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DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

Docket No. 140424374-4374-01

RIN 0691-XC025

Direct Investment Surveys: BE-13, Survey of New Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to reinstate the reporting requirements for the BE-13, Survey of New Foreign Direct Investment in the United States, which was discontinued in 2009. BEA is proposing to reinstate this survey to better measure Commerce Department efforts through the "Build It Here, Sell It Everywhere" initiative to expand foreign business investment in the United States and to ensure complete coverage of BEA's other foreign direct investment statistics. This survey will collect information on the acquisition or establishment of U.S. business enterprises by foreign investors, which was collected on the previous BE-13 survey, and information on expansions by existing U.S. affiliates of foreign companies, which was not previously collected. This mandatory survey would be conducted under the authority of the International Investment and Trade in Services Survey Act (the Act). Unlike other BEA surveys conducted pursuant to the Act, a response would be required from persons subject to the reporting requirements of the BE-13, Survey of New Foreign Direct Investment in the United States, whether or not they are contacted by BEA, in order to insure that respondents subject to

the requirements for foreign direct investments in the U.S. are identified.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5:00 p.m. [INSERT DATE 60 DAYS AFTER PUBLICATION OF NOTICE OF PROPOSED RULEMAKING].

ADDRESSES: You may submit comments, identified by RIN 0691-XC025, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. For Keyword or ID, enter “EAB-2014-0001.”
- *E-mail:* Barbara.Hubbard@bea.gov.
- *Fax:* Office of the Chief, Direct Investment Division, (202) 606-2894.
- *Mail:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE-50, Washington, DC 20230.
- *Hand Delivery/Courier:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE-50, Shipping and Receiving, Section M100, 1441 L Street NW, Washington, DC 20005.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA through any of the methods above and to the Office of Management and Budget (OMB), OIRA, Paperwork Reduction Project 0608-0035, Attention PRA Desk Officer for BEA, via e-mail at pbugg@omb.eop.gov, or by FAX at 202-395-7245.

Public Inspection: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commentator may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. BEA will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Barbara Hubbard, Chief, Direct Transactions and Positions Branch (BE-49NI), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606-9846.

SUPPLEMENTARY INFORMATION: BEA will conduct the BE-13 survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108). Section 4(a) of the Act provides that the President shall, to the extent he deems necessary and feasible,

- (1) conduct a regular data collection program to secure current information on international capital flows and 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, employment and taxes of United States parent and affiliates, and the international investment and trade in services position of the United States;
- (2) conduct such studies and surveys as may be necessary to prepare reports in a timely manner on specific aspects of international investment and trade in services which may

have significant implications for the economic welfare and national security of the United States.

In Section 3 of Executive Order 11961, the President delegated the responsibility for performing functions under the Act concerning direct investment to the Secretary of Commerce, who has re delegated the responsibility to BEA.

By rule issued in 2012 (77 FR 24373), BEA established guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. This proposed rule would amend the regulations to provide for a revised BE-13 survey and to require a response from persons subject to the reporting requirements of the BE-13, whether or not they are contacted by BEA, in order to ensure complete coverage of new foreign direct investments.

The BE-13, Survey of New Foreign Direct Investment in the United States, was a mandatory survey and was conducted pursuant to the International Investment and Trade in Services Survey Act, 22 U.S.C. 3101-3108 (the Act). In 2009, BEA discontinued the BE-13 survey due to budget reductions. To better measure the results of Commerce's investment promotion efforts, BEA is seeking to reinstate the survey with a new questionnaire covering expansions of foreign-owned U.S. companies.

The purpose of the BE-13 survey is to collect data on the acquisition or establishment of U.S. business enterprises by foreign investors and the expansion of existing U.S. affiliates of foreign companies to establish new production facilities. The data collected on the survey are used to measure the amount of new foreign direct investment in the United States, assess the impact on the U.S. economy, and based on this assessment, make informed policy decisions regarding foreign direct investment in the United States. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person

(foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent interest of an unincorporated U.S. business enterprise, including a branch.

BEA will make the survey available via eFile, BEA's electronic filing system. Survey respondents will be notified of their obligation to file in November 2014 and BEA will collect data retroactively back to January 1, 2014. Thereafter, notifications will be mailed to respondents as BEA becomes aware of a potentially reportable investment or when annual cost updates are needed. The forms are due no later than 45 days after the acquisition is completed, the new legal entity is established, the expansion is begun, or the cost update is requested.

This proposed rule would amend 15 CFR 801.7 to set forth the reporting requirements for the BE-13, Survey of New 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, 44 U.S.C. 3501-3520 (PRA).

