

Proposed Rules

Federal Register

Vol. 72, No. 183

Friday, September 21, 2007

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. 070301044-7045-01]

RIN 0691-AA64

Direct Investment Surveys: BE-12, 2007 Benchmark Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend regulations concerning the reporting requirements for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States. The BE-12 survey is conducted once every 5 years and covers virtually the entire universe of foreign direct investment in the United States in terms of value. The benchmark survey will be conducted for 2007. To address the current needs of data users while at the same time keeping the respondent burden as low as possible, BEA proposes modification, addition, or deletion of several items on the survey forms and changes in the reporting criteria.

Changes proposed by BEA in the reporting requirements in this proposed rule are: (a) Increasing the exemption level for reporting on the BE-12(LF) long form from \$125 million to \$175 million; (b) increasing the exemption level for reporting on the BE-12(SF) short form from \$10 million to \$40 million; and (c) increasing the exemption level for reporting on the BE-12 Bank form from \$10 million to \$15 million. In addition, BEA proposes to amend Form BE-12(X) by: (1) re-naming it the Form BE-12 Claim for Not Filing and (2) deleting several questions, which will be moved to a new Form BE-12 Mini. The Claim for Not Filing would be completed only by persons that are not subject to the reporting requirements of the BE-12 survey but have been contacted by BEA concerning

their reporting status. The BE-12 Mini is an abbreviated form for reporting U.S. affiliates with total assets, sales or gross operating revenues, and net income (loss) less than or equal to \$40 million.

DATES: Comments on the proposed rules will receive consideration if submitted in writing on or before 5 p.m. November 20, 2007.

ADDRESSES: You may submit comments, identified by RIN 0691-AA64, 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.

Public Inspection: Comments may be inspected at BEA's offices, 1441 L Street, NW., Room 7005, between 8:30 a.m. and 5 p.m., Eastern Time Monday through Friday.

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 806.17 to set forth the reporting requirements for the BE-12, 2007 Benchmark Survey of Foreign Direct Investment in the United States, and 15 CFR 806.18 to list the OMB control number for this survey. 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 Changes

The BE-12 benchmark survey is a mandatory survey and is conducted once every five years by BEA under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108), hereinafter, "the Act." BEA will send the survey to potential respondents in March 2008; responses will be due by May 31, 2008.

BEA maintains a continuing dialogue with respondents and with data users, including its own internal users, to ensure that, as much as possible, the required data serve their intended purposes and are available from existing records, that instructions are clear, and that unreasonable burdens are not imposed. In reaching decisions on what questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely responses (e.g., whether the data are readily available on respondents' books), and BEA's experience in previous benchmark and related annual surveys.

To reduce respondent burden, particularly for small companies, BEA proposes the following changes to the Code of Federal Regulations: (1) Increase the exemption level for reporting on the BE-12(LF) long form from \$125 million to \$175 million; (2) increase the exemption level for reporting on the BE-12(SF) short form from \$10 million to \$40 million; and (3) increase the exemption level for reporting on the BE-12 Bank form from \$10 million to \$15 million. In addition, BEA proposes to amend Form BE-12(X) by: (1) Re-naming it the Form BE-12 Claim for Not Filing and (2) deleting several questions, which will be moved to a new Form BE-12 Mini. The Claim for Not Filing would be completed only by persons that are not subject to the reporting requirements of the BE-12 survey but have been contacted by BEA concerning their reporting status. The BE-12 Mini is a new abbreviated form for reporting U.S. affiliates with total assets, sales or gross operating revenues, and net income (loss) less than or equal to \$40 million. U.S. affiliates with assets, sales, and net income (loss) less than or equal to \$15 million would be required to report only selected items on the BE-12 Mini.

In addition to these changes in the reporting criteria, BEA proposes several additions and subtractions of questions in order to respond to current needs of data users, while keeping the respondent burden roughly constant. Among the additions, BEA proposes to add questions to the BE-12(LF) long form, BE-12(SF) short form, and BE-12 Bank form to: (1) Collect detail on the broad occupational structure of employment, (2) identify companies that engage in cross-border services transactions, and (3) identify the financial reporting standards used to compile and report the survey. For the BE-12(LF) long form, BEA proposes to add questions to collect additional detail on the composition of external finances, trade, and research and development. For the BE-12(SF) short form, BEA proposes to add questions to collect sales of goods, sales of services, and investment income for majority-owned U.S. affiliates, including sales of services to U.S. persons and to foreign persons. For the BE-12 Bank form, BEA proposes to add questions to make it easier to integrate data collected for banks with data collected for nonbank U.S. affiliates. The items proposed to be collected on this form include those needed to calculate value added as well as expenditures for property, plant, and equipment; sales of goods; and sales of services to the foreign parent group(s), to foreign affiliates owned by the U.S. affiliate, and to other foreign persons.

