§ 301.7424–1 [Removed]

2. Section 301.7424–1 is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. In § 602.101, paragraph (c) is amended by removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.820–2	1545–0128
* * * * *	
1.824–1	1545–1027
1.824–3	1545–1027
* * * * *	
1.1304–1	1545–0074
1.1304–3	1545–0074
1.1304–5	1545–0074
* * * * *	
20.2035–1	1545–0015
* * * * *	
27.642–1	1545–0020
* * * * *	
38.6302–1	1545–0257
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.
Approved: December 18, 1995.
Leslie Samuels,
Assistant Secretary of the Treasury.
[FR Doc. 96–164 Filed 1–5–96; 8:45 am]
BILLING CODE 4830–01–U

26 CFR Parts 1 and 602

[TD 8653]

RIN 1545–AS75

Hedging Transactions by Members of a Consolidated Group

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the character and timing of gain or loss from certain hedging transactions entered into by members of a consolidated group. These regulations apply when one member of the group hedges its own risk, hedges the risk of another member, or enters into a risk-shifting transaction with another member. The regulations are needed to provide appropriate rules for these transactions. The regulations provide guidance for corporations that are members of consolidated groups.

DATES: These regulations are effective February 7, 1996.

For dates of applicability of these regulations, see § 1.446–4(e)(9)(iv) and § 1.1221–2(g) (4), (5), and (6).

FOR FURTHER INFORMATION CONTACT: Jo Lynn Ricks of the Office of the Assistant Chief Counsel (Financial Institutions and Products), telephone (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1480. Some responses to these collections of information are mandatory, and others are required to obtain the benefit of the separate-entity election or of applying single-entity treatment in taxable years prior to the general effective date of the regulations.

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 control number.

The estimated annual burden per respondent or recordkeeper varies from 1.0 to 40.0 hours, depending on individual circumstances, with an estimated average of 5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this 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.

Background

On July 18, 1994, the IRS published in the Federal Register (59 FR 36394) a notice of proposed rulemaking (FI–34–94) relating to the character and timing of gain or loss from certain risk-shifting transactions entered into by members of a consolidated group. Comments were received on the proposed regulations, and a public hearing was held on October 18, 1994. Most commentators believe that the proposed regulations provide a sensible and flexible set of rules to deal with hedging operations by the members of a consolidated group of corporations.

The most significant comment on the regulations relates to their effective date. Almost all of the commentators requested a transition rule permitting consolidated groups to elect to apply the proposed character rules retroactively. The final regulations adopt this suggestion, generally allowing consolidated groups to elect to apply the single-entity approach of the proposed regulations to all open years. Section 1.1221–2, concerning the character of hedging transactions, was made retroactive for all open years to permit the IRS to resolve fairly and consistently controversies involving transactions that were entered into prior to the publication date of those regulations. It is appropriate that these regulations, as an integral part of § 1.1221–2, also apply retroactively. To prevent any adverse consequences, however, retroactivity is elective.

The proposed regulations, with new effective date provisions, are adopted as final regulations. The new provisions, and several comments that were not adopted, are discussed below.

Explanation of Provisions

Character Regulations

The final regulations retain the single-entity approach of the proposed regulations. That is, they treat the risk of one member of the group as the risk of the other members, as if all the members were divisions of a single corporation. Thus, a member of a consolidated group that hedges the risk of another member by entering into a transaction with a third party may receive ordinary gain or loss treatment on that transaction if the transaction otherwise qualifies as a hedging transaction.

Under this single-entity approach, intercompany transactions are neither hedging transactions nor hedged items. Because they are treated as transactions between divisions of a single corporation, intercompany transactions do not reduce the risk of that single corporation and, therefore, fail to qualify as hedging transactions.

Some commentators requested that the IRS extend the single-entity approach to apply the hedging rules to a taxpayer's transactions that hedge the

risk of a related party that is not a member of the taxpayer's consolidated group. The IRS and Treasury, however, do not believe that this approach is appropriate where the parties file different tax returns. Accordingly, the final regulations do not adopt this suggestion.

The final regulations also retain the separate-entity election of the proposed regulations, permitting a consolidated group to treat its members as separate entities when applying the hedging rules. The election is made by attaching a statement to the group's federal income tax return.

