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## **DEPARTMENT OF COMMERCE**

### **Bureau of Economic Analysis**

#### **15 CFR Part 801**

**[Docket No. 1206013202-4700-01 ]**

**RIN 0691-AA83**

#### **Direct Investment Surveys: BE-10, Benchmark Survey of U.S. Direct Investment Abroad**

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Final rule.

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**SUMMARY:** This final rule amends regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to reinstate reporting requirements for the 2014 BE-10, Benchmark Survey of U.S. Direct Investment Abroad. Benchmark surveys are conducted every five years; the prior survey covered 2009. The benchmark survey covers the universe of U.S. direct investment abroad, and is BEA's most comprehensive survey of such investment in terms of subject matter. For the 2014 benchmark survey, BEA will make changes in the data items collected. No changes will be made to the reporting requirements for the survey. This mandatory survey will be conducted under the authority of the International Investment and Trade in Services Survey Act (the Act). Unlike many other BEA surveys conducted pursuant to the Act, a response will be required from persons subject to the reporting requirements of the BE-10, Benchmark Survey of U.S. Direct Investment Abroad, whether or not they are contacted by BEA, in order to ensure that respondents subject to the requirements for U.S. direct investment abroad are identified.

**DATES:** This final rule is effective [insert date 30 days after publication in Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Patricia Abaroa, Chief, Direct Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606-9591.

**SUPPLEMENTARY INFORMATION:** On August 14, 2014, BEA published a notice of proposed rulemaking that set forth revised reporting criteria for the BE-10, Benchmark Survey of U.S. Direct Investment Abroad (79 FR 47599-47603). On September 9, 2014, BEA published a correction to the notice of proposed rulemaking to correct the Regulation Identifier Number (RIN) that was listed in the first notice (79 FR 53355). BEA received two comments on the proposed rule.

One comment was written on behalf of hedge fund managers that are subject to BE-10 reporting requirements. The letter suggested that the BE-10 survey is not well suited to hedge funds and that for these respondents the burden of reporting is significant. The commenter made several recommendations, including 1) that entities that are not contacted by BEA should have no reporting responsibilities (similar to other BEA surveys), 2) that BEA should not require reporting by U.S. investment managers on their management of non-U.S. investment funds, and 3) that BEA should provide survey instructions specific to hedge fund filers. BEA is very concerned about respondent burden and has employed several strategies to reduce the burden where possible. BEA cannot implement the first two recommendations because of the legal requirements and the statistical needs that govern how the data are collected and tabulated. To address the third recommendation, BEA will consider what additional guidance it can offer to hedge fund filers, possibly in the form of Frequently Asked Questions (FAQs).

The other commenter was a data user that urged BEA to reorient the BE-10 survey to address current issues related to global value chains and trade in value added. The commenter recommended that BEA systematically capture data on firm sales of goods and services by business function and international surveys industry (ISI) code, imports and exports by country, and distribution of sales and purchases by type of customer. The commenter also suggested that BEA reorganize the BE-10 survey to collect data in matrix format. BEA does not collect sales by business function and would need to explore the feasibility of collecting this information by conducting outreach to respondent companies to determine what information classified by business function might be available in their records. BEA will consider this addition for future surveys. BEA does collect sales data by ISI code and by type of customer as well as data on trade in services by country and on affiliated goods trade by country. To offer additional information that will be useful in analysis of trade in value added, BEA will add questions to the BE-10 survey to collect a regional breakdown of unaffiliated goods trade by U.S. parent companies. The BE-10 does not cover purchased inputs and BEA believes that this information would be more accurately reported on establishment level surveys. Regarding survey design, BEA has tended to minimize use of matrix formatting on the BE-10 survey because of feedback from experts in survey response indicating that matrix formatting leads to unit and item nonresponse on surveys.

The additional questions related to unaffiliated trade in goods (described in the Description of Changes section below) will be reflected in the final versions of the forms. This final rule adds 15 CFR Part 801.8 to set forth the reporting requirements for the BE-10, Benchmark Survey of U.S. Direct Investment Abroad. BEA conducts the BE-10 survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101- 3108).

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 final rule amends the regulations to require a response from persons subject to the reporting requirements of the BE-10, whether or not they are contacted by BEA, in order to ensure complete coverage of U.S. direct investment abroad.

