



DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

Docket No. 170322304-7557-01

RIN 0691-AA86

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

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to set forth the reporting requirements for the 2017 BE-12, Benchmark Survey of Foreign Direct Investment in the United States. The BE-12 survey is conducted every five years; the prior survey covered 2012. The benchmark survey covers the universe of foreign direct investment in the United States and is BEA's most detailed survey of such investment. For the 2017 benchmark survey, BEA will make changes in data items collected, the design of the survey forms, and the reporting requirements for the survey to satisfy changing data needs and to improve data quality and the effectiveness and efficiency of data collection.

DATES: This final rule is effective [insert date 30 days after publication in the Federal Register].

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 27, 2017, BEA published a notice of proposed rulemaking that set forth revised reporting criteria for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States (82 FR 34894). No comments on the proposed rule were received.

This final rule amends 15 CFR part 801 to set forth the reporting requirements for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States.

BEA conducts the BE-12 survey once every five years under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101- 3108).

In 2012, BEA issued a rule (77 FR 24373) that established guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Persons are required to respond to other BEA surveys conducted under these guidelines only when they are contacted by BEA. Under this final rule, however, persons subject to the reporting requirements of the BE-12, Benchmark Survey of Foreign Direct Investment in the United States, will be required to respond whether or not they are contacted by BEA.

The benchmark survey covers the universe of foreign direct investment in the United States in terms of value and is BEA's most detailed survey of such investment. 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 non-benchmark years. In particular, they serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions, international investment position, and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the activities of the U.S. affiliates of foreign companies.

Description of Changes

This final rule amends the regulations (15 CFR part 801) and the survey forms for the BE-12 benchmark survey. These amendments include changes in data items collected, the design of the survey forms, and the reporting requirements for the survey.

BEA changes the reporting requirements for certain private funds that file the BE-12 survey. BEA, in cooperation with the U.S. Department of the Treasury, instructs 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.

BEA adds, deletes, and modifies some items on the benchmark survey forms. The following items are added to the benchmark survey:

- (1) Expand sales of services breakdown on the BE-12A form to include sales of services to other U.S. affiliates of the same affiliated foreign group, sales to unaffiliated U.S. persons or entities, sales to the affiliated foreign group, sales to foreign affiliates owned by the U.S. affiliate responding to the survey, and sales to all other foreign persons or entities.
- (2) Expand state-level data items on the BE-12A and BE-12B forms to include manufacturing employment; gross book value of property, plant, and equipment; and the portion of the gross book value that is commercial property.
- (3) Add state of location to the BE-12C form, Part I.
- (4) Add a question to collect the 20-digit Legal Entity Identifier of the U.S. affiliate on the BE-12A and BE-12B forms.
- (5) Add a question asking whether the U.S. affiliate is a publicly traded company, and if it is, collect the stock exchange on which it is listed and the ticker symbol on the BE-12A and BE-12B forms.
- (6) Add questions separating payables, receivables, interest payments, and interest receipts by foreign parents and foreign affiliates of foreign parents (FAFPs) on the BE-12B form.
- (7) Add a Part III to the BE-12C form to expand information collected on foreign ownership to better align the data collected on the BE-12 benchmark survey with the BE-605 quarterly survey and to assist in updating the statistics on foreign direct investment to include the benchmark survey results. Part III will include new questions on whether each parent has a direct or indirect ownership interest in the U.S. affiliate being reported, and if direct, the equity percentage of the parent's ownership in the affiliate. Part III will also include existing questions that were in Part II of the 2012 BE-12 survey about the name and industry of each foreign parent

and the name, country, and industry of each ultimate beneficial owner. Part III will be preceded by a request at the end of Part II to enter the number of foreign parents and instructions to file a Part III for each foreign parent. Part III will only be completed by larger BE-12C filers (those with assets, sales, or net income greater than \$20 million).

- (8) Add a private funds exemption option to the BE-12 Claim for Not Filing.
- (9) Add U.S. tax withheld on dividends to the BE-12B Part III to better align the data collected on the BE-12 benchmark survey with the BE-605 quarterly survey and assist in updating the statistics on foreign direct investment to include the benchmark survey results.
- (10) Add intercompany debt payables and receivables to the BE-12C Part I to provide information on debt transactions of smaller affiliates.
- (11) Add questions to the BE-12C form to determine if the U.S. affiliate has consolidated and unconsolidated affiliates. Add Supplement A (list of the U.S. business enterprises consolidated) and Supplement B (list of U.S. business enterprises not consolidated) to the BE-12C form.

