



DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No.: 170322304-7304-01]

RIN 0691-AA86

Direct Investment Surveys: BE-12, Benchmark Survey of 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 set forth the reporting requirements for the 2017 BE-12, Benchmark Survey of Foreign Direct Investment in the United States. The BE-12 survey is conducted every five years; the prior survey covered 2012. The benchmark survey covers the universe of foreign direct investment in the United States and is BEA's most detailed survey of such investment. For the 2017 benchmark survey, BEA proposes changes in data items collected, the design of the survey forms, and the reporting requirements for the survey to satisfy changing data needs, improve data quality and the effectiveness and efficiency of data collection.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5 p.m. **[INSERT DATE 60 DAYS AFTER DATE OF**

PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 0691-AA86, 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-2017-0001."

- *E-mail*: 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 both to BEA through any of the methods above and to the Office of Management and Budget (OMB), O.I.R.A., Paperwork Reduction Project 0608–0042, Attention PRA Desk Officer for BEA, via e-mail at jpark@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-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20233; e-mail patricia.abaroa@bea.gov or phone (301) 278-9591.

SUPPLEMENTARY INFORMATION: The BE-12, Benchmark Survey of Foreign Direct Investment in the United States, is a mandatory survey and is conducted once every five years by BEA under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108), hereinafter, “the Act.”

In 2012, BEA issued a rule (77 FR 24373) that established guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Persons are required to respond to other BEA surveys conducted under these guidelines only when they are contacted by BEA. Under this proposed rule, however, persons subject to the reporting requirements of the BE-12, Benchmark Survey of Foreign Direct Investment in the United States, would be required to respond whether or not they are contacted by BEA.

The benchmark survey covers the universe of foreign direct investment in the United States in terms of value and is BEA's most detailed survey of such investment. 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 in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of U.S. affiliates and on positions and transactions between U.S. affiliates and their foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). These data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy. Such data are generally found in enterprise-level accounting records of respondent companies. 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 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 foreign

direct investment position in the United States and of the activities of the U.S. affiliates of foreign companies.

This proposed rule would amend 15 CFR 801 to set forth the reporting requirements for the BE-12, Benchmark 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, 44 U.S.C. 3501–3520 (PRA).

Description of Changes

The proposed changes would amend the regulations and the survey forms for the BE-12 benchmark survey. These amendments include changes in data items collected, the design of the survey forms, and the reporting requirements for the survey.

BEA proposes to change the reporting requirements for certain private funds that file the BE-12 survey. BEA, in cooperation with the U.S. Department of the Treasury, 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 has already been implemented on BEA's other surveys of foreign direct investment in the United States: 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. Additional information on the change in reporting requirements for reporters of investments in private funds that do not meet the definition of direct investment and the implementation of changes on BEA's surveys of foreign direct investment in the United States can be found in the rule issued in 2016 (81 FR 72519).

BEA proposes to add, delete, and modify some items on the benchmark survey forms. Most of the additions are proposed in response to suggestions from data users and to provide more information about foreign direct investment in the United States. The following items would be added to the benchmark survey:

1. Expand sales of services breakdown on the BE-12A form to include sales of services to other U.S. affiliates of the same affiliated foreign group, sales to unaffiliated U.S. persons or entities, sales to the affiliated foreign group, sales to foreign affiliates owned by the U.S. affiliate responding to the survey, and sales to all other foreign persons or entities. Previously, BEA collected sales of services to U.S. persons or entities and to foreign persons or entities. This expansion will provide information on firm integration as well as insight into global value chains.
2. Expand state-level data items on the BE-12A and BE-12B forms to include manufacturing employment; gross book value of property, plant and equipment; and the portion of the gross book value that is commercial property. BEA added these data items back to the BE-15 annual survey beginning in 2014, after having eliminated them in 2008. This information was previously collected, then discontinued for the 2012 benchmark survey, but the data are of interest to users and Congress provided funding to restore these data items.