For a group that elects separate-entity treatment, an intercompany transaction is treated as a hedging transaction if and only if: (1) it would qualify as a hedging transaction if entered into with an unrelated party; and (2) it is entered into with a member that, under its method of accounting, marks its position in the intercompany transaction to market. If these requirements are satisfied, the member with respect to which it is an intercompany hedging transaction must account for its position in the transaction under § 1.446–4, and, if that member properly identifies the transaction as a hedging transaction, each member treats the gain or loss from its position in the transaction as ordinary.

In response to comments, the final regulations clarify that, even when these two requirements are met, these regulations supplant only the character and timing rules of § 1.1502–13. Other aspects of the transaction, such as the source of the gain or loss, are unaffected by these regulations and thus may be governed by § 1.1502–13.

As noted above, commentators pointed out that taxpayers frequently enter into transactions to transfer their business risk to related parties that do not qualify as members of a consolidated group. Some commentators argued that, even if risk reduction in these circumstances is not analyzed using a single-entity perspective, the relationship between the parties to the risk transfer justifies a rule under which the party receiving the risk has ordinary gain or loss on its position in the transaction. That is, they wanted to apply one part of the separate-entity rules to taxpayers that are not part of the same consolidated group.

The IRS and Treasury, however, do not believe that additional, special character rules are appropriate for risk-shifting transactions outside the context of a consolidated group. Accordingly, the final regulations do not adopt these comments.

The final regulations expand upon the effective date provision of the proposed regulations. The final regulations generally apply to transactions entered into on or after March 8, 1996.

In response to comments, the final regulations permit a consolidated group to apply the single-entity approach of the regulations retroactively. The group may elect to begin to apply the single-entity approach for all transactions entered into in any taxable year (the election year) beginning prior to March 8, 1996. The election may be made, however, only if the election year and each subsequent taxable year are still open for assessment under section 6501 on July 1, 1996, or such earlier date as the Commissioner may allow. Once made, the single-entity election applies to all transactions entered into in the election year and in all subsequent consolidated return years until the date as of which the group makes a separate-entity election. The Service will publish guidance on the manner, and the time, for making the single-entity election.

Further, the regulations also permit a consolidated group to apply the separate-entity approach to all transactions entered into in taxable years subject to the election. The taxpayer may choose, as the first year under the election, any taxable year beginning on or after July 12, 1995. This ability to apply the election to taxable years beginning before March 8, 1996 allows a consolidated group to apply the separate-entity approach to all intercompany transactions that are subject to new § 1.1502–13 (which is effective for taxable years beginning on or after July 12, 1995). Thus, by electing separate-entity treatment for all transactions entered into in a taxable year beginning on or after July 12, 1995, a consolidated group can determine the character and timing of its intercompany hedging transactions under § 1.446–4 and § 1.1221–2, rather than under § 1.1502–13.

If the group makes the single-entity election or elects to apply the separate-entity approach retroactively, special identification rules apply.

First, the members of the group are required to identify transactions that were entered into prior to March 8, 1996, that are still in existence on that date, and that become hedging transactions as a result of one of these elections. The members are also required to identify the hedged item for these transactions.

Second, the final regulations extend the time period for making the additional identifications that are referred to in the preceding paragraph.

Third, if the taxpayer's consolidated group has elected the single-entity approach, the regulations nullify all hedge identifications under § 1.1221–2(e)(i) that had been made for intercompany transactions. In this situation, the regulations determine the character of each intercompany transaction as if it had never been identified as a hedging transaction. Thus, the character and timing of the intercompany transaction are determined under the otherwise applicable regulations, and the transaction is not subject to the ordinary-gain, capital-loss rule that generally applies to transactions that are incorrectly identified as hedging transactions. The identification may, however, serve to identify the hedged item.

In order to ensure that consolidated groups do not improperly use hindsight in making these identifications, the regulations provide a consistency requirement. Under this requirement, the group members must treat similar or identical transactions consistently within the same year and from year to year. If a member of the consolidated group fails to identify a hedging transaction as a hedging transaction, but has identified similar or identical hedging transactions in the same or a subsequent year, then, for purposes of § 1.1221–2(f)(2)(iii), the member entering into the transaction is treated as having no reasonable grounds for treating the transaction as other than a hedging transaction. Thus, the member is generally subject to the ordinary-gain, capital-loss rules for taxpayers who fail to identify transactions as hedging transactions.