This final rule eliminates the following items from the benchmark survey:

- (1) Questions on contract manufacturing services (BE-12A, items 24, 25, 26, and 27);
- (2) Questions on wholesale and retail trade industry activities (BE-12A, items 63a, 63b, and 63c); and
- (3) A question on prior year closing balance for voting interest (BE-12C).

In addition, this final rule makes the following modifications to the survey forms:

- (1) Modify instructions on the BE-12B form for employment by location to explain the expanded state-level data items (see Item 2. in Additions).
- (2) Modify question 87 on the BE-12A form to separate amounts reported for “change in entity” and “change in accounting methods or principles.”

(3) Add a checkbox asking if the change in accounting methods or principles is due in whole or in part to early implementation of FASB ASU No. 2016-02, Leases (Topic 842).

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 Executive Order 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 0608-0042.

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-12 survey is expected to result in the filing of reports from approximately 22,700 U.S. affiliates. The respondent burden for this collection of information will vary from one company to another. The estimated average time per respondent is 11.0 hours, 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 249,625 hours, compared to 194,150 hours for the previous (2012) benchmark survey. An increase in the number of foreign-owned companies accounts for over 80 percent of the increase in the estimated respondent burden, and the new survey questions

account for the rest of the increase.

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 0608–0042, Attention PRA Desk Officer for BEA, via email at jpark@omb.eop.gov.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), that this action 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 final regulatory flexibility analysis was prepared, as no comments were received regarding the determination that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

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

Dated: December 7, 2017.

Brian Moyer,

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 § 801.3 to read as follows:

§ 801.3 Reporting requirements.

Except for surveys subject to rulemaking in §§ 801.7, 801.8, 801.9, and 801.10, reporting requirements for all other surveys conducted by the Bureau of Economic Analysis shall be as follows:

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Director of the Bureau of Economic Analysis in the FEDERAL REGISTER prior to the implementation of a survey;

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code, persons notified of these surveys and subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act; and

(c) Persons not notified in writing of their filing obligation by the Bureau of Economic Analysis are not required to complete the survey.

3. Add § 801.10 to read as follows:

§ 801.10 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2017.

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States, will be conducted covering 2017. 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-12 survey are given in paragraphs (a) through (e) 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-12, Benchmark Survey of Foreign Direct Investment in the United States—2017, 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 a written inquiry, must respond in writing pursuant to this section. This may be accomplished by filing a properly completed BE-12 report (BE-12A, BE-12B, BE-12C, or BE-12 Claim for Not Filing);

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate (except certain private funds as described below), 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 2017. Certain private funds are exempt from reporting on the BE-12

survey. If a U.S. business meets ALL of the following 3 criteria, it is not required to file any BE-12 report except to indicate exemption from the survey if contacted by BEA: 1) The U.S. business enterprise is a private fund; 2) the private fund does not own, directly or indirectly through another business enterprise, an “operating company” - i.e., a business enterprise that is not a private fund or a holding company - in which the foreign parent owns at least 10 percent of the voting interest; AND 3) if the foreign parent owns the private fund indirectly (through one or more other U.S. business enterprises), there are no U.S. “operating companies” between the foreign parent and the indirectly-owned private fund.

(c) *Forms to be filed.* (1) Form BE-12A 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, 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 \$300 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2017:

- (i) Total assets (do not net out liabilities);
- (ii) Sales or gross operating revenues, excluding sales taxes; or
- (iii) Net income after provision for U.S. income taxes.

(2) Form BE-12B must be completed by:

(i) A majority-owned U.S. affiliate if, 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) of this section (not just the foreign parent’s share), was greater than \$60 million (positive or negative) but none of these items was greater than \$300 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2017.

(ii) A minority-owned U.S. affiliate (for purposes of this survey, 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) if, 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) of this section (not just the foreign parent’s share), was greater than \$60 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2017.

(3) Form BE-12C must be completed by a U.S. affiliate if, 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) of this section for a U.S. affiliate (not just the foreign parent’s share), was greater than \$60 million (positive or negative) at the end of, or for, its fiscal year that ended in calendar year 2017.

(4) 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-12A, BE-12B, BE-12C, or BE-12 Claim for Not Filing is due to be filed with BEA not later than May 31, 2018 (or by June 30, 2018 for reporting companies that use BEA’s eFile system).

BILLING CODE 3510-06-P

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