine tools and any combination thereof, for removing (or cutting) metals, ceramics or “composites”, which, according to the manufacturer’s technical specifications, can be equipped with electronic devices for “numerical control”; and specially designed components as follows (*see* List of Items Controlled).

#### License Requirements

*Reason for Control:* NS, NP, AT

<i>Control(s)</i>	<i>Country Chart</i>
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NS applies to entire entry	NS Column 2
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<i>Control(s)</i>	<i>Country Chart</i>
NP applies to 2B001.a, .b, .c, and .d, EXCEPT: (1) Turning machines under 2B001.a with a capacity no greater than 35 mm diameter; (2) bar machines (Swissturn), limited to machining only bar feed through, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks. (Machines may have drilling and/or milling capabilities for machining parts with diameters less than 42 mm); or (3) milling machines under 2B001.b with x-axis travel greater than two meters and overall "positioning accuracy" on the x-axis more (worse) than 0.030 mm	NP Column 1
AT applies to entire entry	AT Column 1
* * * * *	

**Category 4—Computers**

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**Technical Note on "Adjusted Peak Performance" ("APP")**

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**Abbreviations Used in This Technical Note**

\* \* \* \* \*

"APP" is expressed in Weighted TeraFLOPS (WT) in units of 10<sup>12</sup> adjusted floating point operations per second.

\* \* \* \* \*

**Bernard Kritzer,**

*Director, Office of Exporter Services.*

[FR Doc. 2010-14432 Filed 6-15-10; 8:45 am]

**BILLING CODE 3510-33-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9487]

RIN 1545-BG03

**Built-in Gains and Losses Under Section 382(h)**

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

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

**SUMMARY:** This document contains final regulations that apply to loss corporations that have undergone an ownership change within the meaning of section 382. These regulations

provide guidance regarding the treatment of prepaid income under the built-in gain provisions of section 382(h).

**DATES: Effective Date:** These regulations are effective on June 11, 2010.

**Applicability Date:** For dates of applicability see § 1.382-7(b).

**FOR FURTHER INFORMATION CONTACT:** Keith E. Stanley, (202) 622-7750 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains amendments to 26 CFR part 1. On June 14, 2007, temporary regulations (TD 9330; 72 FR 32792) regarding the treatment of prepaid income under the built-in gain provisions of section 382(h) were published in the **Federal Register**. A notice of proposed rulemaking (NPRM) (REG-144540-06) cross-referencing to temporary regulations was published in the **Federal Register** for the same day (72 FR 32828). The temporary regulations provided that prepaid income is not recognized built-in gain ("RBIG") for purposes of section 382(h). They further provided that *prepaid income* means any amount received prior to the change date that is attributable to performance occurring on or after the change date. Examples of prepaid income include, but are not limited to, income received prior to the change date that is deferred until the five year section 382 recognition period under section 455, § 1.451-5, or Rev. Proc. 2004-34 (2004-1 CB 991 (June 1, 2004)) (or any successor revenue procedure) (see § 601.601(d)(2)(ii)(b)). These prepaid income provisions permit deferral in order to better match the taxpayer's income with the expenses incurred to earn that income and, as a result, to more clearly reflect the taxpayer's income both in the year of receipt and in the year of performance. The IRS and the Treasury Department therefore view such income to be properly attributable to the period when included in gross income, which may be within the recognition period. Accordingly, such income is not "attributable to periods before the change date" and so is not RBIG under section 382(h)(6)(A).

One comment was received and no public hearing was requested or held. The public comment focused on companies in the business of providing extended warranty coverage for automobiles or other products. The commenter presented an example under the facts of which the commenter argued that a portion of the prepaid

income deferred to the recognition period should be treated as RBIG.

After giving consideration to the comment, the IRS and Treasury continue to believe that none of the prepaid income taken into account during the recognition period in the example should be RBIG. As noted above, where prepaid income is properly deferred from gross income under a permissible method of accounting, such deferral reflects a judgment that the income has not been earned, or, in the parlance of section 382(h)(6)(A), is not "attributable to" prior performance. The premise of this Treasury decision is that, for purposes of section 382, there is not a compelling policy underlying section 382(h) that warrants a different timing answer for the treatment of properly deferred prepaid income.

Accordingly, the proposed regulations set forth in the NPRM (REG-144540-06), which cross-referenced to the temporary regulations for their substance, are adopted with no substantive change by this Treasury decision, and the corresponding temporary regulations are removed.

**Special Analyses**

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to 5 U.S.C. 553(d)(3), it has been determined that good cause exists to dispense with a delayed effective date on grounds that this regulation, which is substantively identical to currently effective temporary regulations, merely continues to provide necessary guidance to taxpayers with respect to the treatment of prepaid income under the built-in gain provisions of section 382(h). It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations only apply in the rare circumstance in which a qualifying loss corporation that uses a particular accounting method undergoes an ownership change. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.