

**SUPPORTING STATEMENT
REG-104924-98**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

One collection of information in this proposed regulation is described in the Explanation of Provisions section of this document (rather than being included in the text of the proposed regulations). That description indicates that the elections under section 475(e)(1) and (f)(1) and (2) may be required to be made on a form. This burden will be reflected on that form.

The other collection of information in this proposed regulation is in §§1.475(e)-1 and 1.475(f)-2. Section 1.475(e)-1 states that an identification of a commodity as exempt from mark-to-market treatment under section 475(b)(2) is not effective unless it is made before the close of the day on which the commodity was acquired, originated, or entered into. Section 1.475(f)-2(a)(1) states that if a trader in securities makes an election under section 475(f)(1)(A) (electing trader) and holds a security other than in connection with that trading business, the electing trader must identify that security in accordance with section 475(f)(1)(B)(ii). Further, § 1.475(f)-2 provides that an electing trader that holds a security other than in connection with its trading business and also trades the same or substantially similar securities, in no event satisfies the requirement of section 475(f)(1)(B)(i) unless the security is held in a separate, nontrading account maintained with a third party.

2. USE OF DATA

The information required to be recorded under §§1.475(e)-1 and 1.475(f)-2 is required by the IRS to determine whether an exemption from mark-to-market treatment is properly claimed. This information will be used to make that determination upon audit of taxpayers' books and records. The likely recordkeepers are businesses or other for-profit institutions.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, 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

We have attempted to eliminate duplication within the agency wherever possible.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

A notice of proposed rulemaking was published in the Federal Register on January 28, 1999 (64 FR 4374). A public hearing was held on June 3, 1999.

We received no comments during the comment period in response to the Federal Register Notice dated October 28, 2010 (75 FR 66429).

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

Not applicable.

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**

Not applicable.

12. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

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This burden will be reflected on that form.

The collection of information in §§1.475(e)-1 and 1.475(f)-2 of the proposed regulation involves maintaining certain records on securities or commodities identified as exempt from mark-to-market accounting. We estimate that 1,000 businesses or other for-profit institutions will make the identifications required under §§ 1.475(e)-1 and 1.475(f)-2, with an estimated annual burden per recordkeeper varying from 15 minutes to 3 hours, depending on individual circumstances, with an estimated average of 1 hour. Thus, the estimated total annual recordkeeping burden is 1,000 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated October 28, 2010 (75 FR 66429), 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 response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe 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 the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of 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.