3. Add state of location to the BE-12C form, Part I. This will improve estimation of employment and property, plant, and equipment by location for smaller entities reporting on this abbreviated form.
4. Add a question to collect the 20-digit Legal Entity Identifier of the U.S. affiliate on the BE-12A and BE-12B forms. This additional information will assist in matching entities across databases enabling better verification of data and linking to other surveys and publicly available data for these entities.
5. Add a question asking whether the U.S. affiliate is a publicly traded company, and if it is, collect the stock exchange on which it is listed and the ticker symbol on the BE-12A and BE-12B forms. This additional information will assist in matching entities across databases enabling better verification of data and linking to other surveys and publicly available data for these entities.
6. Add questions separating payables, receivables, interest payments, and interest receipts by foreign parents and foreign affiliates of foreign parents (FAFPs) on the BE-12B. Previously, data for foreign parents and FAFPs were combined for these data items. This change will better align the data collected in the BE-12 benchmark survey with the BE-605 quarterly survey and assist in updating the statistics on foreign direct investment transactions, positions, and income to include the benchmark survey results.
7. Add a Part III to BE-12C to expand information collected on foreign ownership to better align the data collected on the BE-12 benchmark survey with the BE-605 quarterly survey and assist in updating the statistics on foreign direct investment to include the benchmark survey results. Part III will include new questions on whether each parent has a direct or indirect ownership interest in the U.S. affiliate being reported, and if direct, the equity percentage of the parent's ownership in the affiliate. Part III will also include existing questions that were in Part

II of the 2012 BE-12 survey about the name and industry of each foreign parent and name, country, and industry of each ultimate beneficial owner in addition to the new questions. Part III will be preceded by a request at the end of Part II to enter the number of foreign parents and instructions to file a Part III for each foreign parent. Part III will only be completed by larger BE-12C filers (those with assets, sales, or net income greater than \$20 million).

8. Add a private funds exemption option to the BE-12 Claim for Not Filing. This is a change to prior reporting requirements for all BEA direct investment surveys and exempts certain private funds that were previously required to report.

9. Add U.S. tax withheld on dividends to the BE-12B Part III to better align the data collected in the BE-12 benchmark survey with the BE-605 quarterly survey and assist in updating the statistics on foreign direct investment to include the benchmark survey results.

10. Add intercompany debt payables and receivables to the BE-12C Part I to provide information on debt transactions of smaller affiliates, which will improve the foreign direct investment statistics in the U.S. international transactions and international investment position accounts.

11. Add questions to the BE-12C to determine if the U.S. affiliate has consolidated and unconsolidated affiliates. Add Supplement A (list of the U.S. business enterprises consolidated) and Supplement B (list of U.S. business enterprises not consolidated) to the BE-12C. These items aid in determining whether correct entities are being consolidated, in improving coverage of indirectly-owned affiliates, and in linking data across datasets. These items are already a part of the BE-12A and BE-12B.

BEA also proposes to eliminate the following items from the benchmark survey: Questions on contract manufacturing services will be deleted (BE-12A, items 24, 25, 26, and 27). The data collected have not met expectations for use and alternative methods are being

developed to address the issue. Questions on wholesale and retail trade industry activities will be deleted (BE-12A, items 63a, 63b, and 63c). Similar information is available from other sources. A question on prior year closing balance for voting interest will be removed from the BE-12C. This information is not necessary as many of the BE-12C affiliates do not file in non-benchmark years so no comparison to prior year is needed.

In addition, BEA proposes to make the following modifications to the survey forms: Modifying instructions on the BE-12B form for employment by location to explain the expanded state-level data items (see Item 2. in Additions). This modification is consistent with the change made to the annual survey forms following the addition of the data items listed in Item 2. in Additions. Modifying question 87 on the BE-12A to separate amounts reported for “change in entity” and “change in accounting methods or principles.” Adding a checkbox asking if the change in accounting methods or principles is due in whole or in part to early implementation of FASB ASU No. 2016-02, Leases (Topic 842). Identifying companies that have implemented this change early may assist in assessing the impact of full implementation on BEA’s statistics.

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

0608-0042.

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-12 survey, as proposed, is expected to result in the filing of reports from approximately 22,700 U.S. affiliates. Total annual burden is calculated by multiplying the estimated number of submissions of each form (A, B, C, and Claim for Not Filing) by the average hourly burden per form and summing the results for the four forms. The respondent burden for this collection of information will vary from one company to another. The estimated average time per respondent is 11.0 hours (249,625 hours/22,700 respondents) 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 249,625 hours, compared to 194,150 hours for the previous (2012) benchmark survey. An increase in the number of foreign-owned companies accounts for over 80 percent of the increase in the estimated respondent burden, and the new survey questions account for the rest of the increase.

