

Proposed Rules

Federal Register

Vol. 73, No. 177

Thursday, September 11, 2008

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 806

[Docket No. 080219210-8245-01]

RIN 0691-AA65

Direct Investment Surveys: BE-15, Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule amends regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to set forth reporting requirements for the BE-15, Annual Survey of Foreign Direct Investment in the United States. The BE-15 is conducted annually and is a sample survey that obtains financial and operating data on U.S. affiliates of foreign companies. BEA proposes the addition and deletion of items on the survey forms and changes to the reporting criteria. The changes to the BE-15 annual survey will: Reduce detail and raise reporting thresholds; extend the coverage of the survey to include banks; and bring the survey forms and instructions into conformity with the 2007 BE-12, Benchmark Survey of Foreign Direct Investment in the United States.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5 p.m. November 10, 2008.

ADDRESSES: You may submit comments, identified by RIN 0691-AA65, 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 agency, select "Commerce Department—all."

- *E-mail:* David.Galler@bea.gov.

- *Fax:* Office of the Chief, Direct Investment Division, (202) 606-5318.

- *Mail:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE-50, Washington, DC 20230.

- *Hand Delivery/Courier:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE-50, Shipping and Receiving, Section M100, 1441 L Street, NW., Washington, DC 20005.

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, O.I.R.A., Paperwork Reduction Project 0608-0034, Attention PRA Desk Officer for BEA, via e-mail at 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.

FOR FURTHER INFORMATION CONTACT:

David H. Galler, Chief, Direct Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606-9835.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 15 CFR 806.15 to set forth the reporting requirements for the BE-15, Annual 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.

Description of Revisions

The BE-15, Annual Survey of Foreign Direct Investment in the United States, is a mandatory survey and is conducted

annually by BEA, under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108)—hereinafter, "the Act." BEA will send the survey to potential respondents in March of each year; responses will be due by May 31.

The proposed changes to the 2008 annual survey are of three types: (1) Changes that will reduce detail and raise reporting thresholds, (2) changes that will extend the coverage of the survey to include banks, and (3) changes that align the BE-15 forms and instructions with those of the 2007 BE-12, Benchmark Survey of Foreign Direct Investment in the United States. The BE-15 survey forms have been revised and, in some cases, renamed to facilitate these proposed changes. The proposed survey is comprised of four forms: Form BE-15A (currently named Form BE-15(LF)), Form BE-15B (currently named Form BE-15(SF)), Form BE-15(EZ) (name unchanged), and BE-15 Claim for Exemption (currently named BE-15 Supplement C).

In order to align BEA's survey program with available resources, which have declined as a result of a recent reduction in BEA's budget, some data items will be dropped from the forms, reporting thresholds will be raised, and use of statistical sampling will be expanded. The following data items will no longer be collected: Selected balance sheet items; the breakdown of sales of services to foreign persons into sales of services to the foreign parent group, to foreign affiliates owned by the affiliate, and to other foreign persons; the breakdown of employment and employee compensation by occupational classification; the breakdown of total employee compensation into wages and salaries and employee benefit plans; data on the composition of external finances; research & development employees; imports of goods intended for further manufacture; manufacturing employment by state; gross property, plant, and equipment by state; commercial property by state; and wholesale and retail trade items. Reporting thresholds will be raised and greater use will be made of sampling, allowing smaller companies to file every other year rather than annually. BEA proposes to (1) increase the threshold for reporting on Form BE-15A from \$125 million to \$275 million; (2)

increase the threshold for reporting on Form BE-15B from \$30 million to \$120 million; and (3) increase the threshold for reporting on Form BE-15(EZ) from \$30 million to \$40 million. Also, filing on Form BE-15(EZ) would be required only every other year. In alternate years, potential respondents would receive a letter indicating that they are not required to file for that year and asking them to update their contact information with BEA. The new reporting thresholds will still allow BEA to produce high quality statistics; however, some reduction in published detail will be necessary because of insufficient coverage in some cells.

BEA proposes to collect data on bank affiliates on the BE-15 annual survey. Currently, collection of data on the BE-15 annual survey is limited to that of nonbank U.S. affiliates. Data for bank affiliates is collected once every five years on BEA's BE-12, Benchmark Survey of Foreign Direct Investment in the United States. This expansion in coverage of the BE-15 to include collection of data on bank affiliates is called for by the BEA Strategic Plan and is required to close a gap in BEA's data on multinational companies. (Data for banks are being collected on the BE-11, Annual Survey of U.S. Direct Investment Abroad, beginning with the survey for 2007). To collect data for a U.S. affiliate that is a bank, BEA plans to use the same forms that will be used for nonbank affiliates.