Description of Changes

The proposed changes would amend the regulations and the survey forms for the BE-13 survey. These amendments include changes in reporting requirements and questionnaire design as well as data items collected.

If this proposed rule is made final, U.S. affiliates would report information on expansions, acquisitions, and establishments of U.S. business enterprises by foreign investors. Unlike other BEA surveys conducted pursuant to the Act, persons subject to the reporting requirements of the BE-13, Survey of New Foreign Direct Investment in the United States, would be required to

respond whether or not they are contacted by BEA.

Depending on the type of investment transaction, U.S. affiliates would report their information on one of six forms—BE-13A, BE-13B, BE-13C, BE-13D, BE-13E, or BE-13 Claim for Exemption. Previously, one form was used to collect information on all transaction types; however, navigating a single form proved difficult for respondents because the type of transaction determined the amount of information required. Utilizing separate forms will ease respondent burden by streamlining navigation. The proposed reporting requirements for the six forms are:

- (a) Form BE-13A—Report for a U.S. business enterprise when a foreign entity acquires a voting interest (directly, or indirectly through an existing U.S. affiliate) in that enterprise, segment, or operating unit and (i) the total cost of the acquisition is greater than \$3 million, (ii) the U.S. business enterprise will operate as a separate legal entity, and (iii) by this acquisition, at least 10 percent of the voting interest in the acquired entity is now held (directly or indirectly) by the foreign entity.
- (b) Form BE-13B—Report for a U.S. business enterprise when a foreign entity, or an existing U.S. affiliate of a foreign entity, establishes a new legal entity in the United States and (i) the projected total cost to establish the new legal entity is greater than \$3 million, and (ii) the foreign entity owns 10 percent or more of the new business enterprise's voting interest (directly or indirectly).
- (c) Form BE-13C—Report for an existing U.S. affiliate of a foreign parent when it acquires a U.S. business enterprise or segment that it then merges into its operations and the total cost to acquire the business enterprise is greater than \$3 million.

- (d) Form BE-13D—Report for an existing U.S. affiliate of a foreign parent when it expands its operations to include a new facility where business is conducted and the projected total cost of the expansion is greater than \$3 million.
- (e) Form BE-13E—Report for a U.S. business enterprise that previously filed a BE-13B or BE-13D indicating that the established or expanded entity is still under construction.
- (f) Form BE-13 Claim for Exemption—Report for a U.S. business enterprise that (i) was contacted by BEA but does not meet the requirements for filing forms BE-13A, BE-13B, BE-13C, or BE-13D, or (ii) whether or not contacted by BEA, met all requirements for filing on Forms BE-13A, BE-13B, BE-13C, or BE-13D except the \$3 million reporting threshold.

In addition to the changes in the reporting criteria and form design, BEA proposes to add and delete some data items from the information collected on the previous BE-13 survey. The following items would be added to the survey:

- (1) Equity and debt components of the foreign parent funding;
- (2) A question asking if the new U.S. operation will have research and development activities;
- (3) A question asking if the new operation is under construction;
- (4) Employment projections;
- (5) Actual and projected construction expenditures by type and by year.

BEA also proposes to eliminate several items from the new foreign investment survey. The items proposed to be eliminated are: Investment incentives, sales by industry (total sales and the overall industry code for the new operation will still be collected), equity ownership interest (voting interest will still be collected), address of the foreign parent (country will still be collected), and acres of U.S. land owned.

Executive Order 12866

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

Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the PRA. The requirement will be submitted to OMB for approval as a reinstatement, with change, of a previously approved collection under OMB control number 0608-0035.

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 PRA unless that collection displays a currently valid OMB control number.

The BE-13 survey, as proposed, is expected to result in the filing of reports from approximately 1,350 U.S. affiliates each year. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 1.6 hours per response, 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 total respondent burden for this survey is estimated at 2,160 hours, compared to 900 hours for the previous BE-13 survey. The increase in burden hours is due to the increase in the number of respondents expected to file.

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.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA and OMB following the instructions given in the ADDRESSES section above.

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 (RFA), 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. The changes proposed in this rule are discussed in the preamble and are not repeated here.

For small businesses that meet the reporting requirements of the survey, BEA has attempted to keep burden to a minimum by asking only those questions that are considered essential. The questions required are for data items that a company would ordinarily have obtained when planning an acquisition or expansion and therefore the answers are likely to be readily available from the existing records of the business.

The amount of information required to be reported by each U.S. enterprise is determined by the type of transaction. U.S. enterprises acquired by a foreign investor are only required to file the BE-13 survey once. Foreign-owned U.S. enterprises that are newly established or are undergoing expansion will be required to file an initial report and then will be asked to revise their projected costs every year until construction is complete.

