

(d) *Covered types of services.* The BE-180 survey covers the following types of financial services transactions (sales or purchases) between U.S. financial companies and foreign persons: Brokerage services related to equity transactions; other brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit card services; credit card services; financial advisory and custody services; securities lending services; electronic funds transfer services; and other financial services.

[75 FR 35290, June 22, 2010]

## PART 806—DIRECT INVESTMENT SURVEYS

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**AUTHORITY:** 5 U.S.C. 301; 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); E.O. 12518 (3 CFR, 1985 Comp., p. 348).

**SOURCE:** 42 FR 64315, Dec. 22, 1977, unless otherwise noted.

### § 806.1 Purpose.

The purpose of this part is to set forth the rules and regulations necessary to carry out the data collection program and analyses concerning direct investment as required by, or provided for in, the International Investment Survey Act of 1976 (Pub. L. 94–472,

90 Stat. 2059, 22 U.S.C. 3101 to 3108), hereinafter “the Act”. The overall purpose of the Act is to provide comprehensive and reliable information pertaining to international investment, including direct investment, and to do so with a minimum of burden on respondents and with no unnecessary duplication of effort.

### § 806.2 Recordkeeping requirements.

In accordance with section 5(b)(1) of the Act (22 U.S.C. 3104) persons subject to the jurisdiction of the United States shall maintain any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential for carrying out the surveys and studies provided for by the Act.

### § 806.3 Reporting requirements.

(a) In accordance with section 5 (b)(2) of the Act (22 U.S.C. 3104) persons 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.

(b) Such reports may be required from among others, U.S. persons which have direct investment abroad, U.S. persons in which foreign persons have direct investment, U.S. intermediaries, and U.S. persons which assist or intervene in the purchase or sale of direct investment interests, such as real estate brokers and brokerage houses acting as managers of tender offers.

### § 806.4 Response required.

Reports, as specified below, are required from all persons coming within the reporting requirements, whether or not they are contacted by BEA. In addition, any person BEA contacts, either by sending them report forms or by written inquiry concerning the person’s being subject to the reporting requirements of a survey conducted pursuant to this part must respond in writing. The response must be made by filing the properly completed report form, or by submitting in writing, or within 30 days of being contacted, a valid exemption claim (including the

situation where the statistical data requested on the form are not applicable) or by certifying in writing to the fact that the person has no direct investments within the purview of the Act or the regulations contained herein. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act.

#### § 806.5 Confidentiality.

Information collected pursuant to § 806.3 is confidential (see section 5(c) of the Act, 22 U.S.C. 3104).

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President may authorize the exchange of information between agencies or officials designated to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal Agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes or for a proceeding under § 806.6.

(e) No official or employee (including consultants and contractors and their employees) shall publish or make available to any other person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified.

(f) Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer.

#### § 806.6 Penalties.

(a) Whoever fails to furnish any information required by the Act or required by § 806.3 or to comply with any other rule, regulation, order or instruction promulgated under the Act may be subject to a civil penalty not exceeding

\$10,000 in a proceeding brought in an appropriate United States court and to injunctive relief commanding such person to comply, or both (see section 6(a) and (b) of the Act, 22 U.S.C. 3105).

(b) Whoever willfully fails to submit any information required by the Act or required by § 806.3 or willfully violates any other rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both (see section 6(c) of the Act, 22 U.S.C. 3105).

(c) Any person who willfully violates § 806.5 relating to confidentiality, shall, upon conviction, be fined not more than \$10,000, in addition to any other penalty imposed by law (see section 5(d) of the Act, 22 U.S.C. 3104).