Timing regulations

The final regulations clarify the general rule that was provided in the proposed regulations for the timing of the gain or loss from hedging transactions that are entered into by members of a consolidated group. Under the final regulations, a member of a consolidated group must account for its hedging transactions as if all the members were separate divisions of a single corporation (the single-entity approach). Thus, the timing of the income, deduction, gain, or loss on the hedging transaction must match the timing of the income, deduction, gain, or loss from the item, items, or aggregate risk being hedged. These regulations make clear that a member must account for all of its hedging transactions, not just those that hedge the risk of another member, under the single-entity approach.

Since all of the members are treated as divisions of a single corporation, intercompany transactions are neither hedging transactions nor hedged items. Thus, under the single-entity approach, the timing of the gain or loss from intercompany transactions is not determined under the rules of § 1.446–4.

The final regulations also clarify the rule in the proposed regulations on accounting for the gain or loss on hedging transactions by members of a group that has made a separate-entity election. If a group makes the separate-entity election, the members do not account for their hedging transactions (including their intercompany hedging transactions) as if they were divisions of a single corporation. Rather, each member accounts for its hedging transactions on a member-by-member basis. For example, if an intercompany transaction is treated as a hedging transaction, the gain or loss on the transaction is accounted for under the rules of § 1.446–4 rather than under the timing rules of the intercompany transaction regulations, § 1.1503–13. As was stated above, even when a separate-entity election is in place, §§ 1.1221–2 and 1.446–4 affect only the timing and character of intercompany hedging transactions. Other aspects of the intercompany hedging transaction remain subject to the rules of § 1.1502–13.

These final timing regulations are effective for transactions entered into on or after March 8, 1996.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. The regulations do not significantly alter the reporting or recordkeeping duties of small entities. 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 regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jo Lynn Ricks, Office of Assistant Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for § 1.1221–2 and by adding entries in numerical order to read as follows:

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

Section 1.446–4 also issued under 26 U.S.C. 1502. * * *

Section 1.1221–2 also issued under 26 U.S.C. 1502 and 6001. * * *

Par. 2. Section 1.446–4 is amended by adding the text of paragraph (e)(9) to read as follows:

§ 1.446–4 Hedging transactions.

* * * * *

(e) * * *

(9) *Hedging by members of a consolidated group—(i) General rule: single-entity approach.* In general, a member of a consolidated group must account for its hedging transactions as if all of the members were separate divisions of a single corporation. Thus, the timing of the income, deduction, gain, or loss on a hedging transaction must match the timing of income, deduction, gain, or loss from the item or items being hedged. Because all of the members are treated as if they were divisions of a single corporation, intercompany transactions are neither hedging transactions nor hedged items for these purposes.

(ii) *Separate-entity election.* If a consolidated group makes an election under § 1.1221–2(d)(2), then paragraph (e)(9)(i) of this section does not apply. Thus, in that case, each member of the consolidated group must account for its hedging transactions in a manner that meets the requirements of paragraph (b) of this section. For example, the income, deduction, gain, or loss from intercompany hedging transactions (as defined in § 1.1221–2(d)(2)(ii)) is taken into account under the timing rules of § 1.446–4 rather than under the timing rules of § 1.1502–13.

(iii) *Definitions.* For definitions of consolidated group, divisions of a single corporation, intercompany transaction, and member, see section 1502 and the regulations thereunder.

(iv) *Effective date.* This paragraph (e)(9) applies to transactions entered into on or after March 8, 1996.

Par. 3. Section 1.1221–2 is amended by adding the text of paragraphs (d), (e)(5), (f)(3), and (g)(4), and by adding the text and headings of paragraphs (g)(5) and (6) to read as follows:

§ 1.1221–2 Hedging transactions.

* * * * *

(d) *Hedging by members of a consolidated group*—(1) *General rule: single-entity approach.* For purposes of this section, the risk of one member of a consolidated group is treated as the risk of the other members as if all of the members of the group were divisions of a single corporation. For example, if any member of a consolidated group hedges the risk of another member of the group by entering into a transaction with a third party, that transaction may potentially qualify as a hedging transaction. Conversely, intercompany transactions are not hedging transactions because, when considered as transactions between divisions of a single corporation, they do not reduce the risk of that single corporation.

(2) *Separate-entity election.* In lieu of the single-entity approach specified in paragraph (d)(1) of this section, a consolidated group may elect separate-entity treatment of its hedging transactions. If a group makes this separate-entity election, the following rules apply.

(i) *Risk of one member not risk of other members.* Notwithstanding paragraph (d)(1) of this section, the risk of one member is not treated as the risk of other members.

