

**DEPARTMENT OF COMMERCE****Bureau of Economic Analysis****15 CFR Part 806**

[Docket No. 030818205-3205-01]

RIN 0691-AA48

**Direct Investment Surveys: BE-15, Annual Survey of Foreign Direct Investment in the United States****AGENCY:** Bureau of Economic Analysis, Commerce.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule amends regulations that set forth reporting requirements for the BE-15, Annual Survey of Foreign Direct Investment in the United States. The annual survey is comprised of four forms—the BE-15(LF) long form, the BE-15(SF) short form, the BE-15(EZ) form, which is a new form, and the BE-15 Supplement C—Claim for Exemption From Filing a BE-15(LF), BE-15(SF), or BE-15(EZ).

Overall respondent burden for the 2003 annual survey is estimated at 107,900 hours, down 20,100 hours from 128,000 hours estimated for the previous (2001) annual survey. The decrease in the estimated total respondent burden is primarily attributable to the proposed changes to the reporting requirements.

**DATES:** Comments on this proposed rule will receive consideration if submitted in writing on or before October 28, 2003.

**ADDRESSES:** Direct all written comments to the Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230. To assure that comments are received in a timely manner, please consider using one of the following delivery methods: (1) Fax to (202) 606-5318, (2) deliver by courier to U.S. Department of Commerce, Bureau of Economic Analysis, BE-49(A), Shipping and Receiving, Section M100, 1441 L Street NW., Washington, DC 20005, or (3) e-mail to [Obie.Whichard@bea.gov](mailto:Obie.Whichard@bea.gov).

Comments received will be available for public inspection in Room 7006, 1441 L Street NW., between 8:30 a.m. and 4:30 p.m., eastern time Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Obie G. Whichard, Acting Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606-9800.

**SUPPLEMENTARY INFORMATION:** This proposed rule amends 15 CFR part

806.15 to set forth reporting requirements for the BE-15, Annual Survey of Foreign Direct Investment in the United States. The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**Description of Revisions**

The BE-15, Annual Survey of Foreign Direct Investment in the United States, is mandatory and is conducted annually by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108)—hereinafter, “the Act.” BEA will send the survey to potential respondents in March of each year; responses will be due by May 31.

BEA proposes to introduce a sampling procedure to help reduce respondent burden for some U.S. businesses. The procedure will utilize the new BE-15(EZ) form; this form will provide a few basic indicators for non-sample firms that can be used as a basis for estimating data that they otherwise would have to report on the lengthier BE-15(LF) and BE-15(SF) forms. To bring the annual survey into conformity with the Benchmark Survey of Foreign Direct Investment in the United States—2002, BEA proposes the following changes to the Code of Federal Regulations: (1) Direct that only nonbank majority-owned U.S. affiliates of foreign companies report on the BE-15(LF) long form (minority-owned affiliates will report on the BE-15(SF) short form, or the BE-15(EZ) form, regardless of size); (2) raise the exemption level on the BE-15(LF) long form from \$100 million to \$125 million (reporting on a given form is required if the affiliate’s assets, sales, or net income (or loss) exceed the exemption level); and (3) exempt nonbank subsidiaries or units of U.S. bank or bank holding company affiliates from reporting.

In addition, BEA proposes to make the following changes to the forms: (1) Add questions to the BE-15 (LF) long form to collect detail on premiums earned and claims paid for U.S. affiliates operating in the insurance industry, and to collect detail on finished goods purchased for resale for U.S. affiliates operating in the wholesale and retail trade industries; (2) in conjunction with increasing the exemption level for reporting on the BE-15(LF) long form, add four items to the short form that will serve to improve

estimates of gross product for majority-owned U.S. affiliates—certain realized and unrealized gains and losses, U.S. income taxes, interest received, and interest paid; (3) in conjunction with requiring all minority-owned U.S. affiliates to file on the short form, revise the State Schedule to collect additional detail, by State, for minority-owned U.S. affiliates with activities in more than five States; and (4) to reduce overall respondent burden, drop several questions that BEA feels are no longer of significant analytical interest to the data users.

