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## **DEPARTMENT OF COMMERCE**

### **Bureau of Economic Analysis**

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

**[Docket No. 160531475-6475-01]**

**RIN 0691-AA85**

### **Direct Investment Surveys: BE-13, Survey of New Foreign Direct Investment in the United States, and Changes to Private Fund Reporting on Direct Investment Surveys**

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

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** This proposed rule would amend regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to set forth the reporting requirements for the BE-13, Survey of New Foreign Direct Investment in the United States. This proposed rule also provides information about, and an opportunity to comment on, plans to amend the reporting requirements for certain private funds on BEA's surveys of foreign direct investment in the United States, including the BE-605, Quarterly Survey of Foreign Direct Investment in the United States; the BE-15, Annual Survey of Foreign Direct Investment in the United States; and the BE-13, Survey of New Foreign Direct Investment in the United States.

The BE-13 survey collects information on the acquisition or establishment of U.S. business enterprises by foreign investors, and information on expansions by existing U.S. affiliates of foreign companies. The data collected through the survey are used to measure the amount of new foreign direct investment in the United States and ensure complete coverage of BEA's other foreign direct investment statistics. BEA proposes several changes to the survey that will simplify reporting and provide more complete information for use in BEA's direct investment

statistics. BEA also proposes changes in survey form design and accompanying instructions to improve the quality of the data collected and reduce respondent burden. This mandatory BE-13 survey is required from persons subject to the reporting requirements, whether or not they are contacted by BEA.

**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 DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** You may submit comments, identified by RIN 0691- AA85, 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-2016-0001.”
- *E-mail:* [Patricia.Abaroa@bea.gov](mailto:Patricia.Abaroa@bea.gov).
- *Mail:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE-49, Washington, DC 20233.
- *Hand Delivery/Courier:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE-49, 4600 Silver Hill Road, Suitland, MD 20746.

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 BEA through any of the methods above and also 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](mailto: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:** Patricia Abaroa, Chief, Direct Investment Division (BE-49), Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278-9591.

**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 parents 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 redelegated the responsibility to BEA.

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 a new facility where business is conducted. 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. Notifications will be mailed to respondents as BEA becomes aware of a potentially reportable investment or when annual cost updates are needed. A response is required whether or not the respondent is contacted by BEA. The forms are due no later than 45 days after the acquisition is completed, the new U.S. business enterprise is established, the expansion is begun, the cost update is requested, or a notification letter is received from BEA by a U.S. business enterprise that does not meet the filing requirements for the survey.

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**

BEA proposes to change the reporting requirements for certain private funds that file BEA's surveys of foreign direct investment in the United States: the BE-605, Quarterly Survey of Foreign Direct Investment in the United States; BE-15, Annual Survey of Foreign Direct Investment in the United States; and the BE-13, Survey of New Foreign Direct Investment in the United States. The BE-12, Benchmark Survey of Foreign Direct Investment in the United States, will also be affected by this change but will be addressed in a separate proposed rule in 2017.

BEA, in cooperation with the Treasury Department, proposes to instruct reporters of investments in private funds that meet the definition of direct investment (that is, ownership by one person of 10 percent or more of the voting interest of a business enterprise) but display characteristics of portfolio investment (specifically, investors who do not intend to control or influence the management of an operating company) to report through the Treasury International Capital (TIC) reporting system, where other related portfolio investments are already being reported, and not to report on BEA's direct investment surveys. Direct investment in operating companies, including investment by and through private funds, will continue to be reported to BEA. This change will align the U.S. direct investment and portfolio investment data more closely with the intent of the investment. In addition, it will reduce burden for respondents, many of whom now report both to the TIC reporting system and to BEA's direct investment reporting system. Under the planned change, U.S. affiliates that are private funds but do not own, directly or indirectly, 10 percent or more of the voting interest of another business enterprise that is not

also a private fund or holding company, will no longer be required to report on BEA surveys of foreign direct investment in the United States.

The proposed changes also amend the regulations and the survey forms for the BE-13 survey. These amendments include changes in reporting requirements and questionnaire design and instructions as well as data items collected. The following changes are specific to the BE-13.