To offset the burden imposed by these additional questions, BEA proposes to discontinue collecting information on U.S. trade in goods by product, which had been collected on the BE-12(LF) long form, and to reduce the amount of detail collected for minority-owned U.S. affiliates on the BE-12(SF) short form and BE-12 Bank form. In addition, questions on services transactions between U.S. affiliates and their foreign parent group(s) would be dropped from the BE-12 survey because collection of this information has been shifted to BEA's surveys of cross-border transactions in services and intangible assets (the BE-120, BE-125, and BE-185).

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108), hereinafter, "the Act." Section 4(b) of the Act provides 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 pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) 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;

(2) Obtain (A) Information on the balance sheet of parents and affiliates and related financial data, (B) 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 (C) 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;

(3) 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;

(4) Obtain information on tax payments by parents and affiliates by country; and

(5) 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, 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 benchmark surveys are BEA's censuses, intended to cover the universe of foreign direct investment in the United States in terms of value, and are BEA's most comprehensive surveys 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 U.S. affiliates, and on positions and transactions between U.S. affiliates and their foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). These data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy. Such data are generally found in enterprise-level accounting records of respondent companies. These data are used to derive current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they would 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.

As proposed, the survey would consist of a number of report forms and a claim for not filing. The amount and type of data required to be reported will vary according to the size of the U.S. affiliate, whether it is a bank or a nonbank, and whether or not it is majority-owned by foreign direct investors. The report forms that would be used in the survey consist of the following:

1. Form BE-12(LF) long form—Report for a majority-owned nonbank U.S. affiliate (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) with total assets, sales or gross operating revenues, or net income greater than \$175 million (positive or negative);

2. Form BE-12(SF) short form—Report for (1) a majority-owned nonbank U.S. affiliate with total assets, sales or gross operating revenues, or net income greater than \$40 million (positive or negative), but not greater than \$175 million (positive or negative), and (2) a minority-owned nonbank U.S. affiliate (owned 50 percent or less) with total assets, sales or gross operating revenues, or net income greater than \$40 million (positive or negative);

3. Form BE-12 Bank—Report for a U.S. affiliate that is a bank; and

4. Form BE-12 Mini—Report for a nonbank U.S. affiliate with total assets, sales or gross operating revenues, and net income (positive or negative) less than or equal to \$40 million.

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

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 new 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 has been submitted to OMB for approval as a reinstatement, with change, of a previously approved collection for which approval has expired under OMB control number 0608-0042. BEA proposes to amend Form BE-12(X) by: (1) Re-naming it the Form BE-12 Claim for Not Filing and (2) deleting several questions, which will be moved to a new Form BE-12 Mini. The Claim for Not Filing would be completed only by persons that are not subject to the reporting requirements of the BE-12 survey but have been contacted by BEA concerning their reporting status. The BE-12 Mini is an abbreviated form for reporting U.S. affiliates with total assets, sales or gross operating revenues, and net income (loss) less than or equal to \$40 million. U.S. affiliates with assets, sales, and net income (loss) less than or equal to \$15 million would be required to report only selected items on the BE-12 Mini.

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 OMB control number.

The BE-12 survey, as proposed, is expected to result in the filing of reports from approximately 18,550 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 for the survey is estimated at 209,650 hours (18,550 times 11.3 hours average burden).

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. Comments should be addressed to: Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; FAX: 202-606-5311; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608-0042, Attention PRA Desk Officer for BEA, via e-mail at pbugg@omb.eop.gov, or by FAX at 202-395-7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under 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. The changes proposed in this rule are discussed in the preamble and are not repeated here.

A BE-12 report is required of any U.S. company in which a foreign person 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. Most small business are not foreign owned and therefore would not be required to submit a BE-12 survey. However, for those small business that are foreign owned, the reporting burden is estimated to be small.

