

but, when requested, must also identify and furnish information concerning the foreign beneficial owner, if known, or if such information can be secured. Accounts or transactions of the U.S. affiliate with the foreign intermediary shall be considered as accounts or transactions of the U.S. affiliate with the foreign beneficial owner.

[42 FR 64315, Dec. 22, 1977, as amended at 43 FR 54624, Nov. 22, 1978]

§ 806.12 Partnerships.

Limited partners do not have voting rights in a partnership and therefore cannot have a direct investment in a partnership; their investment is considered to be portfolio investment. Determination of the existence of direct investment in a partnership shall be based on the country of residence of, and the percentage control exercised by, the general partner(s), although the latter may differ from the financial interest of the general partners.

§ 806.13 Miscellaneous.

(a) *Accounting methods and records.* Generally accepted U.S. accounting principles should be followed. Corporations should generally use the same methods and records that are used to generate reports to stockholders, unless otherwise specified in the reporting instructions for a given report form. Reports for unincorporated persons must be generated on an equivalent basis.

(b) *Annual stockholder's report.* Business enterprises issuing annual reports to stockholders are requested to furnish a copy of their annual reports to this Bureau.

(c) *Required information not available.* All reasonable efforts should be made to obtain information required for reporting. Every question on each form should be answered, except where specifically exempted. When only partial information is available, an appropriate indication should be given.

(d) *Estimates.* If actual figures are not available, estimates should be supplied and labeled as such. When a data item cannot be fully subdivided as required, a total and an estimated breakdown of the total should be supplied.

(e) *Specify.* When "specify" is included in certain data items, the type and dol-

lar amount of the major items included must be given for at least the items mentioned in the line instruction.

(f) *Space on form insufficient.* When space on a form is insufficient to permit a full answer to any item, the required information should be submitted on supplementary sheets, appropriately labeled and referenced to the item number and the form.

(g) *Extensions.* Requests for an extension of a reporting deadline will not normally be granted. However, in hardship cases, written requests for an extension will be considered provided they are received 15 days prior to the date of the report and enumerate substantive reasons necessitating the extension.

(h) *Number of copies.* A single original copy of each report shall be filed with the Bureau of Economic Analysis; this should be the copy with the address label if such a labeled copy has been provided. In addition, each respondent must retain a copy of its report. Both copies are protected by law; see § 806.5.

(i) *Other.* Instructions concerning filing dates, where to send reports, and whom to contact concerning a given report are contained on each form. General inquiries should be directed to the:

U.S. Department of Commerce, Bureau of Economic Analysis, International Investment Division (BE-50), Washington, DC 20230.

§ 806.14 U.S. direct investment abroad.

(a) *Specific definitions*—(1) *U.S. direct investment abroad* means the ownership or control, directly or indirectly, by one U.S. person of 10 per centum or more of the voting securities of an incorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch.

(2) *U.S. Reporter* means the U.S. person which has direct investment in a foreign business enterprise, including a branch. If the U.S. person is an incorporated business enterprise, the U.S. Reporter is the fully consolidated U.S. domestic enterprise consisting of (i) the U.S. corporation whose voting securities are not owned more than 50 percent by another U.S. corporation, and (ii) proceeding down each ownership chain from that U.S. corporation,

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any U.S. corporation (including Domestic International Sales Corporations) whose voting securities are more than 50 percent owned by the U.S. corporation above it.

(3) *Foreign affiliate* means an affiliate located outside the United States in which a U.S. person has direct investment.

(4) *Majority-owned foreign affiliate* means a foreign affiliate in which the combined "direct investment interest" of all U.S. Reporters of the affiliate exceeds 50 per centum.

(b) *Foreign affiliate consolidation.* In cases where the recordkeeping system of foreign affiliates makes it impossible or extremely difficult to file a separate report for each foreign affiliate, a U.S. Reporter may consolidate affiliates in the same country when the following conditions apply:

(1) The affiliates are in the same BEA 3-digit industry as defined in the industry Classifications and Export and Import Trade Classifications Booklet; or

(2) The affiliates are integral parts of the same business operation. For example, if German affiliate A manufactures tires and a majority of its sales are to German affiliate B which produces autos, then affiliates A and B may be consolidated.

