

## **SUPPORTING STATEMENT**

Internal Revenue Service

Hedging Transactions

OMB# 1545-1480

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

TD 8985 contains final regulations relating to the character of gain or loss from hedging transactions. The regulations reflect changes to the law made by the Ticket to Work and Work Incentives Improvement Act of 1999. The regulations affect businesses entering into hedging transactions.

This document contains amendments to 26 CFR Part 1 under section 1221 of the Internal Revenue Code (Code). Prior to amendment in 1999, section 1221 generally defined a capital asset as property held by the taxpayer other than: (1) Stock in trade or other types of assets includible in inventory; (2) property used in a trade or business that is real property or property subject to depreciation; (3) certain copyrights (or similar property); (4) accounts or notes receivable acquired in the ordinary course of a trade or business; and (5) U.S. government publications.

### 2. USE OF DATA

Section 1.1221 2(e)(2) permits a consolidated group to elect separate entity treatment for its hedges. Paragraph (e)(2)(iv) provides that the separate entity election must be made in a separate statement that is to be filed with the group's consolidated return for the taxable year that includes the first date for which the election is to apply. The statement must specify that the election is being made and must indicate the date that the election is to be effective.

Section 1.1221 2(e)(1) contains the single entity approach. The member entering into the hedging transaction with an unrelated party must identify the hedging transaction and the hedged item in its books and records. If the consolidated group makes the separate entity election, each member must identify its hedging transactions with unrelated third parties, its intercompany transactions that are treated as hedging transactions under these regulations, and the item being hedged.

The identification requirement is designed to aid the IRS in administering the law and to prevent manipulation, such as re-characterization of transactions in view of later developments. This information will be used to determine whether the taxpayer has elected separate entity treatment under Section 1.1221 2(e)(2) and to verify that the taxpayer is properly reporting its business hedging transactions. If such recordkeeping were not required, then the IRS would not be able to achieve these objectives.

### 3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans to offer electronic filing. IRS publication, regulations, notices and

letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

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 is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that very few small businesses enter into hedging transactions due to their cost and complexity. Further, those small businesses that hedge enter into very few hedging transactions because hedging transactions are costly, complex, and require constant monitoring and a sophisticated understanding of the capital markets. 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 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.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

If the IRS did not collect this information, the IRS will not be able to administer the law and to prevent manipulation, such as re-characterization of hedging transactions in view of later developments. Also, the IRS will not be able to determine whether the taxpayer has elected separate entity treatment under Section 1.1221-2(e)(2) and to verify that the taxpayer is properly reporting its business hedging transactions.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

FI-34-94 was published in the Federal Register as a notice of proposed rulemaking on July 18, 1994 (59 FR 36394). A public hearing was held on October 18, 1994. The final regulations were published in the Federal Register on January 8, 1996 (61 FR 517).

FI-46-93 (58 FR 54075) was published in the Federal Register on October 20, 1993, simultaneously with temporary regulations (58 FR 54037). A public hearing was held on January 19, 1994. The final regulations (59 FR 36360) were published in the Federal Register on July 18, 1994.

A notice of proposed rulemaking (REG-107047-00), which reinstated the collections of information in FI-34-94 and FI-46-93, was published in the Federal Register on January 18, 2001 (66 FR 4738). A public hearing was held on May 16, 2001. The final regulations (TD 8985) were published in the Federal Register on March 20, 2002 (67 FR 12863).

In response to the Federal Register notice dated July 30, 2019 (84 FR 37007), we received no comments during the comment period regarding the guidance in these regulations.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No PII (Personally Identifiable Information) is being collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.1221-2(e)(2) permits a consolidated group to elect separate-entity treatment for its hedges. Paragraph (e)(2)(iv) provides that the separate entity election must be made in a separate statement that is to be filed with the group's consolidated return for the taxable year that includes the first date for which the election is to apply. The statement must specify that the election is being made and must indicate the date that the election is to be effective. We estimate that 2,000 businesses or other for-profit institutions will make the separate-entity election described in paragraph (e)(2) of the

regulation, with an estimated burden per respondent of .5 hours, with an estimated total reporting burden of 1,000 hours.

