

Issued in Fort Worth, Texas, on December 10, 2010.

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[FR Doc. 2010-31964 Filed 12-21-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 100217100-0608-02]

RIN 0691-AA74

Direct Investment Surveys: BE-11, Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis,
Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations of the Bureau of Economic Analysis (BEA), Department of Commerce, to set forth the reporting requirements for the BE-11, Annual Survey of U.S. Direct Investment Abroad. BEA conducts the survey annually and obtains sample data on financial and operating data covering the overall operations of U.S. parent companies and their foreign affiliates. BEA is modifying and deleting items on the survey forms and changing the reporting criteria. The changes include a change in the reporting criteria for foreign affiliates with U.S. Parent (U.S. Reporter) ownership between 10 and 20 percent. BEA is also making changes to bring the BE-11 forms and instructions into conformity with the 2009 BE-10, Benchmark Survey of U.S. Direct Investment Abroad.

DATES: This final rule will be effective January 21, 2011.

FOR FURTHER INFORMATION CONTACT:

David H. Galler, Chief, Direct Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; e-mail David.Galler@bea.gov or phone (202) 606-9835.

SUPPLEMENTARY INFORMATION: On September 20, 2010, BEA published a notice of proposed rulemaking that set forth revised reporting criteria for the BE-11, Annual Survey of U.S. Direct Investment Abroad (75 FR 57217-57220). No comments on the proposed rule were received. Thus the proposed rule is adopted without change. This final rule amends 15 CFR Part 806.14 to set forth the reporting requirements for

the BE-11 annual survey of U.S. direct investment abroad.

BEA, U.S. Department of Commerce, conducts the BE-11 survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108), hereinafter, "the Act." Section 4(a) of the Act (22 U.S.C. 3103(a)) requires that, with respect to United States direct investment abroad, the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States' balance of payments, the employment and taxes of United States parent companies and their affiliates, and the international investment and trade in services position of the United States.

The BE-11 survey is a sample survey that collects information on a variety of measures of the overall operations of U.S. parent companies and their foreign affiliates, including total assets, sales, net income, employment and employee compensation, research and development expenditures, and exports and imports of goods. The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE-10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are needed to measure the size and economic significance of direct investment abroad, to measure the changes in such investment, and to assess their impact on the U.S. and foreign economies. The data are disaggregated by country and industry of the foreign affiliate and by industry of the U.S. parent. The BE-11 survey is a mandatory annual survey of U.S. direct investment abroad conducted by BEA under the Act. BEA sends survey forms to potential respondents in March of each year; responses are due by May 31.

Description of Changes

The changes revise the regulations for the BE-11 survey and bring the BE-11 forms and instructions into conformity with the 2009 BE-10, Benchmark Survey of U.S. Direct Investment Abroad. These revisions include changes in reporting thresholds and data items collected, as well as changes in form design. Several of these revisions are part of a larger program to align the data collection program for multinationals with available resources.

BEA will also expand the use of sampling to help align the data collection program with resources.

Beginning with the 2010 annual survey, U.S. Reporters will report data on all their foreign affiliates, regardless of industry, on one of four foreign affiliate forms—BE-11B, BE-11C, BE-11D, or BE-11E. Data on foreign affiliates of U.S. Reporters that are banks, bank holding companies, or financial holding companies will be collected on the same survey forms as data on other foreign affiliates. All U.S. Reporters will report data on all domestic operations, on a fully consolidated basis, on Form BE-11A, Report for U.S. Reporter. Also, U.S. Reporters with total assets, sales or gross operating revenues, or net income less than or equal to \$300 million will be required to report only certain items on Form BE-11A.

Additionally, BEA will require U.S. Reporters to file reports annually for foreign affiliates in which they own a 10 to 20 percent voting interest. These affiliates, some of which are very large, fall under both U.S. and international definitions for foreign direct investment and must be represented in the statistics, but in the past they have been required to be reported in the annual survey only in the third year following a benchmark survey. Annual reporting will ensure that the activities of these affiliates are accurately reflected in the statistics derived from the survey.

The four foreign affiliate forms are—

(a) Form BE-11B—report for majority-owned foreign affiliates with total assets, sales or gross operating revenues, or net income greater than \$60 million, positive or negative; filing of additional items would be required for affiliates with assets, sales, or net income greater than \$300 million, positive or negative;

(b) Form BE-11C—report for minority-owned foreign affiliates with total assets, sales or gross operating revenues, or net income greater than \$60 million, positive or negative;

(c) Form BE-11D—schedule for foreign affiliates established or acquired by the U.S. Reporter during the current reporting year with total assets, sales or gross operating revenues, or net income greater than \$25 million, positive or negative, but for which no one of these items is greater than \$60 million, positive or negative; and

(d) Form BE-11E—report for foreign affiliates selected by BEA to be reported on this form in lieu of Form BE-11B. BEA will statistically divide into panels, affiliates with total assets, sales or gross operating revenues, and net income (positive or negative) between \$60 million and \$300 million. At the

direction of BEA, U.S. Reporters will alternate reporting these affiliates on Form BE-11B and Form BE-11E.

