

**DEPARTMENT OF COMMERCE****Bureau of Economic Analysis****15 CFR Part 806**

[Docket No. 020813189-2330-02]

RIN 0691-AA44

**Direct Investment Surveys: BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2002****AGENCY:** Bureau of Economic Analysis, Commerce.**ACTION:** Final rule.**SUMMARY:** This final rule revises regulations for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States.

The BE-12 survey is mandatory and is conducted once every 5 years by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The benchmark survey will be conducted for 2002. BEA will send the survey to potential respondents in February of the year 2003; responses will be due by May 31, 2003. The prior benchmark survey was conducted for 1997. The benchmark survey covers virtually the entire universe of foreign direct investment in the United States in terms of value, and is BEA's most comprehensive survey of such investment in terms of subject matter.

The revised rule raises the reporting threshold on the BE-12(SF) short form and the BE-12 Bank form from \$3 million to \$10 million; directs that only nonbank majority-owned U.S. affiliates of foreign companies report on the BE-12(LF) long form; raises the reporting threshold on the BE-12(LF) long form from \$100 million to \$125 million; and directs bank holding companies to file a fully consolidated report, including all nonbank operations, on the BE-12 Bank form. (Previously, the nonbanking operations were reported on a separate BE-12(LF) long form or BE-12(SF) short form.) These changes will reduce respondent burden, especially for small companies and bank holding companies.

**DATES:** This final rule will be effective February 12, 2003.**FOR FURTHER INFORMATION CONTACT:** R. David Belli, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606-9800.**SUPPLEMENTARY INFORMATION:** On September 12, 2002, the Bureau of

Economic Analysis (BEA) published in the **Federal Register** (67 FR 57767) a notice of proposed rulemaking setting forth revised reporting requirements for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2002. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule, except for minor language changes to remove a possible source of ambiguity with respect to the due date for filing Form BE-12(X), report for claiming exemption from filing a BE-12(LF) long form, BE-12 (SF) short form, or BE-12 Bank form.

This final rule amends 15 CFR 806.17 to set forth revised reporting requirements for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2002. The Bureau of Economic Analysis, 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(b) of the Act requires that with respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter. In conducting surveys (of U.S. direct investment abroad and foreign direct investment in the United States) pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible identify the location, nature, and magnitude of, and changes in the total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates; information on the balance sheet of parents and affiliates and related financial data, income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and related information regarding trade (including trade in both goods and services) between a parent and each of its affiliates and between each parent or affiliate and any other person; collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level; obtain information on tax payments by parents and affiliates by country; and determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of

technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA. The benchmark survey is a census; it covers virtually the entire universe of foreign direct investment in the United States in terms of value, and is BEA's most comprehensive survey of such investment in terms of subject matter. 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, 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). The data are needed to measure the size and economic significance of foreign direct investment in the United States, to measure changes in such investment, and to 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 selected items, by State.

The data will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies. Data from the benchmark survey on U.S. affiliates' employee compensation, profits, interest receipts and expenses, depreciation, and income and other taxes are used by BEA to compute U.S. affiliates' gross product or value added. The estimates are used to measure U.S. affiliates' share of U.S. gross domestic product and to evaluate affiliates' profitability and productivity. Data on employment by affiliates are used to

link enterprise-level data on foreign-owned companies collected in the benchmark survey to establishment-level data for the same companies collected by the Census Bureau.

It should be noted that, aside from their use in compiling the U.S. national and international economic accounts, the benchmark survey data are primarily intended as general purpose statistics. Based on past experience, areas of particular and lasting analytical and policy interest include trade in goods and services, employment and employee compensation, profitability, regional location, taxes, and technology. These areas, all of which are addressed by the proposed survey, are also ones for which the Act specifically requires data to be collected. Another area of continuing policy interest, particularly at the State and local levels, is the impact of foreign direct investment on individual States. The data in the survey disaggregated by State are intended to address needs in this area.

The forms to be used in the survey are:

1. Form BE-12(LF) (Long Form)—Report for nonbank majority-owned U.S. affiliates (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) with assets, sales or gross operating revenues, or net income greater than \$125 million (positive or negative);

2. Form BE-12(SF) (Short Form)—Report for nonbank majority-owned U.S. affiliates with assets, sales or gross operating revenues, or net income greater than \$10 million, but not greater than \$125 million (positive or negative) and nonbank minority-owned U.S. affiliates (owned 50 percent or less) with assets, sales or gross operating revenues, or net income greater than \$10 million (positive or negative). U.S. affiliates with total assets, sales or gross operating revenues, and net income between \$10 million and \$30 million (positive or negative) will be required to report only selected data items on the short form;

3. Form BE-12 Bank—Report for U.S. affiliates that are banks, bank holding companies, or banking and nonbanking operations of bank holding companies; and

4. Form BE-12(X)—Report for claiming exemption from filing a BE-12(LF) long form, BE-12(SF) short form, or BE-12 Bank form.

#### *Executive Order 13132*

This final rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

#### *Executive Order 12866*

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

#### *Paperwork Reduction Act*

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule covers collections of information subject to the provisions of the PRA. The OMB has approved this collection and assigned to it OMB Control Number 0608-0042. The collection will display this control number.