#### § 806.7 General definitions.

(a) *United States*, when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) *Foreign*, when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States;

(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency);

(d) *United States person* means any person resident in the United States or subject to the jurisdiction of the United States;

(e) *Foreign person* means any person resident outside the United States or

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subject to the jurisdiction of a country other than the United States;

(f) *Business enterprise* means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate;

(g) *Parent* means a person of one country who, directly or indirectly, owns or controls 10 per centum or more of the voting stock of an incorporated business enterprise, or an equivalent ownership interest in an unincorporated business enterprise, which is located outside that country;

(h) *Affiliate* means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting stock for an incorporated business or an equivalent interest for an unincorporated business, including a branch;

(i) *International investment* means (1) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by foreign persons of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a United States person, and (2) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by United States persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations of a foreign person;

(j) *Direct investment* means the ownership or control, directly or indirectly, by one person of 10 per centum or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise;

(k) *Portfolio investment* means any international investment which is not direct investment;

(l) *Associated group* means two or more persons who, by the appearance of their actions, by agreement, or by an understanding, exercise their voting privileges in a concerted manner to influence the management of a business enterprise. Each of the following are deemed to be an associated group:

(1) Members of the same family,

(2) A business enterprise and one or more of its officers and directors,

(3) Members of a syndicate or joint venture, or

(4) A corporation and its domestic subsidiaries;

(m) *Branch* means the operations or activities conducted by a person in a different location in its own name rather than through an incorporated entity; and

(n) *Intermediary* means an agent, nominee, manager, custodian, trust, or any person acting in a similar capacity.

[42 FR 64315, Dec. 22, 1977, as amended at 43 FR 54624, Nov. 22, 1978; 46 FR 23226, Apr. 24, 1981]

## § 806.8 Real estate.

Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements of this part. A residence which was an owner's primary residence that is then leased by the owner while outside his/her country of usual residence but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate held for personal use. If a business enterprise, otherwise required to report, is in the form of real property not identifiable by name, reports are required to be filed by and in the name of the beneficial owner, or in the name of such beneficial owner by the intermediary of such beneficial owner.

[46 FR 23226, Apr. 24, 1981]

## § 806.9 Airlines and ship operators.

Foreign stations, ticket offices, and terminal and port facilities of U.S. airlines and ship operators; and U.S. stations, ticket offices, and terminal and port facilities of foreign airlines and ship operators; which provide services only to their own operations are exempted from being reported. Reports are required when such affiliates produce significant revenues from services provided to unaffiliated persons.

**§ 806.10 Determining place of residence and country of jurisdiction of individuals.**

An individual will be considered a resident of, and subject to the jurisdiction of, the country in which physically located, subject to the following qualifications:

(a) Individuals who reside, or expect to reside, outside their country of citizenship for less than one year are considered to be residents of their country of citizenship.

(b) Individuals who reside, or expect to reside, outside their country of citizenship for one year or more are considered to be residents of the country in which they are residing, except as provided in paragraph (c) of this section.

(c) Notwithstanding paragraph (b) of this section, if an owner or employee of a business enterprise resides outside the country of location of the enterprise for one year or more for the purpose of furthering the business of the enterprise, and the country of the business enterprise is the country of citizenship of the owner then such owner or employee shall nevertheless be considered a resident of the country of citizenship provided there is the intent to return within a reasonable period of time.

(d) Individuals and members of their immediate families who are residing outside their country of citizenship as a result of employment by the government of that country—diplomats, consular officials, members of the armed forces, etc.—are considered to be residents of their country of citizenship.

**§ 806.11 Estates, trusts, and intermediaries.**

(a) An estate, either U.S. or foreign, is a person and therefore may have direct investment, and the estate, not the beneficiary, is considered to be the owner.

(b) A trust, either U.S. or foreign, is a person, but is not a business enterprise. The trust shall be considered the same as an intermediary and reporting should be as outlined in paragraph (c) of this section. For reporting purposes, the beneficiary(ies) of the trust, or the creator(s) of the trust in the situation detailed below or if there is, or may be,

a reversionary interest, shall be considered to be the owner(s) of the investments of the trust for determining the existence of direct investment. Where a corporation or other organization creates a trust designating its shareholders or members as beneficiaries, the creating corporation or organization shall be deemed to be the owner of the investments of the trust, or succeeding trusts where the presently existing trust has evolved out of a prior trust, for the purposes of determining the existence and reporting of direct investment.