(ii) *Intercompany transactions.* An intercompany transaction is a hedging transaction (an intercompany hedging transaction) with respect to a member of a consolidated group if and only if it meets the following requirements—

(A) The position of the member in the intercompany transaction would qualify as a hedging transaction with respect to the member (taking into account paragraph (d)(2)(i) of this section) if the member had entered into the transaction with an unrelated party; and

(B) The position of the other member (the marking member) in the transaction

is marked to market under the marking member's method of accounting.

(iii) *Treatment of intercompany hedging transactions.* An intercompany hedging transaction (that is, a transaction that meets the requirements of paragraphs (d)(2)(ii) (A) and (B) of this section) is subject to the following rules—

(A) The character and timing rules of § 1.1502–13 do not apply to the income, deduction, gain, or loss from the intercompany hedging transaction; and

(B) Except as provided in paragraph (f)(3) of this section, the character of the marking member's gain or loss from the transaction is ordinary.

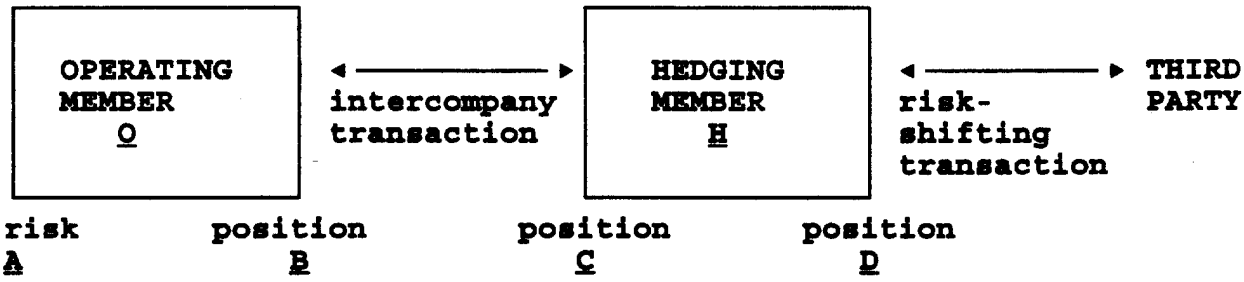
(iv) *Making and revoking the election.* Unless the Commissioner otherwise prescribes, the election described in this paragraph (d)(2) must be made in a separate statement saying ''[Insert Name and Employer Identification Number of Common Parent] HEREBY ELECTS THE APPLICATION OF SECTION 1.1221–2(d)(2) (THE SEPARATE-ENTITY APPROACH).'' The statement must also indicate the date as of which the election is to be effective. The election must be signed by the common parent and filed with the group's federal income tax return for the taxable year that includes the first date for which the election is to apply. The election applies to all transactions entered into on or after the date so indicated.

(3) *Definitions.* For definitions of consolidated group, divisions of a single corporation, group, intercompany transactions, and member, see section 1502 and the regulations thereunder.

(4) *Examples.* The following examples illustrate this paragraph (d):

General Facts. In these examples, *O* and *H* are members of the same consolidated group. *O*'s business operations give rise to interest rate risk ''*A*,'' which *O* wishes to hedge. *O* enters into an intercompany transaction with *H* that transfers the risk to *H*. *O*'s position in the intercompany transaction is ''*B*,'' and *H*'s position in the transaction is ''*C*.'' *H* enters into position ''*D*'' with a third party to reduce the interest rate risk it has with respect to its position *C*. *D* would be a hedging transaction with respect to risk *A* if *O*'s risk *A* were *H*'s risk.

BILLING CODE 4830–01–U



BILLING CODE 4830–01–C

Example 1. Single-entity treatment—(i) *General rule.* Under paragraph (d)(1) of this section, *O*'s risk *A* is treated as *H*'s risk, and therefore *D* is a hedging transaction with respect to risk *A*. Thus, the character of *D* is determined under the rules of this section, and the income, deduction, gain, or loss from *D* must be accounted for under a method of accounting that satisfies § 1.446–4. The intercompany transaction *B–C* is not a hedging transaction and is taken into account under § 1.1502–13.

