



DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 250826-0146]

RIN 0691-AA94

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

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final Rule.

SUMMARY: This final rule amends 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 (“BE-13 survey”). 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 will change the reporting requirements of the survey to reduce respondent burden, simplify reporting, and increase the efficiency of the data collection. This mandatory BE-13 survey is required from persons subject to the reporting requirements, whether or not they are contacted by BEA.

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

FOR FURTHER INFORMATION CONTACT: Amanda Budny, Chief, Direct Transactions and Positions Branch (BE-49), Bureau of Economic Analysis, U.S. Department of Commerce; email *Amanda.Budny@bea.gov* or 301-278-9154.

SUPPLEMENTARY INFORMATION:

The BE-13, Survey of New Foreign Direct Investment in the United States, is a mandatory survey conducted by BEA under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108).

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 by the survey are used to measure the amount and economic significance of new foreign direct investment in the United States and assess its impact on the U.S. economy. 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.

This final rule amends 15 CFR 801.7 to set forth the reporting requirements for the BE-13, Survey of New Foreign Direct Investment in the United States. Under this rule, persons subject to the reporting requirements of the BE-13, Survey of New Foreign Direct Investment in the United States, are required to respond, whether or not they are contacted by BEA.

Description of Changes

This final rule amends the regulations at 15 CFR part 801 by modifying § 801.7. Specifically, BEA changes the reporting requirements of, and adds one question to, form BE-13 Claim for Exemption. The form collects information on new foreign direct investment transactions – i.e.

the acquisition or establishment of U.S. business enterprises by foreign investors and the expansion of existing U.S. affiliates of foreign companies – if the transactions meet all requirements of engaging in an eligible investment activity, but the total cost of the acquisition, establishment, or expansion being reported is less than or equal to \$3 million.

BEA will increase the threshold for filing the BE-13 Claim for Exemption form from \$3 million to \$40 million and add one question to the form requesting the total cost of the acquisition, establishment, or expansion. BEA has determined that this increased threshold on the BE-13 Claim for Exemption, in conjunction with directly collecting the transaction cost, would be sufficient to collect the information necessary to provide data users with insightful statistics measuring the economic impact of these investments. The added question requesting the total cost should not increase the estimated respondent burden for filing the BE-13 Claim for Exemption, as that information must be known to determine if the claim for exemption is applicable. This change would reduce respondent burden and the BEA resources needed to collect and process these investments.

Administrative Procedure Act and Regulatory Flexibility Act

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary. This rule removes a requirement, significantly reducing overall burden, especially on small businesses, and BEA will continue to capture all investments, regardless of investment size. As stated in the preceding section, BEA is increasing the threshold for filing the BE-13 claim for exemption from \$3 million to \$40 million, greatly increasing the number of investments that can be reported using the BE-13 claim for exemption form. This is a significant reduction in burden for these smaller investments as the BE-13 claim for exemption form has an estimated burden time of 36 minutes, compared to estimated burden of between 72 and 150 minutes for the full BE-13A, BE-13B, and BE-13D forms.

Because some members of the public rely on this data, the transactions with a value of \$40 million or less will continue to be collected on the claim for exemption, which will have one question added to directly collect transaction cost and otherwise captures the most critical variables for inclusion in data tables and BEA will have no drop in data quality. Therefore, public comment would serve no purpose and is unnecessary. There is also good cause under 5 U.S.C. 553(d)(1) to waive the 30-day delay in effectiveness because this rule relieves a restriction as the new claim for exemption is a shorter form that significantly reduces the survey response burden by increasing the cut-off for the BE-13 claim for exemption from \$3 million per investment transaction to \$40 million.

Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Executive Order 12866, 14192, 13132, and 14294

This final rule has been determined to be not significant for purposes of E.O. 12866. This is a E.O. 14192 deregulatory action. This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132. Consistent with E.O. 14294, notice is given that this final rule would be subject to a criminal liability for willful violations by individuals or knowing violations by any officer, director, employee, or agent of any corporation, as set forth in 22 U.S.C. 3105(c).

Paperwork Reduction Act

The collection-of-information in this final rule was submitted to the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (PRA). OMB approved the revision of the currently approved information collection under BE-13, Survey of New Foreign Direct Investment in the United States, 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 is expected to result in the filing of approximately 3,417 reports from U.S. affiliates each year. The respondent burden for this collection of information is expected to vary because of differences in company structure, size, and complexity, but is estimated to average 0.6 hours per response. The burden includes 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 2,032 hours, compared to 3,027 hours for the previous BE-13 survey estimate. The decrease in burden hours is due to the increase in the proportion of respondents expected to file on the BE-13 Claim for Exemption.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule should be sent to both BEA via email at PRAComments@bea.gov and to OMB OIRA, Paperwork Reduction Project 0608-0035, Attention PRA Desk Officer for BEA, via email at OIRA_Submission@omb.eop.gov.

List of Subjects in 15 CFR Part 801

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

Paul W. Farello,

Associate Director of International Economics, 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 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 investor 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 describe the proposed information collection in a public notice and will solicit comments according to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501-3520). 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 \$40 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 \$40 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 \$40 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 for three years after the year of the establishment or expansion of the U.S. business enterprise.

(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 \$40 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.