BEA proposes to combine Forms BE-13A, Report for Acquisition of a U.S. Business Enterprise That Remains a Separate Entity, and BE-13C, Report for Acquisition of a U.S. Business Enterprise That is Merged With an Existing U.S. Affiliate, into one form and discontinue the use of Form BE-13C. BEA proposes that these acquisitions be filed on Form BE-13A along with acquired U.S. business enterprises that will operate as a separate legal entity after the acquisition. The revised Form BE-13A will be a 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 U.S. business enterprise (including segments, operating units, or real estate) and (1) the total cost of the acquisition is greater than \$3 million; and (2) by this acquisition, the foreign entity now owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the acquired U.S. business enterprise. BEA originally offered separate forms to alleviate burden on the merging entities by not asking unnecessary questions. BEA found that companies often did not understand the difference between the forms and consequently reported on the wrong one, resulting in resubmissions. Combining the forms will eliminate confusion and the need for resubmission. BEA proposes to redesign Form BE-13A—adding, deleting, and revising questions—to limit the burden for the merging entities. These changes will not affect the data reported on the survey.

BEA proposes to add an instruction to eliminate the requirement to file two forms—Form BE-13B (establishment) and Form BE-13A (acquisition)—when a new U.S. business enterprise

is established to facilitate a single U.S. acquisition that takes place within 30 days. The U.S. business enterprise will be asked to consolidate the new U.S. business enterprise with the acquired U.S. business enterprise and submit a single Form BE-13A. The additional Form BE-13B did not provide any benefit to BEA's data collection and the elimination of the BE-13B filing requirement will be a reduction of burden on respondents. A question will be added to Form BE-13A to capture the names of both the established and acquired entities in this scenario.

BEA proposes to clarify the reporting requirements for Form BE-13E, Cost Update for Projects Originally Reported on Forms BE-13B or BE-13D, by removing the reference to the established or expanded business enterprise still being under construction. At least one Form BE-13E must be filed for each reported BE-13B or BE-13D form to obtain actual costs since the cost data provided on these forms may not be final when filed.

BEA is not proposing any changes to the reporting requirements for Form BE-13D, Report for the Expansion of an Existing U.S. Affiliate, or Form BE-13 Claim for Exemption.

BEA proposes to modify the questions on existing U.S. affiliates in the ownership chain between the acquired or established U.S. business enterprise and the foreign parent to narrow the focus to the specific affiliates needed for analysis and to improve the sample frames of the other BEA surveys. Currently, the questions about existing U.S. affiliates are part of the foreign parent section, which is repeated for each foreign parent, creating duplicate entries for existing U.S. affiliates that have multiple foreign parents. The revised survey forms will eliminate this duplication by creating a new section for reporting ownership by existing U.S. affiliates. The updated questions increase the value of the collected information, reduce processing time, and reduce burden on respondents by greatly reducing the likelihood they provide duplicate or otherwise unneeded information.

BEA proposes to restructure and rephrase the cost questions to more accurately capture any

funding from the affiliated foreign group to facilitate the new foreign direct investment and to determine whether the funding was in the form of a loan or capital contribution. These data are needed to support BEA's U.S. International Transactions Accounts.

BEA proposes to add an instruction on Forms BE-13B and BE-13D to direct U.S. businesses to report total expected costs by year based on their fiscal year end. Previously, the form did not specify whether to report costs on a calendar or fiscal year end basis.

BEA proposes to add an instruction on Form BE-13 Claim for Exemption to direct U.S. businesses that are reporting expansions to skip the questions asking for U.S. affiliates' total assets, total liabilities, and net income (loss). These questions are not asked on Form BE-13D, Report for the Expansion of an Existing U.S. Affiliate, where expected costs are greater than \$3 million, so they are not required for expansions with expected costs of \$3 million or less. This was an oversight when BEA created the survey form. U.S. affiliate total sales, number of employees, industry code, country of foreign parent, and country of ultimate beneficial owner will still be required.