Any affiliates consolidated shall thereafter be considered to be one affiliate and should be consolidated in the same manner for all reports required to be filed pursuant to this section.

(c) *Reports required.* The place and time for filing, and specific instructions and definitions relating to, a given report form are given on the form. Reports are required even though a foreign affiliate may have been established, acquired, seized, liquidated, sold, expropriated, or inactivated during the reporting period.

(d) *Exemption levels.* Exemption levels for individual report forms will normally be stated in terms of total assets, net sales or gross operating revenues excluding sales taxes, and net income after income taxes, whether positive or negative, although different or special criteria may be specified for a given report form. If any one of the three items exceeds the exemption level and if the statistical data requested in the report are applicable to

the entity being reported, then a report must be filed. Since these items may not have to be reported on a given form, a U.S. Reporter claiming exemption from filing a given form must furnish a certification as to the levels of the items on which the exemption is based or must certify that the data requested are not applicable. The exemption-level tests shall be applied as outlined below.

(1) For quarterly report forms, as to the assets test reports are required beginning with the quarter in which total assets exceed the exemption level; as to the test for sales (revenues) and net income after income taxes, reports are required for each quarter of a year in which the annual amount of these items exceeds or can be expected to exceed, the exemption level. Quarterly reports for a year may be required retroactively when it is determined that the exemption level has been exceeded.

(2) For report forms requesting annual data after the close of the year in question, the test shall be whether any one of the three items exceeded the exemption level during that year.

(3) For the semi-annual plant and equipment expenditures survey, which requests actual data for the past year and/or annual projections for the current and following year, the test will be made for each year as to whether any one of the three items exceeded, or is expected to exceed, the exemption level; data must be reported only for the year or years in which the exemption level is, or is expected to be, exceeded.

If total assets, sales or net income exceed the exemption level in a given year, it is deemed that the exemption level will also be exceeded in the following year.

The number and title of each report form, its exemption level, and other reporting criteria, if any, pertaining to it, are given below.

(e) *Quarterly report form.* BE-577—Transactions of U.S. Reporter with Foreign Affiliate: One report is required for each foreign affiliate exceeding an exemption level of \$40,000,000 except that a report need not be filed by

a U.S. Reporter to report direct transactions with one of its foreign affiliates in which it does not hold a direct equity interest unless an intercompany balance or fee and royalty receipts or payments for the quarter exceed \$1,000,000.

(f) *Annual report forms.* (1) BE-133B—Follow-up Schedule of Expenditures for property, Plant, and Equipment of U.S. Direct Investment Abroad: This is a schedule-type report form on which each majority-owned foreign affiliate exceeding an exemption level of \$10,000,000 must be listed and the requested data given for each.

(2) BE-133C—Schedule of Expenditures for Property, Plant, and Equipment of U.S. Direct Investment Abroad: This is a schedule-type report form on which each majority-owned foreign affiliate exceeding an exemption level of \$10,000,000 must be listed and the requested data given for each.

(3) BE-11—Annual survey of U.S. Direct Investment Abroad: A report, consisting of Form BE-11A and Form(s) BE-11B(LF)(Long Form), BE-11B(SF)(Short Form), BE-11B(FN), BE-11B(EZ), and/or BE-11C, is required of each U.S. Reporter that, at the end of the Reporter's fiscal year, had a foreign affiliate reportable on Form BE-11B(LF), (SF), (FN), (EZ), or BE-11C. Forms required and the criteria for reporting on each are as follows:

(i) Form BE-11A (Report for U.S. Reporter) must be filed by each U.S. person having a foreign affiliate reportable on Form BE-11B(LF), (SF), (FN), (EZ), or BE-11C. If the U.S. Reporter is a corporation, Form BE-11A is required to cover the fully consolidated U.S. domestic business enterprise. However, where a U.S. Reporter's primary line of business is not in banking (or related financial activities), but the Reporter also has ownership in a bank, the bank, including all of its domestic subsidiaries or units, must file on a separate Form BE-11A. The nonbanking U.S. operations not owned by the bank must also file on a Form BE-11A.

