

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9330]

RIN 1545-BG66

**Built-in Gains and Losses Under Section 382(h); Correction****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to temporary regulations (TD 9330) that were published in the **Federal Register** on Thursday, June 14, 2007 (72 FR 32792) applying to corporations that have undergone ownership changes 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:** These corrections are effective August 1, 2007.**FOR FURTHER INFORMATION CONTACT:** Keith Stanley at (202) 622-7750 (not a toll-free number).**SUPPLEMENTARY INFORMATION:****Background**

The temporary regulations that are the subject of this document are under section 382 of the Internal Revenue Code.

**Need for Correction**

As published, temporary regulations (TD 9330) contain errors that may prove to be misleading and are in need of clarification.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

**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 \* \* \*

■ **Par. 2.** Section 1.382-7T is amended by revising paragraph (b)(2) to read as follows:

**§ 1.382-7T Built-in gains and losses (temporary).**

\* \* \* \* \*

(b) \* \* \*

(2) The applicability of this section expires on June 14, 2010.

■ **Par. 3.** The signature block is revised by adding the language “Approved: June 4, 2007.”

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E7-14797 Filed 7-31-07; 8:45 am]

**BILLING CODE 4830-01-P****DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9349]

RIN 1545-BF01

**Employee Benefits—Cafeteria Plans****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Removal of temporary regulations.

**SUMMARY:** This document removes the temporary regulations pertaining to benefits that may be offered to participants under a section 125 cafeteria plan. The temporary regulations were published in the ≤ **Federal Register** on February 4, 1986. Guidance issued by the IRS and the Treasury Department under section 125 have made these temporary regulations obsolete.

**DATES: Effective Dates:** These regulations are effective August 1, 2007.**FOR FURTHER INFORMATION CONTACT:** Mireille Khoury at (202) 622-6080 (not a toll-free number).**SUPPLEMENTARY INFORMATION:****Background**

On February 4, 1986, the IRS and Treasury Department published temporary regulations on section 125. The temporary regulations were published in the **Federal Register** (TD 8073; 51 FR 4318) as section 1.125-2T. A notice of proposed rulemaking issued under section 125 (REG-142695-05) and other guidance issued by the IRS and the Treasury Department under section 125 have made these temporary regulations obsolete. The temporary regulations are removed.

**Special Analyses**

It has been determined that this removal of temporary regulations is not a significant regulatory action as defined in Executive Order 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) does not apply to this removal of temporary regulations. This removal of temporary regulations does not impose a collection of information on small entities, thus the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the preceding temporary regulations were 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 removal of temporary regulations is Mireille Khoury, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, personnel from Treasury participated in its development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 is amended as follows:

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

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

**§ 1.125-2T [Removed]**

■ **Par. 2.** Section 1.125-2T is removed.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

Approved: July 24, 2007.

**Eric Solomon,**

*Assistant Secretary (Tax Policy).*

[FR Doc. E7-14823 Filed 7-31-07; 8:45 am]

**BILLING CODE 4830-01-P****ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R03-OAR-2005-MD-0002; FRL-8447-6]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Clarification of Visible Emissions Exceptions****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision

submitted by the State of Maryland. This revision consists of clarifications to the exception provisions of the Maryland visible regulations.

**DATES:** *Effective Date:* This final rule is effective on August 31, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2005-MD-0002. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Linda Miller, (215) 814-2068, or by e-mail at [miller.linda@epa.gov](mailto:miller.linda@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On December 1, 2003, the State of Maryland submitted a formal SIP revision (#03-10) that clarifies Maryland's federally-approved general visible emissions (VE) regulations, including those related to specific source categories. The revised language will ensure that sources correctly interpret the exception provisions provided in those regulations. On April 26, 2005 (70 FR 21337), EPA published a direct final rule (DFR) approving revisions to Maryland's SIP pertaining to its VE regulations.

An explanation of the CAA's requirements and EPA's rationale for approving this SIP revision were provided in the DFR and will not be restated here. In accordance with direct final rulemaking procedures, on April 26, 2005 (70 FR 21387), EPA also published a companion notice of proposed rulemaking (NPR) for this SIP revision inviting interested parties to comment on the DFR. Timely adverse comments were submitted on EPA's April 26, 2005 DFR.

On June 27, 2005 (70 FR 36844), due to the receipt of adverse comments submitted in response to the DFR, EPA published a withdrawal of the DFR. A summary of those comments and EPA's responses are provided in Section II of this document.

**II. Public Comment and EPA Response**

*Comment:* EPA received the same comment on behalf of two commenters. The commenters state that the federal new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAPs) regulations allow exceedance of their respective opacity standards for up to three hours per occurrence during periods of startup, shutdown and repair. These federal regulations require the installation of continuous opacity monitors (COM). The commenters claim that air pollution control equipment on certain municipal waste combustion (MWC) sources cannot achieve the visible emissions exception requirements as stated in Maryland's clarified visible emissions rule due to the occasional formation of "condensed" plumes after emissions exit the stack, as a result of upset conditions that may occur during the operation of emission control devices used to reduce nitrogen oxides (NO<sub>x</sub>) emissions. The commenters believe that Maryland's regulations regarding VE exceptions should be revised to be consistent with the existing federal NSPS and NESHAP regulations for MWCs.