Section 1.1221-2(f)(5)(i)(ii) imposes an identification requirement for hedging transactions involving the single-entity approach. The member entering into the hedging transaction with an unrelated party must identify the hedging transaction and the hedged item in its books and records. If the consolidated group makes the separate-entity election, each member must identify its hedging transactions with unrelated third parties, its intercompany transactions that are treated as hedging transactions under these regulations, and the item being hedged. We estimate that 15,000 businesses or other for-profit institutions will make the identification requirement under section 1.1221-2(f)(5)(i)(ii) of the regulation, with an estimated annual burden per recordkeeper of 5 hours, with an estimated total annual recordkeeping burden of 75,000 hours.

Section 1.1221-2(f)(5)(ii) involves past years. To apply the single-entity election to past years, the group must file a statement attached to a federal income tax return (or amended return). We estimate that 100 groups will make this election and that the burden per respondent is .5 hours. The reporting burden for this requirement is 50 hours.

Paragraph (f) of 1.1221-2 of the regulation imposes an identification requirement with respect to hedging transactions entered on or after January 1, 1994. A taxpayer must identify the hedging transaction before the close of the day which the taxpayer enters it. In addition, the taxpayer must identify the item, items, or aggregate risk being hedged substantially contemporaneously with entering into the hedging transaction. These identifications are to be made on the taxpayer's books and records. We estimate that 100,000 businesses or other for-profit institutions will make the identification requirement under section 1.1221-2(f) of the regulations with an estimated annual burden per recordkeeper of .50 hour, with an estimated total annual recordkeeping burden of 50,000 hours.

Paragraph (f)(3)(ii) of §1.1221-2 of the final regulation provides ordinary treatment for hedges of the purchase of noninventory supplies if the taxpayer sells only a negligible amount of the supply. Thus, we estimate that there will be an additional 10,000 businesses or other for-profit institutions that will make the identification requirement under 1.1221-2(e) of the final regulation, with an estimated annual burden per recordkeeper of .50 hour, with an estimated total annual recordkeeping burden of 5,000 hours.

Paragraph (f)(3)(iv) of §1.1221-2 of the regulation expands the required identification for transactions that hedge aggregate risk by requiring the taxpayer to include in its books and records a description of the hedging program under which the hedging transaction was entered. Taxpayers must describe the type of risk being hedged, the hedged items, and enough additional information to demonstrate that the program is designed to reduce aggregate risk. We estimate that there will be 40,000 businesses or other for-profit institutions that will make the identification required under 1.1221-2(f)(3)(iv), with an estimated annual burden per recordkeeper of 1 hour, with an estimated total annual recordkeeping burden of 40,000 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are based on the Mean Hourly Wage reported by the U.S. Bureau of Labor Statistics, Division of Occupational Employment Statistics, Occupational Employment and Wages, May 2015, for Bookkeeping, Accounting, and Auditing Clerks (43-3031).

See summarized table below:

Collection of Information	Respondents	Time per response (hours)	Total Burden (hours)	Mean Hourly Wage (in \$)	Total Burden (cost in \$)
Section 1.1221-2(e)(2) Consolidated group separate-entity election	2,000	0.50	1,000	18.74	18,740
Section 1.1221-2(e)(1) Identification - single entity approach	15,000	5.00	75,000	18.74	1,405,500
Section 1.1221-2(f)(5)(ii) Single entity election for past years	100	0.50	50	18.74	937
Section 1.1221-2 (f)(5)(i)(ii) Identification requirement in books and records	100,000	0.50	50,000	18.74	937,000
Section 1.1221-2(c)(5)(ii) Ordinary treatment of hedges - negligible amount sold	10,000	0.50	5,000	18.74	93,700
Section 1.1221-2(f)(3)(iv) Requirement to include description of hedging program	40,000	1.00	40,000	18.74	749,600
<b>TOTAL</b>	<b>167,100</b>	<b>8.00</b>	<b>171,050</b>	<b>18.74</b>	<b>3,205,477</b>

The following regulations impose no additional burden. Please continue to assign OMB number 1545-1480 to these regulations.

1.1221-2

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated July 30, 2019, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any responses from taxpayers on this subject. As a result, there appears to be no annual start-up costs associated with this collection.

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no annualized cost to the federal government.

15. REASONS FOR CHANGE IN BURDEN

There are no actual changes to the burden. However, an increase of 40,000 to the estimated annual responses is being requested to correct inconsistencies in previous submission.

We are submitting this request for renewal purposes only.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

**Note:** The following paragraph applies to all the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.