(A) If for a U.S. Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than \$150 million (positive or

negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter must file a complete Form BE-11A. It must also file a Form BE-11B(LF), (SF), (FN), (EZ), or BE-11C as applicable, for each nonexempt foreign affiliate.

(B) If for a U.S. Reporter no one of the three items listed in paragraph (f)(3)(i)(A) of this section was greater than \$150 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter is required to file on Form BE-11A only items 1 through 31 and Part IV. It must also file a Form BE-11B(LF), (SF), (FN), (EZ), or BE-11C as applicable, for each nonexempt foreign affiliate.

(ii) Forms BE-11B(LF), (SF), and (EZ) (Report for Majority-owned Nonbank Foreign Affiliate of Nonbank U.S. Reporter).

(A) A BE-11B(LF)(Long Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$225 million (positive or negative) at the end of, or for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE-11B(EZ).

(B) A BE-11B(SF)(Short Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$60 million (positive or negative), but for which no one of these items was greater than \$225 million (positive or negative), at the end of, or for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE-11B(EZ).

(C) A BE-11B(EZ) must be filed for each nonbank foreign affiliate of a nonbank U.S. Reporter that is selected to be reported on this form in lieu of Form BE-11B(LF) or Form BE-11B(SF).

(iii) Form BE-11B(FN) (Report for Foreign Affiliate of Bank U.S. Reporter and Bank Affiliate of Nonbank U.S. Reporter) must be filed for 1) each foreign affiliate (bank and nonbank) of a bank U.S. Reporter for which any one of the

three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$250 million (positive or negative) at the end of, or for, the affiliate's fiscal year and 2) each bank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$250 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) Form BE-11C (Report for Minority-owned Nonbank Foreign Affiliate of Nonbank U.S. Reporter) must be filed for each minority-owned nonbank foreign affiliate of a nonbank U.S. Reporter that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$60 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(v) Based on the preceding, an affiliate is exempt from being reported if it meets any one of the following criteria:

(A) For nonbank affiliates of nonbank U.S. Reporters, none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds \$60 million (positive or negative). However, affiliates that were established or acquired during the year and for which at least one of these items was greater than \$10 million but not over \$60 million must be listed, and key data items reported, on a supplement schedule on Form BE-11A.

(B) For affiliates of bank U.S. Reporters and bank affiliates of nonbank U.S. Reporters, none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds \$250 million (positive or negative). However, affiliates that were established or acquired during the year and for which at least one of these items was greater than \$10 million but not over \$250 million must be listed, and key data items reported, on a supplement schedule on Form BE-11A.

(C) For nonbank foreign affiliates of nonbank U.S. Reporters, for fiscal year 2007 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of the three items listed in paragraph (f)(3)(ii)(A) of this sec-

tion exceeds \$100 million (positive or negative).

(D) For fiscal years other than 2007, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined.

(vi) Notwithstanding paragraph (f)(3)(v) of this section, a Form BE-11B(LF), (SF), (FN), (EZ) or BE-11C must be filed for a foreign affiliate of the U.S. Reporter that owns another non-exempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt. That is, all affiliates upward in the chain of ownership must be reported.

(g) *Other report forms.* (1) BE-507—Industry Classification Questionnaire: In general, U.S. Reporters and their foreign affiliates will each be assigned a BEA 3-digit industry code in the BE-10 Benchmark Surveys required by the Act to be conducted in 1982, 1989, and every fifth year thereafter. However, interim reports on Form BE-507 are required:

(i) For each foreign affiliate newly established or acquired by a U.S. person on or after January 1, 1978; or

(ii) For each U.S. person who becomes a U.S. Reporter on or after January 1, 1978 by virtue of establishing or acquiring a foreign affiliate; or

(iii) For an existing foreign affiliate or U.S. Reporter whose industry classification changes on or after January 1, 1978 so that a previous BE-507 report or the BE-10 report required to be filed for 1977 does not accurately reflect the current industry classification of the entity.