*Response:* EPA understands that the VE requirements established in Maryland's regulations differ from those established in the NSPS and NESHAP regulations that currently apply to MWCs. States have frequently used VE limits as part of their efforts to attain the NAAQS. Under the CAA's bifurcated scheme, the State is responsible for choosing how a source must be regulated for purposes of attaining the NAAQS and EPA's role is limited in reviewing the State's choice to ensure it meets the minimum statutory requirements. Here, the commenter is not claiming that the regulations do not meet the statutory minimum, but rather that Maryland is seeking to require more than the minimum statutory requirements. The CAA is based upon "cooperative federalism," which contemplates that each State will develop its own SIP, and that States retain a large degree of flexibility in choosing which sources to control and to what degree. EPA must approve a State's plan if it meets the "minimum requirements of the CAA." *Union Elec.*

*Co. v. EPA*, 427 U.S. 246, 264-266 (1976).

**III. Final Action**

EPA is approving revisions to the Maryland VE exception provisions as a revision to the Maryland SIP.

**IV. Statutory and Executive Order Reviews**

*A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety

Risks” (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve revisions to the Maryland regulations which clarify the visible emissions exception provisions may not be challenged later in proceedings to

enforce its requirements may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 19, 2007.  
**William T. Wisniewski**,  
*Acting Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

*Authority:* 42 U.S.C. 7401 *et seq.*

**Subpart V—Maryland**

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entries for COMAR 26.11.06.02, 10.18.08 (Title), 10.18.08.04, 26.11.09.05, and 26.11.10.03 to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c) *EPA approved regulations.*

**EPA-APPROVED REGULATIONS IN THE MARYLAND SIP**

| Code of Maryland administrative regulations (COMAR) citation   | Title/subject           | State effective date | EPA approval date  | Additional explanation/citation at 40 CFR 52.1100       |
|--|-------------------------|----------------------|--|---|
| * * * * *  |                         |                      |  |   |
| <b>26.11.06 General Emission Standards, Prohibitions, and Restrictions</b>   |                         |                      |  |   |
| * * * * *  |                         |                      |  |   |
| 26.11.06.02 [Except: .02A(1)(e), (1)(g), (1)(h), (1)(i)].  | Visible Emissions ..... | 11/24/03             | 08/01/07 [Insert page number where the document begins]. | Revised paragraph 26.11.02.02A(2).                      |
| * * * * *  |                         |                      |  |   |
| <b>10.18.08/26.11.08 Control of Incinerators</b>   |                         |                      |  |   |
| * * * * *  |                         |                      |  |   |
| 10.18.08.04/26.11.08.04 .....  | Visible Emissions ..... | 11/24/03             | 08/01/07 [Insert page number where the document begins]. | Revised COMAR citation; revised paragraph 26.11.08.04C. |
| * * * * *  |                         |                      |  |   |
| <b>26.11.09 Control of Fuel-Burning Equipment and Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations</b> |                         |                      |  |   |
| * * * * *  |                         |                      |  |   |
| 26.11.09.05 .....  | Visible Emissions ..... | 11/24/03             | 08/01/07 [Insert page number where the document begins]. | Revised paragraph 26.11.09.05A(3).                      |

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

| Code of Maryland administrative regulations (COMAR) citation       | Title/subject           | State effective date | EPA approval date  | Additional explanation/citation at 40 CFR 52.1100 |
|--|-------------------------|----------------------|--|---|
| *  | *                       | *                    | *  | *   |
| <b>26.11.10 Control of Iron and Steel Production Installations</b> |                         |                      |  |   |
| *  | *                       | *                    | *  | *   |
| 26.11.10.03 .....  | Visible Emissions ..... | 11/24/03             | 08/01/07 [Insert page number where the document begins]. | Revised paragraph 26.11.10.03A(2).                |
| *  | *                       | *                    | *  | *   |

\* \* \* \* \*  
 [FR Doc. E7-14773 Filed 7-31-07; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2007-0462; FRL-8442-4]

**Revisions to the California State Implementation Plan, Sacramento Metropolitan Air Quality Management District and San Joaquin Valley Air Pollution Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Sacramento Metropolitan Air Quality Management District (SMAQMD) and San Joaquin Valley Air Pollution Control District (SJVAPCD) portions of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO<sub>x</sub>) emissions from boilers, process heaters, steam generators, and glass melting furnaces. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on October 1, 2007 without further notice, unless EPA receives adverse comments by August 31, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to

notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2007-0462, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at

<http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Francisco Doñez, EPA Region IX, (415) 972-3956, [Donez.Francisco@epa.gov](mailto:Donez.Francisco@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

**Table of Contents**

- I. The State’s Submittal
  - A. What rules did the State submit?
  - B. Are there other versions of these rules?
  - C. What is the purpose of the submitted rule revisions?
- II. EPA’s Evaluation and Action.
  - A. How is EPA evaluating the rules?
  - B. Do the rules meet the evaluation criteria?
  - C. EPA recommendations to further improve the rules.
  - D. Public comment and final action.
- III. Statutory and Executive Order Reviews.

**I. The State’s Submittal**

*A. What rules did the State submit?*

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule No. | Rule title   | Adopted  | Submitted |
|--------------|----------|--|----------|-----------|
| SMAQMD ....  | 411      | NO <sub>x</sub> from Boilers, Process Heaters and Steam Generators ..... | 10/27/05 | 06/16/06  |
| SJVAPCD .... | 4354     | Glass Melting Furnaces .....   | 08/17/06 | 12/29/06  |