This procedure is adopted in order to fulfill the statistical purposes of this part and does not imply that control over an enterprise owned or controlled by a trust is, or can be, exercised by the beneficiary(ies) or creator(s).

(c) *Intermediary.* (1) If a particular U.S. direct investment abroad is held, administered, or managed by a U.S. intermediary, such intermediary shall be responsible for reporting the required information for, and in the name of, its principal or shall instruct the principal to submit the required information. Upon instructing the principal, the intermediary shall be released from further liability to report provided it has informed this bureau of the date such instructions were given and the name and address of the principal, and has supplied the principal with any information in the possession of, or which can be secured by, the intermediary, that is necessary to permit the principal to complete the required reports. When acting in the capacity of an intermediary, the accounts or transactions of the U.S. intermediary with the foreign affiliate shall be considered as accounts or transactions of the U.S. principal with the foreign affiliate. To the extent such transactions or accounts are unavailable to the principal, they may be required to be reported by the intermediary.

(2) If a U.S. person holds a foreign affiliate through a foreign intermediary, the U.S. person will be considered to own the foreign affiliate directly and all accounts or transactions of the U.S. person with the intermediary will be considered to be with the foreign affiliate.

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(3) If a particular foreign direct investment in the United States is held, exercised, administered, or managed by a U.S. intermediary for the foreign beneficial owner, such intermediary shall be responsible for reporting the required information for, and in the name of, the U.S. affiliate, and shall report on behalf of the U.S. affiliate or shall instruct the U.S. affiliate to submit the required information. Upon so instructing the U.S. affiliate, the intermediary shall be released from further liability to report provided it has informed this Bureau of the date such instructions were given and the name and address of the U.S. affiliate, and has supplied the U.S. affiliate with any information in the possession of, or which can be secured by, the intermediary that is necessary to permit the U.S. affiliate to complete the required reports. When acting in the capacity of an intermediary, the accounts or transactions of the U.S. intermediary with a foreign beneficial owner shall be considered as accounts or transactions of the U.S. affiliate with the foreign beneficial owner. To the extent such transactions or accounts are unavailable to the U.S. affiliate, they may be required to be reported by the intermediary.

(4) If a foreign beneficial owner holds a U.S. affiliate through a foreign intermediary, the U.S. affiliate may report the intermediary as its foreign parent 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

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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 dollar 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, 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 4-digit industry as defined in the Guide to Industry Classifications for International Surveys, 2007; 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

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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.

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, 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.

(f) *Annual report forms.* (1)–(2) [Reserved]

(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 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.

(g) *Other report forms.* (1) [Reserved]

(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. 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](http://www.fdsys.gov).

### § 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.

(d) *Aggregation of real estate investments.* A foreign person holding real estate investments that are foreign direct investments in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.

(e) *Consolidated reporting by U.S. affiliates.* A U.S. affiliate shall file on a fully consolidated basis, including in the consolidation all other U.S. affiliates in which it directly or indirectly owns more than 50 per centum of the outstanding voting stock, unless the instructions for a given report form specifically provide otherwise. However, separate reports may be filed where a given U.S. affiliate is not normally consolidated due to unrelated operations or lack of control, provided written permission has been requested from and granted by BEA.

(f) The place and time for filing, and specific instructions and definitions relating to, a given report form will be given on the report form. Reports are required even though the foreign person’s equity interest in the U.S. business enterprise may have been established, acquired, liquidated, or sold during the reporting period.

(g) *Exemption levels.* Exemption levels for individual report forms will normally be stated in terms of total assets, 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 person claiming exemption from filing a given report 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.

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.

(h) *Quarterly report form.* BE-605, Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate with Foreign Parent: One report is required for each U.S. affiliate exceeding an exemption level of \$60 million.