In order to align the BE-15 annual survey with the 2007 BE-12 benchmark survey, some detail that is no longer required will be eliminated from the BE-15A and several items will be added to the BE-15B. The BE-15A will no longer ask companies to identify expenditures for property, plant, and equipment as either new or used. On the BE-15B, items will be added to collect information on sales of goods, investment income, and sales of services for majority-owned U.S. affiliates. A further breakout of sales of services will be added to collect sales of services to U.S. persons and sales of services to foreign persons. Due to the proposed increase in the reporting threshold for the BE-15B, it is necessary to add these items to ensure adequate coverage at the industry and investing country level.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108), hereinafter, "the Act." Section 4(a) of the Act provides that with respect to foreign direct investment in

the United States, the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international capital flows and other 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, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibility for performing functions under the Act concerning direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The annual survey is a sample survey that collects data on the financial structure and operations of U.S. affiliates of foreign companies needed to update similar data for the universe of U.S. affiliates collected once every 5 years in the BE-12 benchmark survey. The sample data are used to derive universe estimates of the operations of U.S. affiliates of foreign companies, including their balance sheets; income statements; property, plant, and equipment; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity. The 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. The data are disaggregated by industry of U.S. affiliate, by country and industry of foreign parent or ultimate beneficial owner, and, for employment data, 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 as that term is defined in E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction

Act (PRA). The requirement will be submitted to OMB for approval as a revision to a collection currently approved under OMB control number 0608-0034.

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 Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget control number.

The BE-15 survey, as proposed, is expected to result in the filing of reports from approximately 3,650 U.S. affiliates. The respondent burden for this collection of information is expected to vary from 20 minutes for the smallest and least complex company reporting on the BE-15 Claim for Exemption to 470 hours for the largest and most complex company reporting on Form BE-15A, with an average burden of 18.6 hours per response. Thus the total respondent burden for this survey—including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information—is estimated at 68,000 hours (3,650 responses times 18.6 hours average burden). Total respondent burden for the previous (2006) annual survey was estimated at 107,900 hours. The decrease in respondent burden is due to (1) increased reporting thresholds which reduce the total number of respondents and allow more respondents to file on shorter forms, (2) increased use of sampling which allows BE-15(EZ) filers to submit forms only in alternate years, and (3) a reduction in the number of data items on the form which reduces the average burden per form.

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 (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. Few small U.S. businesses are subject to the reporting requirements of this survey. Under the proposed regulations, foreign-owned U.S. businesses would be required to report on the BE-15 survey if they have total assets, sales or gross operating revenues, or net income that exceed \$40 million. According to the Small Business Administration's Table of Small Business Size Standards, in most industries, businesses with \$40 million of assets are not considered small businesses. The only industry for which the reporting requirements for the BE-15 survey would affect small businesses, would be for certain types of banking and finance companies, where the threshold for being considered a small business is \$175 million. BEA estimates that about 60 banking and finance affiliates would be considered small businesses and would have to report on the BE-15. About 20 of these small businesses would be required to file on the BE-15B, and about 40 (half in alternate years) would be required to file on the BE-15(EZ). Based on average burden hours per response of 3.5 hours for the BE-15B and 1.5 hours for the BE-15(EZ) in alternate years, BEA estimates the total respondent burden of the BE-15 on small companies to be 100 hours out of a total estimated respondent burden on all companies of 68,000 hours.

Because few small businesses are subject to the reporting requirements and because those small businesses that are subject to reporting are subject to minimal recordkeeping burdens, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 806

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

Dated: July 30, 2008.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 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. Section 806.15(i) is revised to read as follows:

§ 806.15 Foreign direct investment in the United States.

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(i) *Annual report form.* BE-15—Annual Survey of Foreign Direct Investment in the United States: One report is required for each consolidated U.S. affiliate exceeding an exemption level of \$40 million. Form BE-15A must be filed by each majority-owned U.S. affiliate (a “majority-owned” U.S. affiliate is one in which the combined direct and indirect ownership interests of all foreign parents of the U.S. affiliate exceed 50 percent) for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds \$275 million (positive or negative). Form BE-15B must be filed by each majority-owned U.S. affiliate for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds \$120 million (positive or negative) but no one item exceeds \$275 million (positive or negative), and by each minority-owned U.S. affiliate (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) for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds \$120 million (positive or negative). Form BE-15(EZ) must be filed every other year by each U.S. affiliate for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds \$40 million (positive or negative) but no one item exceeds \$120 million (positive or

negative). U.S. affiliates will be mailed Form BE-15(EZ) in years when they are required to file; in alternate years, these U.S. affiliates will be mailed a letter confirming that they are not required to file and asking them to update their contact information with BEA. A BE-15 Claim for Exemption must be filed by each U.S. affiliate to claim exemption from filing a BE-15A, BE-15B, or BE-15(EZ). Following an initial filing, the BE-15 Claim for Exemption is not required annually from those U.S. affiliates that meet the stated exemption criteria from year to year.

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[FR Doc. E8-21070 Filed 9-10-08; 8:45 am]

BILLING CODE 3510-06-P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 080731960-81014-01]

RIN 0691-AA66

Direct Investment Surveys: BE-11, Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule amends regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to amend the reporting requirements for the BE-11, Annual Survey of U.S. Direct Investment Abroad. The BE-11 survey is conducted annually and is a sample survey that obtains financial and operating data covering U.S. parent companies and their foreign affiliates. BEA proposes changes in the reporting criteria that will raise the thresholds for reporting.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5 p.m. November 10, 2008.

ADDRESSES: You may submit comments, identified by RIN 0691-AA66, 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 agency, select “Commerce Department—all.”
- *E-mail:* David.Galler@bea.gov.
- *Fax:* Office of the Chief, Direct Investment Division, (202) 606-5318.
- *Mail:* Office of the Chief, Direct Investment Division, U.S. Department of