**Survey Background**

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108), hereinafter, “the Act.” Section 4(a) of the Act provides that with respect to foreign direct investment in the United States, the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The annual survey is a sample survey that collects data on the financial structure and operations of nonbank U.S. affiliates of foreign companies needed to update similar data for the universe of U.S. affiliates collected once every 5 years in the BE-12 benchmark survey. The data are used to derive annual estimates of the operations of U.S. affiliates of foreign companies, including their balance sheets; income statements; property, plant, and equipment; external financing; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity. The data are needed to measure the size and economic significance of foreign direct investment in the United States, to measure changes in such investment, and to assess its impact on the U.S. economy. Such data are generally found

in enterprise-level accounting records of respondent companies. The data are disaggregated by industry of U.S. affiliate, by country and industry of foreign parent or ultimate beneficial owner, and, for selected items, by State.

#### Executive Order 13132

This proposed rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

#### Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

#### Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The requirement has been submitted to OMB for approval as a revision to a collection currently approved under OMB control number 0608-0034.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget control number.

The survey, as proposed, is expected to result in the filing of reports from approximately 4,950 U.S. affiliates. The respondent burden for this collection of information is expected to vary from 20 minutes for the smallest and least complex company reporting on the BE-15 Supplement C form to 550 hours for the largest and most complex company reporting on the BE-15(LF) long form, with an average burden of 21.8 hours per response (down from 32 hours for the previous annual survey), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Total respondent burden for the previous (2001) annual survey was estimated at 128,000 hours. Total respondent burden for this proposed survey is estimated at about 107,900 hours (4,950 responses times 21.8 hours average burden). The decrease of 20,100 hours in the estimated total respondent burden is largely attributable to the proposed changes to the reporting requirements.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608-0034, Attention PRA Desk Officer for BEA, via the Internet at [pbugg@omb.eop.gov](mailto:pbugg@omb.eop.gov), or by fax at (202) 395-7245.

#### Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. Few, if any, small U.S. businesses are subject to the reporting requirements of this survey. Most small businesses are not foreign owned; those that are and have total assets, sales or gross operating revenues, and net income each equal to or less than \$30 million are not required to report on the BE-15(LF) long form, BE-15 (SF) short form, or BE-15(EZ) form. Such entities need only file, on a one-time basis, a BE-15, Supplement C—Claim for Exemption.

BEA estimates that each year there will be approximately 300 small business that file the BE-15, Supplement C—Claim for Exemption. Of the 300 small entities that will be filing the BE-15, Supplement C, the respondent burden for this collection of information is expected to range from 20 minutes to 75 minutes, with an average burden of 1 hour, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the aggregate respondent burden would be 300 hours.

Because there are few small businesses that are subject to the reporting requirements and because those small businesses that are subject to reporting are subject to minimal recordkeeping burdens, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant

impact on a substantial number of small entities.

#### List of Subjects in 15 CFR Part 806

International transactions, Economic statistics, Foreign investment in the United States, Penalties, Reporting and record keeping requirements.

Dated: August 19, 2003.

**Rosemary Marcuss,**

*Deputy Director, Bureau of Economic Analysis.*

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

#### PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

**Authority:** 5 U.S.C. 301; 22 U.S.C. 3101-3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.15(i) is revised to read as follows:

#### § 806.15 Foreign direct investment in the United States.

\* \* \* \* \*

(i) *Annual report form.* BE-15—Annual Survey of Foreign Direct Investment in the United States: One report is required for each consolidated U.S. affiliate, except a U.S. banking affiliate or U.S. bank holding company affiliate (including all of the subsidiaries and units of the bank holding company), exceeding an exemption level of \$30 million. A long form, BE-15(LF), must be filed by each nonbank majority-owned U.S. affiliate (a “majority-owned” U.S. affiliate is one in which the combined direct and indirect ownership interests of all foreign parents of the U.S. affiliate exceed 50 percent) for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds \$125 million (positive or negative), unless the nonbank majority-owned U.S. affiliate is selected to file a BE-15(EZ) form. A short form, BE-15(SF), must be filed by each nonbank majority-owned U.S. affiliate for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds \$30 million but no one item exceeds \$125 million (positive or negative), and by each nonbank minority-owned U.S. affiliate (a “minority-owned” U.S. affiliate is one in which the combined direct and

indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less) for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds \$30 million (positive or negative), unless the nonbank U.S. affiliate is selected to file a BE-15(EZ) form. A BE-15(EZ) form must be filed by each nonbank U.S. affiliate that is selected to file this form in lieu of filing the BE-15(LF) or BE-15(SF). A BE-15 Supplement C (Exemption Claim) must be filed by each nonbank U.S. affiliate to claim exemption from filing a BE-15(LF), BE-15(SF), or BE-15(EZ). Following an initial filing, the BE-15 Supplement C is not required annually from those nonbank U.S. affiliates that meet the stated exemption criteria from year to year.

\* \* \* \* \*

[FR Doc. 03-22074 Filed 8-28-03; 8:45 am]

BILLING CODE 3510-06-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-106486-98; INTL-0015-91]

RIN 1545-AW33; RIN 1545-PP78

#### Guidance Regarding the Treatment of Certain Contingent Payment Debt Instruments With One or More Payments That Are Denominated in, or Determined by Reference to, a Nonfunctional Currency

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

**ACTION:** Notice of proposed rulemaking; notice of public hearing; and withdrawal of previous proposed regulations section.

**SUMMARY:** This document contains proposed regulations regarding the treatment of contingent payment debt instruments for which one or more payments are denominated in, or determined by reference to, a currency other than the taxpayer's functional currency. These regulations are necessary because current regulations do not provide guidance concerning the tax treatment of such instruments. The proposed regulations generally provide that taxpayers should apply the existing rules under section 1275 of the Internal Revenue Code, with certain modifications, to nonfunctional currency contingent payment debt instruments. This document also

withdraws existing proposed regulations and provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments and requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for December 3, 2003, at 10 a.m. must be submitted by November 12, 2003.

**ADDRESSES:** Send submissions to: CC:PA:LDP:PR (REG-106486-98), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to: REG-106486-98, Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: <http://www.irs.gov/regs>. The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Milton Cahn at (202) 622-3870; concerning submission and delivery of comments and the public hearing, Treena Garrett, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent 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, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP Washington, DC 20224. Comments on the collection of information should be received by October 28, 2003. Comments are specifically requested concerning:

Whether the proposed collections of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 1.988-6(a)(1) (cross reference to § 1.1275-4) and § 1.988-6(d)(3). This information is required to ensure consistency in the treatment of the debt instrument between the issuer and the holders. This information will be used for audit and examination purposes. The disclosure of information is mandatory as regards the issuers of nonfunctional currency contingent payment debt instruments. The reporting of information is mandatory as regards holders of debt instruments which determine their own projected payment schedule. The recordkeeping requirement is mandatory for any party that determines the comparable yield and projected payment schedule for a debt instrument. The likely respondents are business or other for-profit institutions.

Taxpayers provide the information on a statement attached to its timely filed federal income tax return for the taxable year that includes the acquisition date of the debt instrument.

*Estimated total annual reporting, and/or recordkeeping burden:* 100 hours.

*Estimated average annual burden hours per respondent and/or recordkeeper:* 1 hour.

*Estimated number of respondents and/or recordkeepers:* 100.

*Estimated annual frequency of responses:* on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

#### Background

On March 17, 1992, Treasury and the IRS issued proposed regulations (INTL-0015-91), §§ 1.988-1(a)(3), (4) and (5), regarding contingent payment debt instruments, dual currency debt instruments and multi-currency debt