(i) *Annual report form.* BE-15—Annual Survey of Foreign Direct Investment in

the United States: One report is required for each consolidated U.S. affiliate exceeding an exemption level of \$40 million. Form BE-15A must be filed by each majority-owned U.S. affiliate (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) for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds \$275 million (positive or negative). Form BE-15B must be filed by each majority-owned U.S. affiliate for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds \$120 million (positive or negative) but no one item exceeds \$275 million (positive or negative), and by each minority-owned U.S. affiliate (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) for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds \$120 million (positive or negative). Form BE-15(EZ) must be filed every other year by each U.S. affiliate for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds \$40 million (positive or negative) but no one item exceeds \$120 million (positive or negative). U.S. affiliates will be mailed Form BE-15(EZ) in years when they are required to file; in alternate years, these U.S. affiliates will be mailed a letter confirming that they are not required to file and asking them to update their contact information with BEA. A BE-15 Claim for Exemption must be filed by each U.S. affiliate to claim exemption from filing a BE-15A, BE-15B, or BE-15(EZ). Following an initial filing, the BE-15 Claim for Exemption is not required annually from those U.S. affiliates that meet the stated exemption criteria from year to year.

(j) *Other report forms.* (1) [Reserved]

(2) BE-12—Benchmark Survey of Foreign Direct Investment in the United States: Section 4b of the Act (22 U.S.C. 3103) provides that a comprehensive benchmark survey of foreign direct investment in the United States shall be conducted in 1980, 1987, and every fifth year thereafter. The survey is referred to as the “BE-12”. Exemption levels, specific requirements for, and the year of coverage of, a given BE-12 Survey may be found in § 806.17.

[42 FR 64315, Dec. 22, 1977; 43 FR 2169, Jan. 16, 1978, as amended at 44 FR 32586, June 6, 1979; 46 FR 23226, Apr. 24, 1981; 46 FR 60191, Dec. 9, 1981; 47 FR 13139, Mar. 29, 1982; 47 FR 14138, Apr. 2, 1982; 49 FR 3174, Jan. 26, 1984; 53 FR 1016, Jan. 15, 1988; 63 FR 16892, Apr. 7, 1998; 68 FR 3813, Jan. 27, 2003; 68 FR 67940, Dec. 5, 2003; 74 FR 8004, Feb. 23, 2009; 74 FR 65019, Dec. 9, 2009; 76 FR 39261, July 6, 2011]

#### § 806.16 Rules and regulations for BE-10, Benchmark Survey of U.S. Direct Investment Abroad—2009.

A BE-10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 2009. All legal authorities, provisions, definitions, and requirements contained in § 806.1 through § 806.13 and § 806.14(a) through (d) are applicable to this survey. Specific additional rules and regulations for the BE-10 survey are given in paragraphs (a) through (d) 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-10, Benchmark Survey of U.S. Direct Investment Abroad—2009, contained herein, whether or not they are contacted by BEA. Also, a person, or their agent, that is contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by:

(1) Certifying in writing, by the due date of the survey, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE-10 survey;

(2) Completing and returning the “BE-10 Claim for Not Filing” by the due date of the survey; or

(3) Filing the properly completed BE-10 report (comprising Form BE-10A and Form(s) BE-10B, BE-10C, and/or BE-10D) by May 28, 2010, or June 30, 2010, as required.

(b) *Who must report.* (1) A BE-10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, including a branch—at any time during the U.S. person’s 2009 fiscal year.

(2) If the U.S. person had no foreign affiliates during its 2009 fiscal year, a “BE-10 Claim for Not Filing” must be filed by the due date of the survey; no other forms in the survey are required. If the U.S. person had any foreign affiliates during its 2009 fiscal year, a BE-10 report is required and the U.S. person is a U.S. Reporter in this survey.

(3) Reports are required even if the foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the U.S. person’s 2009 fiscal year.

(4) The amount and type of data required to be reported vary according to the size of the U.S. Reporters or foreign affiliates, and, for foreign affiliates, whether they are majority-owned or minority-owned by U.S. direct investors. For purposes of the BE-10 survey, a “majority-owned” foreign affiliate is one in which the combined direct and indirect ownership interest of all U.S. parents of the foreign affiliate exceeds 50 percent; all other affiliates are referred to as “minority-owned” affiliates.

