

(i) *Timing of service.* (1) Service is made under this section when the document served is deposited in the mail or is delivered in another manner.

(2) Service of any document must be made not later than the date of the filing of the document.

(3) In the case of a document served through a link to the Commission's eLibrary system, as specified in paragraph (f)(2) of this section, if a link to the document does not become available in eLibrary within two business days after the document is filed, the person responsible for serving the document must immediately serve the document by other means, as specified in paragraph (f)(1) or (f)(2) of this section.

\* \* \* \* \*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

**Appendix A**

- Adirondack Mountain Club
- Edison Electric Institute
- FPL Group, Inc.
- Interstate Natural Gas Association of America
- Miller, Balis & O'Neil, P.C.
- Missouri Public Service Commission
- NiSource, Inc.
- Spiegel & McDiarmid
- Sullivan & Worcester, LLP.
- United States Postal Service
- Williston Basin Interstate Pipeline Company

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BILLING CODE 6717-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 1**

[Docket No. 2002N-0277]

**Establishment and Maintenance of Records Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Correction**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final regulation that appeared in the **Federal Register** of December 9, 2004 (69 FR 71562). The document issued a final regulation that requires the establishment and maintenance of records by persons who manufacture, process, pack, transport, distribute, receive, hold, or import food in the United States. Such records allow for the identification of the immediate

previous sources and immediate subsequent recipients of food. The document was published with some errors. This document corrects those errors.

**DATES:** This rule is effective February 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Nega Beru, Center for Food Safety and Applied Nutrition (HFS-305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1400.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 04-26929, appearing on page 71562 in the **Federal Register** of Thursday, December 9, 2004, the following corrections are made to the **SUPPLEMENTARY INFORMATION:**

1. On page 71562, in the first column, under **DATES** after "Compliance Dates" the phrase "except that for small businesses employing fewer than 500, but more than 10 full-time equivalent employees, the compliance date is June 9, 2005;" is corrected to read "except that for small businesses employing fewer than 500, but more than 10 full-time equivalent employees, the compliance date is June 9, 2006;"

2. On page 71564, in the second column, the sixth bullet, beginning in the 4<sup>th</sup> line, the phrase "except that the compliance date for small businesses employing fewer than 500, but more than 10 full-time equivalent employees is June 9, 2005," is corrected to read "except that the compliance date for small businesses employing fewer than 500, but more than 10 full-time equivalent employees is June 9, 2006,".

3. On page 71565, in the second column, the last bullet, second sentence, the sentence "Small businesses have June 9, 2005, of this final rule to come into compliance with these regulations, and very small businesses have December 11, 2006, of this final rule to come into compliance with these regulations." is corrected to read "Small businesses have until June 9, 2006, to come into compliance with these regulations, and very small businesses have until December 11, 2006, to come into compliance with these regulations."

4. On page 71609, in the third column, in the 1<sup>st</sup> complete paragraph, the sentences "Section 1.368 of the final rule requires large businesses (500 or more full-time equivalent employees) to be in compliance within December 9, 2005. Small businesses (those with fewer than 500, but more than 10 full-time equivalent employees) must be in compliance within June 9, 2005, and very small businesses that employ 10 or fewer full-time equivalent employees

must be in compliance within December 11, 2006." are corrected to read "Section 1.368 of the final rule requires large businesses (500 or more full-time equivalent employees) to be in compliance by December 9, 2005. Small businesses (those with fewer than 500, but more than 10 full-time equivalent employees) must be in compliance by June 9, 2006, and very small businesses that employ 10 or fewer full-time equivalent employees must be in compliance by December 11, 2006."

5. On page 71627, in the third column, beginning in the 12<sup>th</sup> line from the bottom, the sentence "For example, from CA, LA, and TX alone, DOT reports over 12 percent of intrastate truck tonnage is from FDA-regulated products (ref. 18)." is corrected to read "For example, for California in 1997, DOT reports 12.8 percent of revenue from specialized freight transportation is for intrastate traffic in agricultural products (ref. 18)."

6. On page 71651, in the first column, in Reference 18, the phrase "U.S. Department of Transportation, available at <http://www.transtats.bts.gov>, accessed on April 6, 2004." is corrected to read "1997 Economic Census, Transportation and Warehousing, Geographic Area Series, California 1997, issued January 2000, U.S. Department of Commerce."

**List of Subjects in 21 CFR Part 1**

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

n Therefore, 21 CFR part 1 is corrected by making the following correcting amendments:

**PART 1—GENERAL ENFORCEMENT REGULATIONS**

n 7. The authority citation for 21 CFR part 1 continues to read as follows:

**Authority:** 15 U.S.C. 1453, 1454, 1455; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

n 8. In § 1.363, revise paragraph (b) to read as follows:

**§ 1.363 What are the consequences of failing to establish or maintain records or make them available to FDA as required by this subpart?**

\* \* \* \* \*

(b) The failure of a nontransporter immediate previous source or a nontransporter immediate subsequent recipient who enters an agreement under § 1.352(e) to establish, maintain, or establish and maintain, records required under § 1.352(a), (b), (c), or (d), or the refusal to permit access to or

verification or copying of any such required record, is a prohibited act under section 301 of the act.