The survey is expected to result in the filing of reports from approximately 17,700 respondents. The respondent burden for this collection of information is estimated to vary from 20 minutes to 715 hours per response, with an average of 11.3 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 of the survey is estimated at about 199,500 hours (17,700 times 11.3 hours average burden).

Comments regarding the burden estimate or any aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608-0042, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

#### *Regulatory Flexibility Act*

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)) that this final rulemaking will not have a significant economic impact on a substantial number of small entities. Few small businesses as defined by the RFA are foreign owned; those that are and have total assets, sales or gross operating revenues, and net income each equal to or less than \$10 million are not required to report on the BE-12 (LF) long form, BE-12(SF) short form, or BE-12 Bank form. To further reduce

reporting burden for smaller companies, the reporting threshold for filing a BE-12(LF) long form has been raised to \$125 million, from \$100 million in the 1997 survey, and companies with total assets, sales or gross operating revenues and net income (positive or negative) between \$10 million and \$30 million will be required to report only selected data items on the BE-12(SF) short form. Accordingly, this action will relieve reporting burdens on small entities.

#### **List of Subjects in 15 CFR Part 806**

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

Dated: December 18, 2002.

**J. Steven Landefeld,**

*Director, Bureau of Economic Analysis.*

For the reasons set forth in the preamble, BEA amends 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; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.17 is revised to read as follows:

#### **§ 806.17 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2002**

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 2002. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.15(a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE-12 survey are given in this section.

(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—2002, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4, or electronically using BEA's Automated Survey Transmission and Retrieval (ASTAR) system. This may be accomplished by completing and returning either Form BE-12(X) within

30 days of the date it was received, if Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank do not apply, or by completing and returning Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank, whichever is applicable, by May 31, 2003.

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate, *i.e.*, 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 if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at the end of the business enterprise's 2002 fiscal year. A report is required even though the foreign person's ownership interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1) Form BE-12(LF)—Benchmark Survey of Foreign Direct Investment in the United States—2002 (Long Form) must be completed and filed by May 31, 2003, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year and that was majority-owned by one or more foreign parents (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:

(i) It is not a bank or a bank holding company, and is not owned directly or indirectly by a U.S. bank holding company, and

(ii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded \$125 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(A) Total assets (do not net out liabilities);

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

(C) Net income after provision for U.S. income taxes.

(2) Form BE-12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—2002 (Short Form) must be completed and filed by May 31, 2003 by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year, if:

(i) It is not a bank or a bank holding company, and is not owned directly or indirectly by a U.S. bank holding company, and

(ii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, one or more of the following three items for a majority-owned U.S. affiliate (not just the foreign parent's share) exceeded \$10 million, but no one item exceeded \$125 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(A) Total assets (do not net out liabilities);

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

(C) Net income after provision for U.S. income taxes, or

(iii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, one or more of the following three items for a minority-owned U.S. affiliate (not just the foreign parent's share) exceeded \$10 million (positive or negative) at the end of, or for, its 2002 fiscal year (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):

(A) Total assets (do not net out liabilities);

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

(C) Net income after provision for U.S. income taxes.

(3) Form BE-12 Bank—Benchmark Survey of Foreign Direct Investment in the United States—2002 BANK must be completed and filed by May 31, 2003, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year, if:

(i) The U.S. affiliate is in "banking", which, for purposes of the BE-12 survey, covers business enterprises engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations engaged in international or foreign banking, U.S. branches and agencies of foreign banks whether or not they accept domestic deposits, savings and loans, savings banks, and bank holding companies, including all subsidiaries or units of a bank holding company and

(ii) On a fully consolidated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded \$10 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(A) Total assets (do not net out liabilities);

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

(C) Net income after provision for U.S. income taxes.

(4) Form BE-12(X)—Benchmark Survey of Foreign Direct Investment in the United States—2002 Claim for Exemption from Filing BE-12(LF), BE-

12(SF), or BE-12 Bank must be completed and filed within 30 days of the date it was received by:

(i) Each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 2002 fiscal year (whether or not the U.S. affiliate, or its agent, is contacted by BEA concerning its being subject to reporting in the 2002 benchmark survey), but is exempt from filing Form BE-12(LF), Form BE-12(SF), and Form BE-12 Bank; and

(ii) Each U.S. business enterprise, or its agent, that is contacted, in writing, by BEA concerning its being subject to reporting in the 2002 benchmark survey but that is not otherwise required to file the Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank.

(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.

(e) *Exemption.* (1) A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file form BE-12(LF), BE-12(SF), or Form BE-12 Bank if each of the following three items for the U.S. affiliate (not just the foreign parent's share) did not exceed \$10 million (positive or negative) at the end of, or for, its 2002 fiscal year:

(i) Total assets (do not net out liabilities);

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

(iii) Net income after provision for U.S. income taxes.

(2) If a U.S. business enterprise was a U.S. affiliate at the end of its 2002 fiscal year but is exempt from filing a completed Form BE-12(LF), BE-12(SF), or Form BE-12 Bank, it must nevertheless file a completed and certified Form BE-12(X).

(f) *Due date.* A fully completed and certified Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank is due to be filed with BEA not later than May 31, 2003. A fully completed and certified Form BE-12(X) is due to be filed with BEA within 30 days of the date it was received.

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