(c) *Forms to be filed*—(1) Form BE-10A must be completed by a U.S. Reporter. If the U.S. Reporter is a corporation, Form BE-10A is required to cover the fully consolidated U.S. domestic business enterprise.

(i) 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 any time during the Reporter’s 2009 fiscal year, the U.S. Re-

porter must file a complete Form BE-10A. It must also file Form(s) BE-10B, C, and/or D, as appropriate, for its foreign affiliates.

(ii) If for a U.S. Reporter none of the three items listed in paragraph (c)(1)(i) of this section was greater than \$300 million (positive or negative) at any time during the Reporter’s 2009 fiscal year, the U.S. Reporter is required to file on Form BE-10A only certain items as designated on the form. It must also file Form(s) BE-10B, C, and/or D for its foreign affiliates.

(2) Form BE-10B must be filed for each majority-owned foreign affiliate, whether held directly or indirectly, for which any 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 \$80 million (positive or negative) at any time during the affiliate’s 2009 fiscal year. Additional items must be filed for affiliates with assets, sales, or net income greater than \$300 million (positive or negative).

(3) Form BE-10C must be reported:

(i) For each majority-owned foreign affiliate, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2) of this section was greater than \$25 million but for which none of these items was greater than \$80 million (positive or negative), at any time during the affiliate’s 2009 fiscal year, and

(ii) For each minority-owned foreign affiliate, whether held directly or indirectly, for which any one of the three items listed in (c)(2) of this section was greater than \$25 million (positive or negative), at any time during the affiliate’s 2009 fiscal year.

(4) Form BE-10D must be filed for majority- or minority-owned foreign affiliates, whether held directly or indirectly, for which none of the three items listed in paragraph (c)(2) of this section was greater than \$25 million (positive or negative) at any time during the affiliate’s 2009 fiscal year. Form BE-10D is a schedule; a U.S. Reporter would submit one or more pages of the form depending on the number of affiliates that are required to be filed on this form.

(d) *Due date.* A fully completed and certified BE-10 report comprising Form BE-10A and Form(s) BE-10B, C, and/or D (as required) is due to be filed with BEA not later than May 28, 2010 for those U.S. Reporters filing fewer than 50, and June 30, 2010 for those U.S. Reporters filing 50 or more, foreign affiliate Forms BE-10B, C, and/or D. If the U.S. person had no foreign affiliates during its 2009 fiscal year, it must file a BE-10 Claim for Not Filing by May 28, 2010.

[74 FR 66233, Dec. 15, 2009]

**§ 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 May 31, 2008; or

(3) Certifying in writing, by May 31, 2008, 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

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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.

[72 FR 72919, Dec. 26, 2007]

EFFECTIVE DATE NOTE: At 76 FR 79056, Dec. 21, 2011, §806.17 was revised, effective Jan. 20, 2012. For the convenience of the user, the revised text is set forth as follows:

**§ 806.17 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2012.**

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States, will be conducted covering 2012. 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—2012, 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) 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;

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

(3) Filing the properly completed BE-12 report—Form BE-12A, Form BE-12B, or Form BE-12C—by May 31, 2013.

(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 2012. 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 2012 reporting year.

(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 2012:

- (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 2012.

(ii) A minority-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) at the end of, or for, its fiscal year that ended in calendar year 2012. (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-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 2012.

(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, 2013.

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

(a) *Purpose.* This section complies 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 .....	0608-0004 0009 0034 0042 0049 0053

[72 FR 72919, Dec. 26, 2007, as amended at 76 FR 39261, July 6, 2011]

**PART 807—PUBLIC INFORMATION**

Sec.

807.1 Public Reference Facility.

807.2 Department of Commerce rules applicable.

**§ 807.1 Public Reference Facility.**

The Public Reference Facility of the Bureau of Economic Analysis is located in room B7 of the Tower Building, 1401 K Street NW., Washington, DC 20230. The telephone number is 202-523-0595. The facility is open to the public from