To minimize the reporting burden on smaller U.S. companies that are foreign owned and are required to report, BEA would increase the exemption level for reporting on the BE-12(SF) short form from \$10 million to \$40 million and would implement a new abbreviated form, Form BE-12 Mini for those companies with total assets, sales or gross operating revenues, and net income less than or equal to \$40 million

(positive or negative). To further reduce reporting burden for smaller companies, for those respondents who are majority-owned nonbank U.S. companies with total assets, sales, and net income between \$40 million and \$175 million (positive or negative), BEA would require these companies to report on the BE-12(SF) short form.

Because 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 806

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

Dated: September 17, 2007.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the 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; and 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. Sections 806.17 and 806.18 are revised to read as follows:

§ 806.17 Rules and regulations for BE-12, 2007 Benchmark Survey of Foreign Direct Investment in the United States.

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 2007. 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, 2007 Benchmark Survey of Foreign Direct Investment in the United States, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond pursuant

to § 806.4. This may be accomplished by:

(1) Filing the properly completed BE-12 report—Form BE-12(LF), Form BE-12(SF), Form BE-12 Mini, or Form BE-12 Bank, by May 31, 2008, as required;

(2) Completing and returning the Form BE-12 Claim for Not Filing by the due date of the survey; or

(3) Certifying in writing, by the due date of the survey, to the fact that the person is not a U.S. affiliate of a foreign person and not subject to the reporting requirements of the BE-12 survey.

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate, that is, for each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, at the end of the business enterprise's fiscal year that ended in calendar year 2007. A BE-12 report is required even if the foreign person's ownership interest in the U.S. business enterprise was established or acquired during the 2007 reporting year. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1)—Form BE-12(LF) long form must be completed by a U.S. affiliate that was majority-owned by one or more foreign parents (for purposes of this survey, a "majority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent), if:

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

(ii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the following three items for the U.S. affiliate (not just the foreign parent's share), was greater than \$175 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2007:

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

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

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

(2) Form BE-12(SF) short form must be completed by a U.S. affiliate if:

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

(ii) On a fully consolidated basis, or, in the case of real estate investment, on

an aggregated basis, any one of the three items listed in paragraph (c)(1)(ii) of this section for a majority-owned U.S.

affiliate (not just the foreign parent's share), was greater than \$40 million (positive or negative) but none of these items was greater than \$175 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2007.

(iii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1)(ii) of this section for a minority-owned U.S.

affiliate (not just the foreign parent's share), was greater than \$40 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2007. (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.)

(3) Form BE-12 Mini must be completed by a U.S. affiliate if:

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

(ii) On a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, none of the three items listed in paragraph (c)(1)(ii) of this section for a U.S. affiliate (not just the foreign parent's share), was greater than \$40 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2007.

(4) Form BE-12 Bank must be completed by a U.S. affiliate if:

(i) The U.S. affiliate is a bank. For purposes of the BE-12 survey, a "bank" is a business entity 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, bank holding companies and financial holding companies under the Gramm-Leach-Bliley Act, including all subsidiaries or units of a bank holding company or financial holding company, and

(ii) On a fully consolidated basis any one of the three items listed in paragraph (c)(1)(ii) of this section for a U.S. affiliate (not just the foreign parent's share), was greater than \$15 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2007.

(5) Form BE-12 Claim for Not Filing will be provided for response by persons that are not subject to the reporting requirements of the BE-12

survey but have been contacted by BEA concerning their reporting status.

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

(e) *Due date.* A fully completed and certified Form BE-12(LF), BE-12(SF), BE-12 Mini, BE-12 BANK, or Form BE-12 Claim for Not Filing is due to be filed with BEA not later than May 31, 2008.

§ 806.18 OMB control numbers assigned to the Paperwork Reduction Act.

(a) *Purpose.* This section will comply with the requirements of section 3507(f) of the Paperwork Reduction Act (PRA) which requires agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

15 CFR section where identified and described	Current OMB control No.
806.1 through 806.17	0608-0020 0024 0032 0004 0035 0030 0009 0023 0034 0042 0053

[FR Doc. E7-18592 Filed 9-20-07; 8:45 am]

BILLING CODE 3510-06-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA-302P]

RIN 1117-AB14

Record Requirements for Chemical Distributors

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: In March 2006, Congress enacted the Combat Methamphetamine Epidemic Act of 2005, which mandates