

**DEPARTMENT OF COMMERCE****Bureau of Export Administration****15 CFR Ch. VII****[Docket No. 970925233-7233-01]****Request for Comments on Effects of Foreign Policy-Based Export Controls****AGENCY:** Bureau of Export Administration, Commerce.**ACTION:** Request for comments on foreign policy-based export controls.

**SUMMARY:** The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BXA is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), foreign policy controls expire one year after imposition unless they are extended. The EAA requires a report to Congress whenever foreign policy-based export controls are extended. Although the EAA expired on August 20, 1994, the President, invoking the International Emergency Powers Act (IEEPA), continued in effect the export control system in place under the provisions of the Act and the Export Administration Regulations, to the extent permitted by law (Executive Order 12924 of August 19, 1994 and Notices of August 15, 1995, August 14, 1996 and August 13, 1997). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls and requesting comments on such controls. Foreign Policy controls need to be extended in January 1998.

**DATES:** Comments must be received by November 7, 1997, to assure full consideration in the formulation of export control policies as they relate to foreign policy-based controls.

**ADDRESSES:** Written comments (three copies) should be sent to Sharron Cook, Regulatory Policy Division (Room 2096), Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044. If sending comments by courier, send to: Department of Commerce, Bureau of Export Administration, Attn: Sharron Cook, 14th Street and Pennsylvania Avenue, Room 2705, N.W., Washington, D.C. 20230

**FOR FURTHER INFORMATION CONTACT:**

Anita McNamee, Foreign Policy Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482-4252. Copies of the current Annual Foreign Policy Report to the Congress can also be requested.

**SUPPLEMENTARY INFORMATION:** The current foreign policy controls maintained by the Bureau of Export Administration (BXA) are set forth in the Export Administration Regulations (EAR), parts 742(CCL Based Controls), 744 (End-user and End-use Based Controls), and 746 (Embargoes and Special Country Controls). These controls apply to: High performance computers (§ 742.12); significant items (SI); Commercial communications satellites and Hot section technology for the development, production or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (EI) (§ 742.15); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of missiles (§ 742.5 and § 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§ 742.2 and § 744.4); activities of U.S. persons in transactions related to missile technology or chemical or biological weapons proliferation in named countries (§ 744.6); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 746.2, 746.3, 746.5, and 746.7); and, Libya (§§ 744.8, and 746.4). Attention is also given in this context to the controls on nuclear-related commodities, software, and technology (§ 742.3 and § 744.2) which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Effective January 21, 1997, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria the Departments of Commerce and State consider in determining whether to continue or revise U.S.

foreign policy controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. The reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or the economic well-being of individual United States companies and their employees and communities does not exceed the benefit to United States foreign policy objectives; and

6. The ability of the United States to enforce the controls effectively. BXA is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in comments relating to the effects of foreign policy controls on exports of replacement and other parts.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

BXA will consider requests for confidential treatment. The information for which confidential treatment is requested should be submitted to BXA separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information." BXA will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by BXA as confidential will be protected from public disclosure to the extent permitted by law. Communications between agencies of the United States Government or with foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about inspection and copying of records at this facility may be obtained from Margaret Cornejo, BXA Freedom of Information Officer, at the above address or by calling (202) 482-2593.

Dated: October 3, 1997.

**William V. Skidmore,**

*Acting Assistant Secretary for Export Administration.*

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## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

#### 15 CFR Part 806

[Docket No. 970918231-7231-01]

RIN 0691-AA08

#### **Direct Investment Surveys: BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1997**

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document sets forth proposed rules to revise 15 CFR 806.17 to present the reporting requirements for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1997 and to delete the rules

now in 15 CFR 806.17, which were for the last benchmark survey covering 1992.

The BE-12 benchmark survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under Section 3103(b) of the International Investment and Trade in Services Survey Act, which requires that a benchmark survey of foreign direct investment in the United States be conducted every five years. The last benchmark survey was conducted for 1992, and the proposed survey will be conducted for 1997. The benchmark survey will obtain universe data on the financial and operating characteristics of, and on positions and transactions between, U.S. affiliates and their foreign parents. The data from the quinquennial survey will provide benchmarks for deriving current universe estimates of foreign direct investment from sample data collected in other BEA surveys in nonbenchmark years. The data are needed to measure the economic significance of foreign direct investment in the United States, measure changes in such investment, assess its impact on the U.S. economy, and based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States. They are also required for compiling the balance of payments, international investment position, and national income and product accounts of the United States.

Key changes proposed by BEA from the previous benchmark survey include reducing respondent burden, particularly for small companies, by: Increasing the exemption level for reporting on the survey to \$3 million (measured by the company's total assets, sales, or net income) from \$1 million in the 1992 survey; increasing the exemption level at which reporting on the long form version of the survey is required from \$50 million to \$100 million; and requiring reporting companies with assets, sales, or net income between \$3 million and \$30 million to report only selected data items on the short form version. In addition, BEA proposes to base industry coding of reporting companies on the new North American Industry Classification System (NAICS) in place of the current system which is based on the U.S. Standard Industrial Classification system; to collect new information on affiliated services transactions by type of service; and to modify the detail collected on the composition of external financing of the reporting enterprise, on exports and imports of goods by product, and on the

operations of foreign-owned businesses in individual States.

**DATES:** Comments on the proposed rules will receive consideration if submitted in writing on or before November 24, 1997.

**ADDRESSES:** Comments may be mailed to the Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room M-100, 1441 L Street NW, Washington, DC 20005. Comments received will be available for public inspection in Room 7005, 1441 L Street NW, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**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:** These proposed rules set forth the reporting requirements for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1997. This survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by Pub. L. 98-573 and Pub. L. 101-533), hereinafter, "the Act." Section 3103(b) of the Act, as amended, 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 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 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;