BEA proposes to eliminate "lease" and "construction" from the list of expected costs on Forms BE-13B and BE-13D. BEA will continue to collect data on land; property, plant, and equipment (PP&E); intellectual property rights; fees, taxes, permits, and licenses; and other costs. Since leased equipment can also be classified as construction costs or PP&E, respondents struggled with these questions and the data BEA collected had costs inconsistently classified. BEA determined that any capitalized lease or construction costs could be collected as PP&E, so lease and construction can be eliminated. Any construction costs that are not to be capitalized can be combined with other costs.

BEA proposes to add a question to Form BE-13D to collect the name of the expanding U.S. affiliate and to Form BE-13 Claim for Exemption to collect the name of the acquired,

established, or expanding U.S. business enterprise. BEA has found that the name of the company filing these forms is often different than the name of the acquired, established, or expanding U.S. business enterprise. Obtaining the name of the U.S. business enterprise would help BEA evaluate respondent compliance.

BEA proposes to add a question to Form BE-13 Claim for Exemption to collect the state where the new investment is located in cases when this form is being filed to report a new investment that met all the requirements for filing on Forms BE-13A, BE-13B, or BE-13D except the \$3 million reporting threshold. This addition will improve BEA's data on new investment by state.

#### **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 2,550 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 1.1 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 2,805 hours, compared to 2,160 hours for the previous BE-13 survey estimate. The increase in burden hours is due to the increase in the number of respondents expected to file. The previous estimate of the number of respondents was made before the survey was launched; the revised estimate is based on two years of data collection.

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.

Most of the U.S. business enterprises that are required to file the survey are units of multinational enterprises. In order to qualify as a small business, the multinational enterprise as a whole must be evaluated when determining if the business meets the size standards set by the Small Business Administration. While BEA only collects information on the U.S. portion of the multinational enterprise, BEA estimates, based on private subscription-based databases, that fewer than 2 percent of the U.S. businesses required to file the BE-13 survey are units of foreign multinational enterprises that would be considered small businesses.

For the few 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, establishment, or expansion and therefore the answers are likely to be readily available from the existing records of the business.

Because few small businesses are required to file the survey and because those 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: June 17, 2016.

**Brian Moyer,**

*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. 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 new facilities where business is conducted. 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. 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, who 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 to this section. This may be accomplished by filing the properly completed BE-13 report (BE-13A, BE-13B, BE-13D, BE-13E, or BE-13 Claim for Exemption).
- (b) *Who must report.* A BE-13 report is required of any U.S. business enterprise, except certain private funds, see exception in item (b.4.), 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. business enterprise, expands its U.S. operations, or acquires a U.S. business enterprise, or;
  - (3) BEA requests a cost update (Form BE-13E) for a U.S. business enterprise that previously filed Form BE-13B or BE-13D.
  - (4) Certain private funds are exempt from reporting on the BE-13 survey. If a U.S. business enterprise is a private fund and does not own, directly or indirectly, 10 percent or more of another business enterprise that is not also a private fund or a holding company, it is not

required to file any BE-13 report except to indicate exemption from the survey if contacted by BEA.

(c) *Forms to be filed.* Depending on the type of investment transaction, U.S. affiliates would report their information on one of five forms—BE-13A, BE-13B, 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 U.S. business enterprise including segments, operating units, or real estate; and

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

(ii) By this acquisition, the foreign entity now owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the acquired U.S. business enterprise.

(2) Form BE-13B—Report for a U.S. business enterprise when it is established by a foreign entity or by an existing U.S. affiliate of a foreign parent; and

(i) The expected total cost to establish the new U.S. business enterprise is greater than \$3 million; and

(ii) The foreign entity owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the new U.S. business enterprise.

(3) 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 expected total cost of the expansion is greater than \$3 million.

(4) Form BE-13E—Report for a U.S. business enterprise that previously filed Form BE-13B or BE-13D. Form BE-13E collects updated cost information and will be

collected annually until the establishment or expansion of the U.S. business enterprise is complete.

(5) 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, or BE-13D; or

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

(d) *Due date.* The BE-13 forms are due no later than 45 calendar days after the acquisition is completed, the new U. S. business enterprise is established, the expansion is begun, the cost update is requested, or a notification letter is received from BEA by a U.S. business enterprise that does not meet the filing requirements for the survey.

**BILLING CODE 3510-06-P**

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