(ii) *Identification. D* must be identified as a hedging transaction under paragraph (e)(1) of this section, and *A* must be identified as the hedged item under paragraph (e)(2) of this section. Under paragraph (e)(5) of this section, the identification of *A* as the hedged item can be accomplished by identifying the positions in the intercompany transaction as hedges or hedged items, as appropriate. Thus, substantially contemporaneous with entering into *D*, *H* may identify *C* as the hedged item and *O* may identify *B* as a hedge and *A* as the hedged item.

Example 2. Separate-entity election; counterparty that does not mark to market. In addition to the *General Facts* stated above, assume that the group makes a separate-entity election under paragraph (d)(2) of this section. If *H* does not mark *C* to market under its method of accounting, then *B* is not a hedging transaction, and the *B–C* intercompany transaction is taken into account under the rules of section 1502. *D* is not a hedging transaction with respect to *A*, but *D* may be a hedging transaction with respect to *C* if *C* is ordinary property or an ordinary obligation and if the other requirements of paragraph (b) of this section are met. If *D* is not part of a hedging transaction, then *D* may be part of a straddle for purposes of section 1092.

Example 3. Separate-entity election; counterparty that marks to market. The facts are the same as in *Example 2* above, except that *H* marks *C* to market under its method of accounting. Also assume that *B* would be a hedging transaction with respect to risk *A* if *O* had entered into that transaction with an unrelated party. Thus, for *O*, the *B–C* transaction is an intercompany hedging transaction with respect to *O*'s risk *A*, the character and timing rules of § 1.1502–13 do not apply to the *B–C* transaction, and *H*'s income, deduction, gain, or loss from *C* is ordinary. However, other attributes of the items from the *B–C* transaction are determined under § 1.1502–13. *D* is a hedging transaction with respect to *C* if it meets the requirements of paragraph (b) of this section.

(e) * * *

(5) *Identification of hedges involving members of a consolidated group*—(i) *General rule: single-entity approach.* A member of a consolidated group must satisfy the requirements of this paragraph (e) as if all of the members of the group were divisions of a single corporation. Thus, the member entering into the hedging transaction with a third party must identify the hedging transaction under paragraph (e)(1) of this section. Under paragraph (e)(2) of this section, that member must also identify the item, items, or aggregate risk that is being hedged, even if the item, items, or aggregate risk relates primarily or entirely to other members of the group. If the members of a group use intercompany transactions to transfer risk within the group, the requirements of paragraph (e)(2) of this section may be met by identifying the intercompany transactions, and the risks hedged by the intercompany transactions, as hedges or hedged items, as appropriate. Because identification of the intercompany transaction as a hedge serves solely to identify the hedged item, the identification is timely if made within the period required by paragraph (e)(2) of this section. For example, if a member transfers risk in an intercompany transaction, it may identify under the rules of this paragraph (e) both its position in that transaction and the item, items, or aggregate risk being hedged. The member that hedges the risk outside the group may identify under the rules of this paragraph (e) both its position with the third party and its position in the intercompany transaction. Paragraph (d)(4) *Example 1* of this section illustrates this identification.

(ii) *Rule for consolidated groups making the separate-entity election.* If a consolidated group makes the separate-entity election under paragraph (d)(2) of this section, each member of the group must satisfy the requirements of this paragraph (e) as though it were not a member of a consolidated group.

* * * * *

(f) * * *

(3) *Transactions by members of a consolidated group*—(i) *Single-entity approach.* If a consolidated group is under the general rule of paragraph (d)(1) of this section (the single-entity approach), the rules of this paragraph (f) apply only to transactions that are not intercompany transactions.

(ii) *Separate-entity election.* If a consolidated group has made the election under paragraph (d)(2) of this section, then, in addition to the rules of paragraphs (f) (1) and (2) of this section, the following rules apply.

(A) If an intercompany transaction is identified as a hedging transaction but does not meet the requirements of paragraphs (d)(2)(ii) (A) and (B) of this section, then, notwithstanding any contrary provision in § 1.1502–13, each party to the transaction is subject to the rules of paragraph (f)(1) of this section with respect to the transaction as though it had incorrectly identified its position in the transaction as a hedging transaction.

(B) If a transaction meets the requirements of paragraphs (d)(2)(ii) (A) and (B) of this section but the transaction is not identified as a hedging transaction, each party to the transaction is subject to the rules of paragraph (f)(2) of this section. (Because the transaction is an intercompany hedging transaction, the character and timing rules of § 1.1502–13 do not apply. See paragraph (d)(2)(iii)(A) of this section.)