The benchmark survey covers the U.S. direct investment abroad universe and is BEA's most comprehensive survey of such investment in terms of subject matter. U.S. direct investment abroad is defined as the ownership or control, directly or indirectly, by one U.S. person of 10 percent or more of the voting securities of an incorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. parent companies and their foreign affiliates. The data are needed to measure the size and economic significance of U.S. direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies. These data are used to derive current universe estimates of direct investment from sample data collected in other BEA surveys in non-benchmark years. In particular, they would serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions, international investment position, and national income and product accounts, and for annual estimates of the operations of U.S. parent companies and their foreign affiliates.

### **Description of Changes**

The changes amend the regulations and the survey forms for the BE-10 benchmark

survey. These amendments include changes in the data items collected and questionnaire design.

Under the revised regulations, unlike many other BEA surveys conducted pursuant to the Act, persons subject to the reporting requirements of the BE-10, Survey of U.S. Direct Investment Abroad, are required to respond whether or not they are contacted by BEA.

BEA will add and delete some items on the benchmark survey forms. Most of the additions are made in response to suggestions from data users. The following items will be added to the benchmark survey:

- (1) For U.S. parent companies, questions will be added to collect data on the U.S. imports of goods by the intended use of the goods and by whether the shipper of the goods is a foreign affiliate or an unaffiliated foreign entity.
- (2) For U.S. parent companies, questions will be added to collect data on U.S. exports to and imports from unaffiliated foreigners in the following regions: Canada, Europe, Latin America and other Western Hemisphere, Africa, Middle East, and Asia and Pacific.
- (3) For larger U.S. parent companies (those with assets, sales, or net income greater than \$300 million), questions will be added to collect information on assets, liabilities, and interest receipts and payments that are related to banking activities. These questions are collected on the Annual Survey of U.S. Direct Investment Abroad (BE-11).
- (4) A question will be added to collect the city in which each foreign affiliate is located.
- (5) For majority-owned foreign affiliates with assets, sales, or net income greater than \$80 million, a question will be added to the balance sheet to collect data on cash and cash equivalents.
- (6) For larger majority-owned foreign affiliates (those with assets, sales, or net income greater than \$300 million), questions will be added to the section on sales to collect the top five countries (besides the U.S. and the country of the affiliate) to which the affiliates

made sales. For each country, sales will be categorized by customer: “other foreign affiliates of the U.S. Reporter(s)” and “unaffiliated customers.” An “all other” item will also be added after the top five countries. Questions on sales by region of destination will be retained.

- (7) For majority-owned foreign affiliates with assets, sales, or net income greater than \$80 million, questions will be added to the section on royalties and license fees to collect receipts from U.S. parents, receipts from other U.S. persons, payments to U.S. parents, and payments to other U.S. persons. On the previous benchmark survey, this section only included receipts from and payments to foreign persons.
- (8) For foreign affiliates with assets, sales, or net income greater than \$25 million, several check-box questions will be added to ensure that certain types of finance companies do not report intercompany debt to BEA that is already reported on Treasury International Capital surveys. Similar questions are included in the Quarterly Survey of U.S. Direct Investment Abroad (BE-577).
- (9) For foreign affiliates with assets, sales, or net income between \$25 million and \$80 million, a question will be added to collect expenditures for research and development performed by the foreign affiliate.

Several questions will be modified:

- (1) Questions on contract manufacturing will be updated to incorporate improved wording.
- (2) The cash item on the balance sheet for U.S. parent companies will be modified to include cash equivalents.

BEA will eliminate several items from the benchmark survey because they are no longer used:

- (1) Official foreign identification numbers issued by host-country governments to foreign affiliates on BE-10B.
- (2) Withholding taxes on interest received from and paid to U.S. parent companies by foreign affiliates on BE-10B.

In addition, BEA will redesign the survey questionnaires. The new design will incorporate improvements made to other BEA surveys. Survey instructions and data item descriptions will be changed to improve clarity and make the benchmark survey forms more consistent with those of other BEA surveys.

#### **Executive Order 12866**

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

#### **Executive Order 13132**

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

#### **Paperwork Reduction Act**

The collection of information in this final rule has been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). OMB has pre-approved the information collection under OMB control number 0608-0049.