Comments are requested concerning: 1. 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; 2. the accuracy of the burden estimate; 3. ways to enhance the quality, utility, and clarity of the information collected; and 4. 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. 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, the size determination takes into account the sizes of both the U.S. businesses and their foreign parents. BEA estimates that fewer than 1 percent of the U.S. businesses required to file the BE-12 survey are considered small businesses based on the SBA size standards.

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 amount of information required to be reported by each U.S. affiliate is determined by the size of the affiliate's assets, sales, or net income or loss. The reporting thresholds for Form BE-12A (the longest form) and Form BE-12B are \$300 million and \$60 million, respectively. All affiliates below \$60 million will file on Form BE-12C (the shortest form). The smallest affiliates, those below \$20 million, are only required to report a few items on Form BE-12C. These data items are likely to be readily available from existing business records. Compliance with the survey should take less than one hour. The cost should be less than \$40.00 to a small

business. Because few small businesses are required to file the survey and because those impacted are subject to only 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 direct investment in the United States, International transactions, Multinational enterprises, Penalties, Reporting and record keeping requirements.

Dated: July 17, 2017

Brian C. 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. Revise § 801.3 to read as follows:

§ 801.3 Reporting requirements.

Except for surveys subject to rulemaking in §§ 801.7, 801.8, 801.9, and 801.10, 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. Amend § 801.10 to read as follows:

§ 801.10 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2017.

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States, will be conducted covering 2017. 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-12 survey are given in paragraphs (a) through (e) 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-12, Benchmark Survey of Foreign Direct Investment in the United States—2017, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, 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 a properly completed BE-12 report (BE-12A, BE-12B, BE-12C, or BE-12 Claim for Not Filing);

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate (except certain private funds as described below), that is, for each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, at the end of the business enterprise's fiscal year that ended in calendar year 2017. Certain private funds are exempt from reporting on the BE-12 survey. If a U.S. business meets ALL of the following 3 criteria, it is not required to file any BE-12 report except to indicate exemption from the survey if contacted by BEA: 1) The U.S. business enterprise is a private fund; 2) the private fund does not own, directly or indirectly through another business enterprise, an "operating company" - i.e., a business enterprise that is not a private fund or a holding company - in which the foreign parent owns at least 10 percent of the voting interest; AND 3) if the foreign parent owns the private fund indirectly (through one or more other U.S. business enterprises); there are no U.S. "operating companies" between the foreign parent and the indirectly-owned private fund.

(c) *Forms to be filed.* (1) Form BE-12A must be completed by a U.S. affiliate that was majority-owned by one or more foreign parents (for purposes of this survey, a "majority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign

parents of the U.S. affiliate exceeds 50 percent) if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, if any one of the following three items for the U.S. affiliate (not just the foreign parent's share) was greater than \$300 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2017:

- (i) Total assets (do not net out liabilities);
- (ii) Sales or gross operating revenues, excluding sales taxes; or
- (iii) Net income after provision for U.S. income taxes.

(2) Form BE-12B must be completed by:

(i) A majority-owned U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's share), was greater than \$60 million (positive or negative) but none of these items was greater than \$300 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2017.

(ii) A minority-owned U.S. affiliate (for purposes of this survey, 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) if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's share), was greater than \$60 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2017.

(3) Form BE-12C must be completed by a U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, none of the three items listed in paragraph (c)(1) of this section for a U.S. affiliate (not just the foreign parent's share), was greater than \$60 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2017.

(4) BE-12 Claim for Not Filing will be provided for response by persons that are not subject to the reporting requirements of the BE-12 survey but have been contacted by BEA concerning their reporting status.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately on the same type of report that would have been required if the real estate holdings were aggregated.

(e) *Due date.* A fully completed and certified Form BE-12A, BE-12B, BE-12C, or BE-12 Claim for Not Filing is due to be filed with BEA not later than May 31, 2018 (or by June 30, 2018 for reporting companies that use BEA's eFile system).

BILLING CODE 3510-06-P

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