(g) * * *

(4) *Effective date and transition rules for hedges by members of a consolidated group.* Paragraphs (d), (e)(5), and (f)(3) of this section apply to transactions entered into on or after March 8, 1996.

(5) *Elections to accelerate the effective date of the regulations*—(i) *Election to apply the single-entity approach retroactively.* A consolidated group may elect to begin to apply paragraphs (d)(1) and (3), (e)(5)(i), and (f)(3)(i) of this section to all transactions entered into in any taxable year (the election year) beginning prior to March 8, 1996. This election must be made in the manner, and at the time, prescribed by the Commissioner. A group may make the election only if the election year, and each subsequent taxable year, are still open for assessment under section 6501 on July 1, 1996 (or such earlier date as the Commissioner may allow). The election applies to all transactions entered into in the election year and in all subsequent consolidated return years until the date, if any, as of which the group makes a separate-entity election under paragraph (d)(2) of this section. The rules of paragraph (g)(6) of this section apply to all transactions that were entered into before March 8, 1996 in taxable years subject to an election under this paragraph (g)(5)(i). The election may be revoked only with the consent of the Commissioner.

(ii) *Ability to apply the separate-entity approach retroactively.* Notwithstanding paragraph (g)(4) of this section, the separate-entity election described in paragraph (d)(2) of this section may be made for any taxable year beginning on or after July 12, 1995. If that election is made for a taxable year beginning before March 8, 1996, then paragraphs (d)(2) and (3), (e)(5)(ii), and (f)(3)(ii) of this section apply to all transactions entered into on or after the beginning of that taxable year and while the election is in effect, and the rules of paragraph (g)(6) of this section (other than paragraph (g)(6)(i)) apply to all transactions that were entered into on or after the first day of the first year for which the election is made and before March 8, 1996.

(6) *Transitional identification rules.* To allow a consolidated group to conform to paragraphs (g)(5)(i) and (ii) of this section, this paragraph (g)(6) nullifies certain hedge identifications and permits a member of a consolidated group to add certain hedge identifications. This paragraph (g)(6) applies only to the extent provided in paragraph (g)(5) of this section.

(i) *Intercompany transactions previously identified.* Notwithstanding paragraph (f)(1)(i) of this section, if, for purposes of paragraph (e)(1) of this section, a member identified as a hedging transaction an intercompany transaction (or a transaction that would qualify as an intercompany transaction under § 1.1502–13(b)(1) if the taxable year in which the transaction was entered into were described in § 1.1502–13(*l*)), the character of the gain on the intercompany transaction is determined as if it had not been identified as a hedging transaction. The identification may, however, serve to identify the hedged item under paragraph (e)(5)(i) of this section.

(ii) *Additional identifications of hedging transactions.* A member of a consolidated group must identify under paragraph (e)(5) of this section a transaction that—

(A) Was entered into before March 8, 1996,

(B) When entered into was not a hedging transaction (as defined in paragraph (b) of this section),

(C) Solely as a result of the group's election under paragraph (g)(5)(i) or (ii) of this section, is a hedging transaction (as defined in paragraph (b) of this section), and

(D) Remains in existence on March 8, 1996.

(iii) *Additional identification of hedged items.* In the case of transactions described in paragraph (g)(6)(ii) of this section, the hedging member must identify under paragraph (e)(5) of this section the item, items, or aggregate risk being hedged.

(iv) *Consistency requirement for hedge identifications.* In identifying transactions as hedging transactions under paragraph (g)(6)(ii) of this section, all of the members of the group must treat similar or identical transactions consistently within the same year and from year to year. If paragraph (g)(6)(ii) of this section requires a member to identify a transaction, and the member fails to identify a transaction as a hedging transaction, but it or another member of the group identifies similar or identical hedging transactions in the same or a subsequent year, then for purposes of paragraphs (f)(2)(iii) and (3) of this section, the member entering into the transaction is treated as having no reasonable grounds for treating the transaction as other than a hedging transaction.

(v) *Extension of time for making additional identifications.* If an identification of a hedging transaction would not be required but for the rules of paragraph (g)(6)(ii) of this section, the identification is timely for purposes of paragraph (e)(1) of this section if made before the close of business on May 7, 1996. If an identification of a hedged item would not be required but for the rules of paragraph (g)(6)(iii) of this section, it is timely for purposes of paragraph (e)(2) of this section if made before the close of business on the later of May 7, 1996 or the last day of the period specified in paragraph (e)(2)(ii) of this section.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (c) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
1.1221–2(d)(2)(iv)	1545–1480
1.1221–2(e)(5)	1545–1480
1.1221–2(g)(5)(ii)	1545–1480
1.1221–2(g)(6)(ii)	1545–1480
1.1221–2(g)(6)(iii)	1545–1480
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 20, 1995.

