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DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 160531475–6465–01]

RIN 0691–0691–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: Final rule.

SUMMARY: The 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. This rule also amends 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 will make several changes to the survey that will simplify reporting and provide more complete information for use in BEA's direct investment statistics. BEA will also change the 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: This final rule will be effective November 21, 2016.

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; or via email at *Patricia.Abaroa@bea.gov.*

SUPPLEMENTARY INFORMATION: On July 1, 2016, BEA published a notice of proposed rulemaking that set forth revised reporting criteria for the BE–13, Survey of New Foreign Direct Investment in the United States (81 FR 43126–43130). One comment on the proposed rule was received.

The comment was written by a group representing U.S. asset management firms whose combined assets under management exceed $30 trillion. The letter was generally supportive of the changes to the reporting requirements for private funds, but it did raise two points, one of which lead to a clarification in the reporting requirements for private funds which is outlined below.

One point raised in the letter led to an adjustment to the language of the reporting requirements for private funds used in the proposed rule. As stated in the proposed rule, a foreign-owned U.S. private fund would be required to report on BEA's direct investment surveys if it owns at least 10 percent of an operating company. The letter pointed out that under this standard a private fund may be required to report on direct investment surveys even though in certain cases its foreign parent may own less than 10 percent of an operating company. For example, if a foreign parent owns 10 percent voting interest in a U.S. private fund, and that private fund owns 10 percent of an operating company, under the proposed rule the U.S. private fund would be required to report even though the foreign parent's indirect ownership interest in the operating company is just 1 percent. It was not BEA's intention to include investments of less than 10 percent foreign ownership in the direct investment statistics. In this final rule, BEA has clarified language regarding the private fund reporting requirements to indicate that if the *foreign parent* of a U.S. private fund does not own *through the private fund* 10 percent or more of an operating company, the private fund is not required to file.

The letter also indicated that the burden estimate provided on the BE–13 form is understated. BEA's burden estimate is an average across the various BE–13 survey forms and across survey respondents with different levels of complexity and different activities or transactions that may be reported on the survey. BEA has noted the input from the private fund industry on burden estimates.

This final rule amends 15 CFR part 801.7 to set forth the reporting requirements for the BE–13, Survey of New Foreign Direct Investment in the United States.

BEA conducts the BE–13 survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108).

The BE–13 survey collects 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.

Description of Changes

BEA amends 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 proposed rule in 2017.

BEA, in cooperation with the U.S. Treasury Department, will 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 aligns the U.S. direct investment and portfolio investment data more closely with the intent of the investment with respect to management control. In addition, it reduces burden for respondents, many of whom now report both to the TIC reporting system and to BEA's direct investment reporting system. Under the revised regulations, U.S. affiliates that are private funds but whose foreign parents do not own through the private fund 10 percent or more of the voting interest of another business enterprise that is not 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 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 will 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. These acquisitions should 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 will 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. A question will be added to Form BE–13A to capture the names of both the established and acquired entities in this scenario.

BEA will 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 will not change 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 will 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.

BEA will 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.

BEA will 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.

BEA will 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.

BEA will 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.

BEA will 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 will 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.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

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 information 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 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 2,860 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.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the final rule should be sent to both BEA via email at *Patricia.Abaroa@bea.gov,* and to OMB, O.I.R.A., Paperwork Reduction Project 0608–0035, Attention PRA Desk Officer for BEA, via email at *pbugg@omb.eop.gov.*

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, certified at the proposed rule stage 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 final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the certification or the economic impact of the rule more generally aside from the comment regarding the burden estimate. No final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 801

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

Dated: October 6, 2016.

Brent Moulton,

Acting Director, 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. Revise § 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, persons, or their agents, that are 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 paragraph (b)(4) of this section, 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 its foreign parent does not own through the private fund 10 percent or more of the voting interest of a business enterprise that is not also a private fund or a holding company, the private fund 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 shall 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.

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DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 9530]

RIN 1400–AD93

Visas: Visa Information Update Requirements Under the Electronic Visa Update System (EVUS)

AGENCY: Department of State.

ACTION: Final rule with request for comments.

SUMMARY: The Department of State is coordinating with the Department of Homeland Security on instituting a requirement for nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category to provide required information to DHS after the receipt of his or her visa of a designated category.

DATES: This Final rule is effective on November 29, 2016. The Department of State will accept comments until December 19, 2016.

