

SUPPORTING STATEMENT
Tax on Certain Foreign Procurement
NPRM (REG 103281-11)
1545-XXXX

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The Notice of Purposed Rulemaking document contains proposed regulations (REG 103281-11) under section 5000C of the Internal Revenue Code relating to the 2 percent tax on payments made by the U.S. government to foreign persons pursuant to certain contracts. The proposed regulations affect U.S. government acquiring agencies and foreign persons providing certain goods or services to the U.S. government pursuant to a contract. This document also contains proposed regulations under section 6114, with respect to foreign persons claiming an exemption from the tax under an income tax treaty.

The collection of information in the proposed regulations is contained in a number of provisions including §§1.5000C-2, 1.5000C-3, and 1.5000C-4. Responses to these collections of information are required to verify the status of foreign persons to whom specified Federal procurement payments subject to the section 5000C tax are made; to obtain a benefit (to claim an exemption to, or a reduction in, withholding); and to facilitate tax compliance (to verify entitlement to an exemption). The IRS intends that these information collection requirements will be satisfied primarily on existing chapter 3 withholding forms by U.S. government acquiring agencies, along with Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation," and Form 1040NR, "U.S. Nonresident Alien Income Tax Return." However, in certain circumstances, foreign persons must collect certain information in order to demonstrate to an acquiring agency the appropriate amount to withhold, if any, on a Section 5000C Certificate (Form W-14).

A Form W-14, Certificate of Party Receiving Federal Procurement Payment, must be provided to the acquiring agency (U.S. government department, agency, independent establishment, or corporation) to:

- Establish that they are a foreign contracting party; and
- If applicable, claim an exemption from withholding based on an international agreement (such as a tax treaty); or
- Claim an exemption from withholding, in whole or in part, based on an international procurement agreement or because goods are produced, or services are performed in the United States.

A Form W-14 must be provided to the acquiring agency if a foreign contracting party has been paid a specified Federal procurement payment and the foreign contracting party is seeking to claim an exemption (in whole or in part) from the tax imposed by section 5000C. Form W-14 must be submitted when requested by the acquiring agency, whether or not an exemption (in whole or in part) is claimed from withholding under section 5000C.

2. USE OF DATA

The Internal Revenue Service will use this data to establish that the foreign persons that are parties to specified Federal procurement contracts with the U.S. government entered into on and after January 2, 2011 are:

- Foreign contracting parties; and
- If applicable, can claim an exemption from withholding/tax imposed by section 5000C based on an international agreement (such as a tax treaty);or
- That an exemption (in whole or in part) from withholding can be claimed based on an international procurement agreement or because goods are produced, or services are performed in the United States.

The likely respondents are the U.S. government and foreign persons that enter into contracts with the U.S. government.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, regulations, published guidance, e.g., revenue rulings and revenue procedures, notices, letters, and letter rulings are to be electronically enabled on an “as practicable” basis in accordance with the IRS Reform and Restructuring Act of 1998.

The agency is making the form available and accepting Form W-14 electronically.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible. Form W-14 is similar to Form W-8 but the information provided in each form is very different. Thus, there is no duplication of collection of information.

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

The collection of information requirement will not have a significant economic impact on a substantial number of small entities because a limited number of foreign contracting parties that are small entities will be subject to the tax.

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

Less frequent collection would result in inappropriate withholding.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH THE 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

Periodic meetings are held between IRS personnel and representatives of various professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding the collection requirements under this notice.

We will publish a notice in the Federal Register in the near future to solicit public comments on this Notice.

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

In general, tax returns and tax return information are confidential as required by 26 U.S.C. § 6103, and certain matters relating to taxability and deductibility are disclosable under 26 U.S.C. § 6110.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the "Business Master File (BMF)" system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.046-Customer Account Data Engine Business Master File. The Internal Revenue Service PIAs can be found at <http://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The burden estimate is as follows:

	<u>Number of Responses</u>	<u>Time per Response</u>	<u>Total Hours</u>
Form W-14	2,000	5 hours, 55 minutes	11,840

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no start-up costs associated with this collection.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Because this is a new form that has not yet been printed and distributed to the public, the annualized cost to the federal government is not known at this time.

15. REASONS FOR CHANGE IN BURDEN

There is an increase in burden because this is a new form.

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

We believe the public interest will be better served by not printing an expiration date on the form(s) in this package.

Printing the expiration date on the form will result in increased costs because of the need to replace inventories that become obsolete by passage of the expiration date each time OMB approval is renewed. Without printing the expiration date, supplies of the form could continue to be used.

The time period during which the current edition of the form(s) in this package will continue to be usable cannot be predicted. It could easily span several cycles of review and OMB clearance renewal. In addition, usage fluctuates unpredictably. This makes it necessary to maintain a substantial inventory of forms in the supply line at all times. This includes supplies owned by both the Government and the public. Reprinting of the form cannot be reliably scheduled to coincide with an OMB approval expiration date. This form may be privately printed by users at their own expense. Some businesses print complex and expensive marginally punched continuous versions, at their expense, for use in their computers. The form may be printed by commercial printers and stocked for sale. In such cases, printing the expiration date on the form could result in extra costs to the users.

Not printing the expiration date on the form(s) will also avoid confusion among taxpayers who may have identical forms with different expiration dates in their possession.

For the above reasons we request authorization to omit printing the expiration date on the form(s) in this package.

We are requesting OMB approval for continued use of the prior version of the form(s) in this clearance package, so that late filers will have the previous versions available to them in future years.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all 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 the 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.