Cynthia G. Beerbower,

Deputy Assistant Secretary of the Treasury.

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Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF–370; Ref. Notice Nos. 749, 581]

RIN 1512–AA67

Grape Variety Names for American Wines

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing a final rule containing a list of approved prime grape variety names which may be used as the designation for American wines. This rule contains two other lists of alternative names which may be used as grape wine designations until January 1, 1997, or January 1, 1999. This rule also contains a procedure by which interested persons may petition the Director for the addition of names to the list of prime grape names.

ATF believes the listing of approved names of grape varieties for American wines will help standardize wine label terminology and prevent consumer confusion by reducing the large number of synonyms for grape varieties currently used for labeling American wines.

DATES: This final rule is effective February 7, 1996. Alternative names listed at § 4.92(a) may be used as designations for American wines bottled prior to January 1, 1997. Alternative names listed at § 4.92(b) may be used as designations for American wines bottled prior to January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Forearms, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product. Regulations which implement the provisions of section 105(e) as they relate to wine are set forth in title 27, Code of Federal Regulations, Part 4 (27 CFR part 4).

Wine Varietal Labeling

Under § 4.34(a), still grape wine may be designated by labeling the wine with the predominant grape(s) from which the wine is produced. Since 1983, labeling rules at § 4.23a have provided for the use of a grape variety name as the type designation of the wine if not less than 75 percent of the wine is derived from the labeled grape variety (less in the case of wine made from certain *Vitis labrusca* grapes), and if the wine is labeled with an appellation of origin. Wine may also be labeled with the names of two or more grape varieties if all of the grapes used to make the wine are of the labeled varieties, and the percentage of wine derived from each variety is shown on the label.

In recent years, ATF has noted a trend among domestic and foreign wineries to label wines using a grape variety designation. Increasing use of hundreds of grape variety names and synonyms prompted ATF to examine the correctness of using these names in order to insure that grape variety names used are truthful, accurate, and not misleading.

Winegrape Varietal Names Advisory Committee

In 1982, ATF established the Winegrape Varietal names Advisory Committee (''Committee'') to conduct an examination of the hundreds of grape variety names and synonyms in use [47 FR 13623, March 31, 1982]. According to its charter, the Committee was to advise the Director of the grape varieties and subvarieties which are used in the production of wine, to recommend appropriate label designations for these varieties, and to recommend guidelines for approval of names suggested for new grape varieties. Their recommendations were restricted to grape names used in the production of American wines. The Committee's final report, presented to the Director in September 1984, contained their findings regarding use of the most appropriate names for domestic winegrapes varieties. ATF announced that the Committee's report was available to the public in Notice No. 548 [49 FR 44049], published on November 1, 1984.

Notice No. 581

On the basis of the recommendations contained in the Committee's final report, ATF issued Notice No. 581 on February 4, 1986 [51 FR 4392]. This notice proposed the addition of Subpart J, American Grape Variety Names, to Part 4. Within this subpart, § 4.91 contained the list of prime grape names which the Committee had found to be the most appropriate names for grape varieties. Sections 4.92 and 4.93 contained alternative names which could be used in conjunction with the prime name (§ 4.92), or for five years, in lieu of the prime name (§ 4.93). Section 4.94 contained guidelines for adding new grape variety names to the list of prime names.

In addition to the recommendations included in the Committee report, Notice No. 581 contained other proposals. One was to prohibit the modification of grape variety names with color or style descriptive terms or with proprietary names. This notice also proposed to make obsolete certain IRS and ATF rulings relating to grape wine designations. The comment period for Notice No. 581 was extended until July 7, 1986, by the publication of Notice No. 589, April 8, 1986 [51 FR 11944].

Written Comments

ATF received 156 comments from 146 different respondents prior to the end of the comment period on July 7, 1986. Comments were received from: 76 consumers; the American Wine Society; 38 American wineries; the Wine Institute; the Association of American Vintners; the Washington Wine Institute; six grape growers; the California Farm Bureau Federation; the California Association of Winegrape Growers; the North Carolina Grape Growers Association; the Oregon Winegrowers Association; two United