

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

#### 15 CFR Part 801

[Docket No. 190726–0005]

RIN 0691–AA89

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

**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 2019 BE–10, Benchmark Survey of U.S. Direct Investment Abroad ("BE–10 survey"). The BE–10 survey is conducted every five years; the prior survey covered 2014. The BE–10 survey covers the universe of U.S. direct investment abroad and is BEA's most comprehensive survey of such investment. For the 2019 BE–10 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 and 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 5:00 p.m. October 7, 2019.

**ADDRESSES:** You may submit comments, identified by RIN 0691–AA89 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–2019–0002."
- *Email:* [ricardo.limes@bea.gov](mailto:ricardo.limes@bea.gov).
- *Mail:* Multinational Operations Branch, U.S. Department of Commerce,

Bureau of Economic Analysis, BE–69, Washington, DC 20233.

- *Hand Delivery/Courier:* Multinational Operations Branch, U.S. Department of Commerce, Bureau of Economic Analysis, BE–69, 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 both BEA through any of the methods above and to the Office of Management and Budget (OMB), OIRA, Paperwork Reduction Project 0608–0049, Attention PRA Desk Officer for BEA, via email at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@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. Personal identifying information voluntarily submitted by the commenter 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).

**FOR FURTHER INFORMATION CONTACT:** Ricardo Limes, Chief, Multinational Operations Branch (BE–69), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20233; telephone number: (301) 278–9659; email: [ricardo.limes@bea.gov](mailto:ricardo.limes@bea.gov).

**SUPPLEMENTARY INFORMATION:** The BE–10, Benchmark Survey of U.S. Direct Investment Abroad, 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).

The BE–10 survey covers the U.S. direct investment abroad universe and is BEA's most comprehensive survey of such investment. 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 BE–10 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. Such data are generally found in enterprise-level accounting records of respondent companies. The benchmark data provide a baseline for subsequent sample-based estimates 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 U.S. direct investment abroad position and of the activities of U.S. multinational enterprises.

This proposed rule would amend 15 CFR part 801 to set forth the reporting requirements for the BE–10, Benchmark Survey of U.S. Direct Investment Abroad. Under this proposed rule, persons subject to the reporting requirements of the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, would be required to respond, whether or not they are contacted by BEA.

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–10 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–10 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. Reporting through TIC is more efficient because other related portfolio investments are already being reported there. Such private funds should not report on the BE-10 survey and BEA's other 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 U.S. direct investment abroad: The BE-577, Quarterly Survey of U.S. Direct Investment Abroad; and the BE-11, Annual Survey of U.S. Direct Investment Abroad. Additional information on the change in reporting requirements for investments in private funds can be found in the *Direct Investment Surveys: BE-577, Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter With Foreign Affiliate, and Changes to Private Fund Reporting on Direct Investment Surveys* **Federal Register** notice issued in 2016 (81 FR 33658).

BEA proposes to add, delete, and modify some items on the BE-10 survey forms. Most of the additions are proposed in response to suggestions from data users and to provide more information about U.S. direct investment abroad. The following items would be added to, or modified on, the BE-10 survey:

(1) The form of organization question for the U.S. reporter (item 2 on the BE-10A form, the form that collects information on the domestic operations of U.S. parent companies) will be modified to include more options: Corporations (except for S corporations); partnerships; S corporations; limited liability companies (LLCs); individual, estate, or trust; and other (specify). This information will help BEA to produce economic statistics by sector.

(2) A question will be added to collect the 20-digit Legal Entity Identifier of each U.S. parent and foreign affiliate on the BE-10A, BE-10B, and BE-10C forms (the BE-10B and BE-10C forms collect information on foreign affiliate operations). This information will assist in matching entities across databases, enabling better verification of data and linking to other surveys and publicly available data.

(3) For each publicly traded company, the stock exchange on which it is listed and the ticker symbol will be collected on the BE-10A form. This information will assist in matching entities across databases, enabling better verification of

data and linking to other surveys and publicly available data.

(4) The income statement item on income from equity investments (item 44) on the BE-10A form will be modified to separately collect income from unconsolidated U.S. investments and from foreign investments. This will aid in resolving discrepancies between the BE-10 and the BE-577 surveys.

(5) Item 73 on the BE-10A and item 127 on the BE-10B forms collect the amount of restatement in a company's property, plant, and equipment. This question will be modified to separately collect restatement due to "change in entity" and due to "change in accounting methods or principles." A checkbox question will be added to the BE-10A and BE-10B forms asking if the change due to accounting methods or principles is due in whole or in part to implementation of FASB ASU No. 2016-02, Leases (Topic 842). This information will allow BEA to assess the impact on BEA's statistics of the change in accounting standards on leases.