ADDRESSES: You may submit comments, identified by RIN 1400–AD93, by one of the following methods:

- *Electronic comments:* Submit through the Federal eRulemaking Portal *http://www.regulations.gov* and search for docket number DOS–2016–0066.
- *Mail:* Address all written submissions to Chief, CA/VO/L/R, U.S. Department of State, 600 19th St. NW., 12th Floor, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kevin J. Earnest, Legislation and Regulations Division, Legal Affairs, Office of Visa Services, Bureau of Consular Affairs, Department of State, 600 19th St. NW., Washington, DC 20006, (202) 485–7588.

SUPPLEMENTARY INFORMATION: The Department of State (State) regulation on the revocation of nonimmigrant visas is at 22 CFR 41.122. State is amending 22 CFR 41.122 in support of a joint program with the Department of Homeland Security (DHS) that requires nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category to periodically provide required information to DHS after the receipt of his or her visa of a designated category.

The revised 22 CFR 41.122(b)(3) and the contemporaneous DHS rule amending 8 CFR part 215, subpart B (RIN 1651–AB08), are creating the Electronic Visa Update System (EVUS). As provided in 8 CFR part 215, subpart B, EVUS is an online information update system. Under EVUS, nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category are required to enroll in EVUS by providing information to DHS after the receipt of their visa of a designated category, and periodically thereafter. Successful enrollment in EVUS is evidenced by the receipt of a notification of compliance. Identified countries and designated visa categories are those countries and visa categories that the Secretary of Homeland Security, in consultation with the Secretary of State, has determined will be subject to EVUS enrollment requirements. Identified countries and designated visa categories will be announced in a notice published in the **Federal Register**. Failure to comply with EVUS after November 29, 2016, will result in an automatic provisional revocation of the visa and will preclude travel to the United States on that visa. The visa will be automatically reinstated upon compliance with the EVUS requirements outlined in 8 CFR 215.24, as established by receipt of a notification of compliance. While, as discussed in the DHS rulemaking, individuals may enroll in EVUS prior to November 29, such enrollment is not required for travel to the United State prior to that date.

This rulemaking provides State the mechanism for visas to be automatically provisionally revoked, and the revocation to automatically be reversed and visas reinstated upon subsequent compliance with EVUS (22 CFR 41.122(b)(3)). The rule also makes other modifications to the visa revocation regulations consistent with the EVUS enrollment requirements.

As discussed in the contemporaneous DHS EVUS rule, DHS is exercising its authority under INA 214(a)(1) and 215(a)(1) (8 U.S.C. 1184(a)(1) and 1185(a)(1)) to require that nonimmigrant aliens who hold a passport issued by an identified country containing a U.S. nonimmigrant visa of a designated category comply with the requirements in 8 CFR part 215, subpart B, and successfully enroll in EVUS by providing certain information to DHS after the receipt of their visas of a designated category as a condition of admission to the United States. Recognizing that holders of such visas who have not complied with the requirements in 8 CFR part 215, subpart B, will not be admitted to the United States under 8 CFR. 214.1(a)(3)(i), State is amending 22 CFR 41.122 to provide for automatic provisional revocation of the visas. Once the visa holder makes the required submission of biographic and other information and successfully enrolls in EVUS, the revocation of the visa will automatically be reversed, and the visa will be valid for travel to the United States.

To implement EVUS, State is amending 22 CFR 41.122 and DHS is contemporaneously amending 8 CFR part 212, 214, 215, and 273.

Description of Regulation Changes

In 22 CFR 41.122, paragraph (b) is now subdivided. New paragraph (b)(1) describes the force and effect of a provisional revocation generally. The paragraph also describes how a provisional revocation can be reversed and how the revocation authority contained in INA 221(i) (8 U.S.C. 1201(i)) is not limited by this paragraph. Paragraph (b)(2) contains the current language of paragraph (b) with the addition of a new header. New paragraph (b)(3) describes the new process of automatic provisional revocation of U.S. visas of designated categories held by nonimmigrant aliens in a passport issued by an identified country who fail to comply with EVUS after the receipt of his or her visa as required by 8 CFR 215.24.

Paragraph (c) is modified to make a notification exception to visa holders where visas have been automatically provisionally revoked under new paragraph (b)(3) of this section.

Paragraph (d) is modified to make an exception to the requirement of physically cancelling visas for visas that are automatically provisionally revoked by paragraph (b)(3).

Paragraph (e) remains unchanged.

Regulatory Findings

Administrative Procedure Act

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the notice-and-comment rule making procedures set forth in 5 U.S.C. 553.

This final rule is also exempt from notice and comment requirements under the ''good cause'' exception set forth at 5 U.S.C. 553(b)(3)(B). This rule is critical because it improves the security of granting longer-length visas while also facilitating legitimate travel. Implementation of this rule as soon as possible is necessary to protect the national security of the United States and to prevent the harm that could be