\* \* \* \* \*

n 9. In § 1.368, revise paragraph (a) to read as follows:

**§ 1.368 What are the compliance dates for this subpart?**

\* \* \* \* \*

(a) The compliance date for the requirements in this subpart is June 9, 2006, for small businesses employing fewer than 500, but more than 10 full-time equivalent employees.

\* \* \* \* \*

Dated: February 16, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9180]

RIN 1545-BC29

#### Adjustment To Net Unrealized Built-in Gain

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations under section 1374 that provide for an adjustment to the amount that may be subject to tax under section 1374 in certain cases in which an S corporation acquires assets from a C corporation in an acquisition to which section 1374(d)(8) applies. These final regulations provide guidance to certain S corporations that acquire assets from a C corporation in a carryover basis transaction.

**DATES:** *Effective Date:* These regulations are effective February 23, 2005.

*Applicability Dates:* For dates of applicability, see § 1.1374-10.

**FOR FURTHER INFORMATION CONTACT:** Jennifer D. Sledge, (202) 622-7750 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

This document contains amendments to Income Tax Regulations (26 CFR part 1) under section 1374 of the Internal Revenue Code (Code), relating to the tax imposed on certain recognized built-in

gains of S corporations. Section 1374 imposes a tax on an S corporation's net recognized built-in gain attributable to assets that it held on the date it converted from a C corporation to an S corporation for the 10-year period beginning on the first day the corporation is an S corporation and assets that it acquired from a C corporation in a carryover basis transaction for the 10-year period beginning on the day of the acquisition. A separate determination of the amount subject to tax under section 1374 is required for those assets the S corporation held on the date it converted to C status and each pool of assets the S corporation acquired in a carryover basis transaction from a C corporation. The total amount subject to tax under section 1374 for each pool of assets is limited to that pool's net unrealized built-in gain (NUBIG) on the date of the conversion or acquisition.

Under the current rules, if X, a C corporation, elects to be an S corporation when it owns some or all of the stock of Y, a C corporation, and Y subsequently transfers its assets to X in a liquidation to which sections 332 and 337(a) apply or in a reorganization described in section 368(a), the built-in gain or built-in loss in Y's assets may be wholly or partially reflected twice: once in the NUBIG attributable to the assets X owned on the date of its conversion (including the Y stock) and a second time in the NUBIG attributable to Y's former assets acquired by X in the liquidation of Y. The IRS and Treasury Department recognize that continuing to reflect the built-in gain or the built-in loss in the Y stock at the time of X's conversion after the liquidation or reorganization is inconsistent with the fact that such liquidation or reorganization has the effect of eliminating that built-in gain or built-in loss. Therefore, on June 25, 2004, the IRS and Treasury Department published in the **Federal Register** (69 FR 35544) a notice of proposed rulemaking (REG-131486-03) that includes regulations proposing an adjustment to the NUBIG in these cases. In particular, the proposed regulations generally provide that, if an S corporation acquires assets of a C corporation in a carryover basis transaction, some or all of the stock of the C corporation from which such assets were acquired was taken into account in the computation of NUBIG for a pool of assets of the S corporation, and some or all of such stock is redeemed or canceled in such transaction, then, subject to certain limitations, such NUBIG is adjusted to eliminate any effect any built-in gain or

built-in loss in the redeemed or canceled stock had on the initial computation of NUBIG for that pool of assets. These regulations are proposed to apply for taxable years beginning after the date they are published as final regulations in the **Federal Register**.

No public hearing was requested or held regarding the proposed regulations. One written comment, however, was received. That comment requested that the proposed regulations be made effective as soon as possible.

These final regulations adopt the proposed regulations without substantive change as final regulations. However, the final regulations do modify the proposed effective date of the regulations. The final regulations apply to section 1374(d)(8) transactions that occur in taxable years beginning after February 23, 2005. The final regulations also provide that an S corporation may apply the regulations to section 1374(d)(8) transactions that occur in taxable years beginning on or before February 23, 2005, if the S corporation (and any predecessors or successors) and all affected shareholders file original or amended returns that are consistent with the regulations for taxable years of the S corporation during the recognition period of the pool of assets the NUBIG of which would be adjusted pursuant to the regulations that are not closed as of the first date after February 23, 2005, that the S corporation files an original or amended return.

#### Special Analyses

It has been determined that this Treasury decision 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 these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Drafting Information

The principal author of these regulations is Jennifer D. Sledge of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury and the IRS participated in their development.