(6) Questions will be added to collect sales, employment, and costs and expenses (excluding compensation) on the BE-10A form, and sales on the BE-10B form, related to the provision of selected services generally recognized as prevalent in the digital economy. These selected services are (1) cloud computing, (2) digital intermediation services on both the BE-10A and BE-10B forms, and (3) advertising on the BE-10B form. In addition, checkboxes will be added to the BE-10A and BE-10B forms to collect the percentage of the respondent's sales of services delivered remotely, sales of services that were digitally ordered, and sales of goods that were digitally ordered, along with checkboxes to identify if this information was sourced from accounting records or from recall/general knowledge. These questions will contribute to BEA's efforts to measure the digital economy.

(7) A checkbox question will be added to the BE-10B and BE-10C forms to capture whether the affiliate serves as a regional headquarters. This information will support research into the role and impact of regional headquarters in the operations of multinational enterprises.

(8) A checkbox question will be added to the BE-10B forms to collect information on the value of R&D performed by the U.S. parent for the foreign affiliate under a collaborative R&D agreement, such as a cost-sharing agreement. This question will help BEA follow the production and use of intellectual property in global value chains and their impacts on economic statistics.

(9) A section will be added to the BE-10 Claim for Not Filing to report affiliates that do not meet the survey reporting requirements. This section will make it easier for reporters to indicate to BEA which affiliates should be removed from the survey.

a. The section would include a private funds exemption option. This is a change to prior reporting requirements described above.

b. There would also be an option to select if the U.S. reporter no longer owns the foreign affiliate and if this was due to the affiliate being sold or liquidated, or because the U.S. reporter's ownership interest in the affiliate fell below 10 percent.

BEA also proposes to eliminate or consolidate the following items from the BE-10 survey:

(1) Item 8 on the BE-10A, which asks if the U.S. reporter is a bank, will be removed. This question was used in the past when reporting requirements for direct investment surveys were different for banks than other *industries* but is no longer needed.

(2) Questions on contract manufacturing services will be deleted (items 33-35 on the BE-10A form). The data collected have been burdensome for companies to provide and have not been widely used by data users. Alternative methods are being developed to measure and study contract manufacturing.

(3) The petroleum and mining exploration and development expenditures item will be removed from the BE-10A form (item 80) and BE-10B form (item 135). This item was used to calculate the current cost adjustment to the direct investment statistics in the international transactions accounts (ITAs) but is not used in the current methodology.

(4) The trade in goods by world region questions (items 99-104 and 109-114) on the BE-10A form will be removed. The data collected have been burdensome for companies to provide and have not been widely used by data users. BEA is exploring alternative methods to produce geographical detail on trade by U.S. multinational companies.

(5) Option 2 of item 11 on the BE-10B form and item 8 on the BE-10C form, which collect information on why the affiliate will no longer report on the survey, will be removed. This information will now be captured on the BE-10 Claim for Not Filing (as discussed in item 9 of the additions and modifications section above). U.S. reporters will no longer be required to complete the rest of the BE-10B or BE-10C form with partial year information

for foreign affiliates that were sold, merged, reorganized, liquidated, seized, or otherwise ceased to exist at some point during, but before the end of, their fiscal year that ended in the calendar year covered by the BE-10 survey.

(6) Items 18 and 19 on the BE-10B form, and 14 and 15 on the BE-10C form, which collect the direct ownership interest held by “foreign persons in this affiliate’s country of location” and by “all other foreign persons,” will be combined into one item on each of the forms.

(7) Questions collecting information on sales by world region (items 105–110) and on sales to the top five countries outside of the country of location of the affiliate (items 111–116) on the BE-10B form will be removed. The data collected have been burdensome for companies to provide and have not been widely used by data users. BEA will continue to collect items 101–104, which allow sales to be disaggregated into goods and services and by whether the sales are to the United States, to the host country, or to other foreign countries. These items are more widely used.

(8) Several items of Part V of the BE-10B form and Part III of the BE-10C form will be removed, except for the items noted below. These data were used to validate the information collected on the quarterly survey, but data reported elsewhere in the BE-10 forms are sufficient for this purpose. The following items will be retained:

a. A question on reverse investment (item 167 on the BE-10B form).

b. Intercompany debt balances (items 63–65 on the BE-10C form) for foreign affiliates with less than \$60 million in assets, sales, or net income.

#### **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 0608–0049.

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, as proposed, is expected to result in the filing of reports from approximately 18,000 respondents. A complete response includes a BE-10A form for the U.S. parent’s domestic operation and one or more BE-10B, BE-10C, or BE-10D forms for its foreign affiliates. BEA estimates that U.S. parents will submit 18,000 BE-10A forms, 19,100 BE-10B forms, 14,500 BE-10C forms, 18,000 BE-10D forms, and 2,000 BE-10 Claims for Not Filing. Total annual burden is calculated by multiplying the estimated number of submissions of each form by the average hourly burden per form, which is 10 hours for the BE-10A form, 19 hours for the BE-10B form, 6 hours for the BE-10C form, 3 hours for the BE-10D form, and 0.5 hours for the BE-10 Claim for Not Filing. The estimated total respondent burden for this survey is estimated at 684,900 hours. The respondent burden for this collection of information is expected to vary considerably among respondents because of differences in company structure, size, and complexity. 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. The average respondent burden is 38 hours per response (684,900 hours/18,000 respondents), compared to an average burden of 144 hours and total burden of 561,100 hours for the previous (2014) BE-10 survey. The increase in the estimated total respondent burden reflects an increase in the respondent universe of U.S. and foreign entities that are required to file the BE-10 survey. The average burden decreased because the newer respondents on average file fewer and more abbreviated forms and because BEA is proposing a net decrease in the amount of information collected on the survey.