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-10 survey is expected to result in the filing of reports from approximately 3,900 respondents. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 144 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 561,100 hours, compared to 459,400 hours for the previous (2009) benchmark survey. The increase in burden hours is due to an increase in the size of the respondent universe.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the final rule should be sent to both BEA via e-mail at [Patricia.Abaroa@bea.gov](mailto:Patricia.Abaroa@bea.gov), and to OMB, O.I.R.A., Paperwork Reduction Project 0608-0049, Attention PRA Desk Officer for BEA, via e-mail 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, certified at the proposed rule stage 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 final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the certification or the economic impact of the rule more generally. No final regulatory flexibility analysis was prepared.

## **List of Subjects in 15 CFR Part 801**

Economic statistics, International transactions, Multinational companies, Penalties, Reporting and record keeping requirements, U.S. direct investment abroad.

**Brian C. Moyer,**

*Director, Bureau of Economic Analysis.*

For reasons set forth in the preamble, BEA amends 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 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 and 801.8, 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. Add § 801.8 to read as follows:

**§ 801.8 Requirements for the BE-10, Benchmark Survey of U.S. Direct Investment Abroad—2014.**

A BE-10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 2014. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 and 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional requirements for the BE-10 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-10, Benchmark Survey of U.S. Direct Investment Abroad—2014, 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:

- (1) Certifying in writing, by the due date of the survey, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE-10 survey;
- (2) Completing and returning the “BE-10 Claim for Not Filing” by the due date of the survey; or

(3) Filing the properly completed BE-10 report (comprising Form BE-10A and Form(s) BE-10B, BE-10C, and/or BE-10D) by May 29, 2015, or June 30, 2015, as required.

(b) *Who must report.* (1) A BE-10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, including a branch—at any time during the U.S. person's 2014 fiscal year.

(2) If the U.S. person had no foreign affiliates during its 2014 fiscal year, a “BE-10 Claim for Not Filing” must be filed by the due date of the survey; no other forms in the survey are required. If the U.S. person had any foreign affiliates during its 2014 fiscal year, a BE-10 report is required and the U.S. person is a U.S. Reporter in this survey.

(3) Reports are required even if the foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the U.S. person's 2014 fiscal year.

(4) The amount and type of data required to be reported vary according to the size of the U.S. Reporters or foreign affiliates, and, for foreign affiliates, whether they are majority-owned or minority-owned by U.S. direct investors. For purposes of the BE-10 survey, a “majority-owned” foreign affiliate is one in which the combined direct and indirect ownership interest of all U.S. parents of the foreign affiliate exceeds 50 percent; all other affiliates are referred to as “minority-owned” affiliates.

(c) *Forms to be filed.* (1) Form BE-10A must be completed by a U.S. Reporter. If the U.S. Reporter is a corporation, Form BE-10A is required to cover the fully consolidated U.S. domestic business enterprise. It must also file Form(s) BE-10B, C, and/or D for its foreign affiliates, whether held directly or indirectly.

(2) Form BE-10B must be filed for each majority-owned foreign affiliate for which any of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$80 million (positive or negative) at any time during the affiliate's 2014 fiscal year.

(3) Form BE-10C must be filed:

(i) For each majority-owned foreign affiliate for which any one of the three items listed in paragraph (c)(2) of this section was greater than \$25 million but for which none of these items was greater than \$80 million (positive or negative), at any time during the affiliate's 2014 fiscal year, and

(ii) For each minority-owned foreign affiliate for which any one of the three items listed in (c)(2) of this section was greater than \$25 million (positive or negative), at any time during the affiliate's 2014 fiscal year.

(4) Form BE-10D must be filed for majority- or minority-owned foreign affiliates for which none of the three items listed in paragraph (c)(2) of this section was greater than \$25 million (positive or negative) at any time during the affiliate's 2014 fiscal year. Form BE-10D is a schedule; a U.S. Reporter would submit one or more pages of the form depending on the number of affiliates that are required to be filed on this form.

(d) *Due date.* A fully completed and certified BE-10 report comprising Form BE-10A and Form(s) BE-10B, C, and/or D (as required) is due to be filed with BEA not later than May 29, 2015, for those U.S. Reporters filing fewer than 50, and June 30, 2015, for those U.S. Reporters filing 50 or more, foreign affiliate Forms BE-10B, C, and/or D. If the U.S. person had no foreign affiliates during its 2014 fiscal year, it must file a BE-10 Claim for Not Filing by May 29, 2015.

**BILLING CODE 3510-06-P**

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