For new U.S. Reporters or foreign affiliates, the BE-507 report must be filed only if one of the other reports must be filed and shall be submitted with the initial filing of the related report. For a change in an existing U.S. Reporter or foreign affiliate which is currently filing one of the other reports, the BE-507 report must be filed whenever it is determined that change from one 3-digit industry classification to another has occurred.

(2) BE-10—Benchmark Survey of U.S. Direct Investment Abroad: Section 4(b) of the Act (22 U.S.C. 3103) provides that a comprehensive benchmark survey of U.S. direct investment abroad will be conducted in 1982, 1989, and every fifth

year thereafter. The survey, referred to as the “BE-10,” consists of a Form BE-10A or BE-10A BANK for reporting information concerning the U.S. Reporter and Form(s) BE-10B(LF), BE-10B(SF), or BE-10B BANK for reporting information concerning each foreign affiliate. Exemption levels, specific requirements for, and the year of coverage of, a given BE-10 survey may be found in §806.16.

[42 FR 64315, Dec. 22, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §806.14, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EFFECTIVE DATE NOTES: 1. At 75 FR 76631, Dec. 9, 2010, §806.14 was amended by revising paragraph (e), effective Jan. 10, 2011. For the convenience of the user, the revised text is set forth as follows:

§806.14 U.S. direct investment abroad.

* * * * *

(e) *Quarterly report form.* BE-577, Quarterly Survey of U.S. Direct Investment Abroad—Direct Transactions of U.S. Reporter With Foreign Affiliate: One report is required for each foreign affiliate exceeding an exemption level of \$60 million except that a report need not be filed by a U.S. Reporter to report direct transactions with one of its foreign affiliates in which it does not hold a direct equity interest unless an intercompany balance for the quarter exceeds \$1 million.

* * * * *

2. At 75 FR 80295, Dec. 22, 2010, §806.14 was amended by revising paragraphs (b)(1) and(f)(3), effective Jan. 21, 2010. For the convenience of the user, the revised text is set forth as follows:

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* * * * *

(b) * * *

(1) The affiliates are in the same BEA 4-digit industry as defined in the Guide to Industry Classifications for International Surveys, 2007; or

* * * * *

(f) * * *

(3) BE-11—Annual Survey of U.S. Direct Investment Abroad: A report, consisting of Form BE-11A and Form(s) BE-11B, BE-11C, BE-11D and/or BE-11E, is required of each

U.S. Reporter that, at the end of the Reporter’s fiscal year, had a foreign affiliate reportable on Form BE-11B, BE-11C, BE-11D or BE-11E. Forms required and the criteria for reporting on each are as follows:

(i) Form BE-11A (Report for U.S. Reporter) must be filed by each U.S. person having a foreign affiliate reportable on Form BE-11B, BE-11C, BE-11D or BE-11E. If the U.S. Reporter is a corporation, Form BE-11A is required to cover the fully consolidated U.S. domestic business enterprise.

(A) If for a U.S. Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than \$300 million (positive or negative) at the end of, or for, the Reporter’s fiscal year, the U.S. Reporter must file a complete Form BE-11A. It must also file a Form BE-11B, BE-11C, BE-11D or BE-11E, as applicable, for each nonexempt foreign affiliate.

(B) If for a U.S. Reporter no one of the three items listed in paragraph (f)(3)(i)(A) of this section was greater than \$300 million (positive or negative) at the end of, or for, the Reporter’s fiscal year, the U.S. Reporter is required to file on Form BE-11A only items 1 through 26 and Part IV. It must also file a Form BE-11B, BE-11C, BE-11D, or BE-11E as applicable, for each nonexempt foreign affiliate.

(ii) Forms BE-11B, BE-11C, BE-11D, and BE-11E (Report for Foreign Affiliate).