Because those small businesses that are impacted are subject to only a minimal reporting

burden, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

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

Dated: May 16, 2014.

Brent Moulton,

Acting Director, Bureau of Economic Analysis.

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801 as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

2. Revise § 801.3 to read as follows:

§ 801.3 Reporting requirements.

Except for surveys subject to rulemaking in § 801.7, reporting requirements for all other surveys conducted by the Bureau of Economic Analysis shall be as follows:

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Director of the Bureau of Economic Analysis in the FEDERAL REGISTER prior to the implementation of a survey;

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code, persons notified of these surveys and subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act; and

(c) Persons not notified in writing of their filing obligation by the Bureau of Economic Analysis are not required to complete the survey.

3. Revise § 801.4 to read as follows:

§ 801.4 Recordkeeping requirements.

In accordance with section 3104(b)(1) of title 22 of the United States Code, persons subject to the jurisdiction of the United States shall maintain any information which is essential for carrying out the surveys and studies provided for by the Act.

4. Amend § 801.7 to read as follows:

§ 801.7 Rules and regulations for the BE-13, Survey of New Foreign Direct Investment in the United States.

The BE-13, Survey of New Foreign Direct Investment in the United States is conducted to collect data on the acquisition or establishment of U.S. business enterprises by foreign investors and the expansion of existing U.S. affiliates of foreign companies to establish a new production facility. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-13 survey are given in paragraphs (a) through (d) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-13, Survey of New Foreign Direct Investment in the United States, contained herein, whether or not they are contacted by BEA. Also, a person, or their agent, that is contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant this section. This may be accomplished by filing the properly completed BE-13 report (BE-13A, BE-13B, BE-13C, BE-13D, BE-13E, or BE-13 Claim for Exemption) within 45 days of being contacted.

(b) *Who must report.* A BE-13 report is required of any U.S. company in which:

(1) A foreign direct investment in the United States relationship is created;

(2) An existing U.S. affiliate of a foreign parent establishes a new U.S. legal entity, expands its U.S. operations, or acquires a U.S. business enterprise, or;

(3) A U.S. business enterprise that previously filed a BE-13B or BE-13D indicating that the established or expanded entity is still under construction. Foreign direct investment is defined as the ownership or control by one foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent interest of an unincorporated U.S. business enterprise, including a branch.

(c) *Forms to be filed.* Depending on the type of investment transaction, U.S. affiliates would report their information, on one of six forms—BE-13A, BE-13B, BE-13C, BE-13D, BE-13E, or BE-13 Claim for Exemption.

(1) Form BE-13A—Report for a U.S. business enterprise when a foreign entity acquires a voting interest (directly, or indirectly through an existing U.S. affiliate) in that enterprise, segment, or operating unit and:

(i) The total cost of the acquisition is greater than \$3 million;

(ii) The U.S. business enterprise will operate as a separate legal entity, and;

(iii) By this acquisition, at least 10 percent of the voting interest in the acquired entity is now held (directly or indirectly) by the foreign entity.

(2) Form BE-13B—Report for a U.S. business enterprise when a foreign entity, or an existing U.S. affiliate of a foreign entity, establishes a new legal entity in the United States and:

(i) The projected total cost to establish the new legal entity is greater than \$3 million, and;

(ii) The foreign entity owns 10 percent or more of the new business enterprise's voting interest (directly or indirectly).

(3) Form BE-13C—Report for an existing U.S. affiliate of a foreign parent when it acquires a U.S. business enterprise or segment that it then merges into its operations and the total cost to acquire the business enterprise is greater than \$3 million.

(4) Form BE-13D—Report for an existing U.S. affiliate of a foreign parent when it expands its operations to include a new facility where business is conducted and the projected total cost of the expansion is greater than \$3 million.

(5) Form BE-13E—Report for a U.S. business enterprise that previously filed a BE-13B or BE-13D indicating that the established or expanded entity is still under construction. This form will collect updated cost information and will be collected annually until construction is complete.

(6) Form BE-13 Claim for Not Filing—Report for a U.S. business enterprise that:

(i) was contacted by BEA but does not meet the requirements for filing forms BE-13A, BE-13B, BE-13C, or BE-13D; or

(ii) whether or not contacted by BEA, met all requirements for filing on Forms BE-13A, BE-13B, BE-13C, or BE-13D except the \$3 million reporting threshold.

(d) *Due date.* The BE-13 forms are due no later than 45 days after the acquisition is completed, the new legal entity is established, the expansion is begun, or the cost update is requested.

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