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.

A BE-10 report is required of any U.S. company 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 the end of the U.S. company’s 2019 fiscal year. U.S. companies that have direct investments abroad tend to be large. 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 (SBA), *i.e.* the size determination takes into account the sizes of both the U.S. parents and their foreign operations. BEA estimates that approximately 20 percent of the U.S. multinational enterprises that will be required to respond to the BE-10 survey are small businesses according to the standards established by the SBA. The number of items required to be reported for a U.S. parent and its foreign affiliates is determined by the size of each in terms of assets, sales, and net income. In the BE-10 survey, for the smallest foreign affiliates—those with assets, sales or gross operating revenues, and net income (loss) less than or equal to \$25 million (positive or negative)—only a few selected items would be reported on a schedule-type form, Form BE-10D. To further ease the reporting burden on smaller U.S. companies, U.S. reporters with total assets, sales or gross operating revenues, and net income (loss) less than or equal to \$300 million (positive or negative) are required to report a subset of items on the BE-10A form for U.S. reporters, in addition to forms they may be required to file for their foreign

affiliates. BEA expects that virtually all small businesses filing the BE-10 will complete an abbreviated BE-10A and BE-10D. The proposed changes represent a net decrease in the amount of information collected on the survey, further reducing the economic impact on small businesses required to file the survey.

Because relatively few small businesses are impacted by this rule, and because those small businesses that are impacted are subject to only minimal recordkeeping burdens, 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, International transactions, Multinational companies, Penalties, Reporting and recordkeeping requirements, U.S. direct investment abroad.

Paul W. Farello,

Associate Director of International Economics, 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 § 801.8 to read as follows:

##### § 801.8 Rules and regulations for the BE-10, Benchmark Survey of U.S. Direct Investment Abroad.

A BE-10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted every five years and covers years ending in 4 and 9. 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-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, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted in writing by BEA about reporting in this survey must respond by filing a properly completed BE-10 report (BE-10A and BE-10B, BE-10C, BE-10D, and/or BE-10 Claim for Not Filing);

(b) *Who must report.* 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 the end of the U.S. person's fiscal year that ended in the calendar year covered by the survey. Foreign affiliates that are private funds and meet certain criteria are exempt from the BE-10 survey. Specifically, if a foreign affiliate meets ALL of the following 3 criteria, the U.S. reporter is not required to file a BE-10 form for that affiliate except to indicate exemption from the survey if contacted by BEA: (1) The foreign affiliate is a private fund; AND (2) the private fund foreign affiliate 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 consolidated U.S. reporter owns at least 10 percent of the voting interest; AND (3) if the U.S. reporter owns the private fund indirectly (through one or more other business enterprises), there are no “operating companies” between the consolidated U.S. reporter and the indirectly-owned foreign private fund.

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

(2) Form BE-10B must be filed for each majority-owned foreign affiliate (for purposes of this 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) for which any of the following three items (not just the U.S. reporter's share) was greater than \$80 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey:

(i) Total assets (without netting liabilities);

(ii) Sales or gross operating revenues, excluding sales taxes; or

(iii) Net income after provision for foreign income taxes.

(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 the end of, or for, its fiscal year that ended in the calendar year covered by the survey, and

(ii) For each minority-owned foreign affiliate (for purposes of this survey, a “minority-owned” foreign affiliate is one in which the combined direct and indirect ownership interest of all U.S. parents of the foreign affiliate is 50 percent or less) for which any one of the three items listed in paragraph (c)(2) of this section was greater than \$25 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey.

(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 the end of, or for, its fiscal year that ended in the calendar year covered by the survey. 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.

(5) BE-10 Claim for Not Filing will be provided for response by:

(i) Persons that are not subject to the reporting requirements of the BE-10 survey but have been contacted by BEA concerning their reporting status; or

(ii) U.S. reporters that have been contacted by BEA concerning their reporting status for foreign affiliates that are no longer subject to the reporting requirements of the BE-10 survey.

(d) *Due date.* A fully completed and certified BE-10 report comprising Form BE-10A and Form(s) BE-10B, BE-10C, BE-10D, and/or BE-10 Claim for Not Filing (as required) is due to be filed with BEA not later than May 31 of the year after the year covered by the survey, for those U.S. reporters filing fewer than 50, and June 30, for those U.S. reporters filing 50 or more, foreign affiliate Forms BE-10B, BE-10C, and/or BE-10D.

[FR Doc. 2019-16628 Filed 8-6-19; 8:45 am]

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