(A) Form BE-11B must be reported for each majority-owned foreign affiliate, whether held directly or indirectly, for which any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$60 million (positive or negative) at the end of, or for, the affiliate’s fiscal year, unless the foreign affiliate is selected to be reported on Form BE-11E.

(B) Form BE-11C must be reported for each minority-owned foreign affiliate, whether held directly or indirectly, for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$60 million (positive or negative) at the end of, or for, the affiliate’s fiscal year.

(C) Form BE-11D must be reported for each majority- and minority-owned foreign affiliate, whether held directly or indirectly, established or acquired during the year for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$25 million (positive or negative), but for which no one of these items was greater than \$60 million (positive or negative), at the end of, or for, the affiliate’s fiscal year. Form BE-11D is a schedule; a U.S. Reporter would submit one or more pages of

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the form depending on the number of affiliates that are required to be filed on this form.

(D) Form BE-11E must be reported for each foreign affiliate that is selected by BEA to be reported on this form in lieu of Form BE-11B. BEA statistically divides into panels, affiliates for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$60 million (positive or negative), but for which no one of these items was greater than \$300 million (positive or negative), at the end of, or for, the affiliate's fiscal year. At the direction of BEA, U.S. Reporters would alternate reporting these affiliates on Form BE-11B and Form BE-11E.

(iii) Based on the preceding, an affiliate is exempt from being reported if none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds \$60 million (positive or negative). However, affiliates that were established or acquired during the year and for which at least one of the items was greater than \$25 million but not over \$60 million must be listed, and key items reported, on schedule-type Form BE-11D.

(iv) Notwithstanding paragraph (f)(3)(iii) of this section, a Form BE-11B, BE-11C, or BE-11E must be filed for a foreign affiliate of the U.S. Reporter that owns another non-exempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt. That is, all affiliates upward in the chain of ownership must be reported.

* * * * *

§ 806.15 Foreign direct investment in the United States.

(a) *Specific definitions*—(1) *Foreign direct investment in the United States* means the ownership or control, directly or indirectly, by one foreign person of 10 per centum 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.

(2) *U.S. affiliate* means an affiliate located in the United States in which a foreign person has a direct investment.

(3) *Foreign parent* means the foreign person, or the first person outside the United States in a foreign chain of ownership, which has direct investment in a U.S. business enterprise, including a branch.

(4) *Affiliated foreign group* means (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 per centum of the person below it up to and including that person

which is not owned more than 50 per centum by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 per centum by the person above it.

(5) *Foreign affiliate of foreign parent* means, with reference to a given U.S. affiliate, any member of the affiliated foreign group owning the affiliate that is not a foreign parent of the affiliate.

(6) *Ultimate beneficial owner (UBO)* is that person, proceeding up the ownership chain beginning with and including the foreign parent, that is not more than 50 percent owned or controlled by another person. (An owner who creates a trust, proxy, power of attorney, arrangement, or device with the purpose or effect of divesting such owner of the ownership of an equity interest as part of a plan or scheme to avoid reporting information, is deemed to be the owner of the equity interest.)

(b) *Beneficial, not record, ownership is the basis of the reporting criteria.* In those cases where a U.S. affiliate is also required to identify the ultimate beneficial owner (UBO) of the foreign investment, if the UBO is an individual, only the country of location of the individual must be given.

(c) *Bearer shares.* If the ownership in a U.S. affiliate by any owner in the ownership chain from the U.S. affiliate up to and including the ultimate beneficial owner (UBO) is represented by bearer shares, the requirement to disclose the information regarding the UBO remains with the reporting U.S. affiliate, except where a company in the ownership chain has publicly traded bearer shares. In that case, identification of the UBO may stop with the identification of the company whose capital stock is represented by the publicly traded bearer shares. For closely held companies with nonpublicly traded bearer shares, identifying the foreign parent or the UBO as "bearer shares" is not an acceptable response. The U.S. affiliate must pursue the identification of the UBO through managing directors or any other official or intermediary.