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 even if the foreign affiliate parent is otherwise exempt. That is, all affiliates upward in the chain of ownership must be reported.

In addition to the changes in the reporting criteria, BEA adds, combines, or deletes some items on the annual survey forms. BEA will no longer collect selected balance sheet items as separate items. BEA also will discontinue collecting a breakdown of the number of employees and amount of employee compensation by occupational classification; the composition of external finances; and wholesale and retail trade items (specifically, the cost of goods purchased for resale and inventory of goods purchased for resale).

BEA also adds several items to be collected in the surveys. First, BEA adds an item on Form BE-11C to collect information about respondents' total liabilities. BEA also adds an item on Form BE-11E to collect property, plant, and equipment expenditure information, and adds a schedule on Form BE-11B to collect a list of foreign affiliates in which the affiliate being reported has a direct equity interest, but which are not fully consolidated into the reported foreign affiliate. Completion of this list will be required only for foreign affiliates with total assets, sales or gross operating revenues, or net income greater than \$300 million at the end of, or for, the fiscal year.

The changes to the BE-11A, U.S. Reporter annual survey form, largely parallel the above-described changes to the foreign affiliate forms. For the BE-11A, BEA will no longer collect the breakdown of number of employees and amount of employee compensation by occupational classification and no longer collect wholesale and retail trade items (specifically, the cost of goods purchased for resale and inventory of goods purchased for resale). BEA also adds a question to Form BE-11A asking if the Reporter is a bank, and will add questions to collect information on assets, liabilities, and interest receipts and payments that are related to banking activities.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection of information in this final rule has been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). OMB approved the information collection under control number 0608-0053.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

The BE-11 survey is expected to result in the filing of reports from approximately 1,750 respondents, which is an increase from the 1,550 respondents that were required to file reports for the 2008 BE-11 annual survey. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 86 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total respondent burden of the survey is estimated at 150,550 hours, which is a decrease from the 153,800 hours estimated for the 2008 BE-11 annual survey. The reduction in burden is due to a decrease in the estimated average hours per response that resulted from the changes in reporting requirements. Written comments regarding the burden-hour estimates or any other aspects of the collection-of-information requirements contained in the final rule should be sent both to the Bureau of Economic Analysis via mail to U.S. Department of Commerce, Bureau of Economic Analysis, Office of the Chief, Direct Investment Division, BE-50, Washington, DC 20230; via e-mail at David.Galler@bea.gov; or by FAX at (202) 606-5311, and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608-0053, Attention PRA Desk Officer for BEA, via e-mail at pbugg@omb.eop.gov, or by FAX at (202) 395-7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified

to the Chief Counsel for Advocacy, Small Business Administration (SBA), under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the certification or the economic impact of the rule more generally. No final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 806

Economic statistics, Multinational corporations, Penalties, Reporting and recordkeeping requirements, U.S. investment abroad.

Dated: November 29, 2010.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For the reasons set forth in the preamble, BEA amends 15 CFR Part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

■ 1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101-3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp., p. 173) and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

■ 2. Amend § 806.14 by revising paragraphs (b)(1) and (f)(3) to read as follows:

806.14 U.S. direct investment abroad.

* * * * *

(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 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.

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[FR Doc. 2010-32027 Filed 12-21-10; 8:45 am]

BILLING CODE 3510-06-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release No. 33-9165; File No. S7-18-10]

RIN 3235-AK70

Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting an amendment to Rule 312 of Regulation S-T to further extend its application for eighteen months. Rule 312 provides a temporary filing accommodation for filings with respect to asset-backed securities that allows static pool information required to be disclosed in a prospectus of an asset-backed issuer to be provided on an Internet Web site under certain conditions. Under this rule, such information is deemed to be included in the prospectus included in the registration statement for the asset-backed securities. As a result of the extension, the rule will apply to filings

with respect to asset-backed securities filed on or before June 30, 2012.

DATES: *Effective Date:* December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Jay Knight, Attorney-Adviser, Division of Corporation Finance, at (202) 551-3370, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-3720.

SUPPLEMENTARY INFORMATION: We are adopting an amendment to Rule 312¹ of Regulation S-T.²

I. Background and Discussion of the Amendment

In December 2004, we adopted new and amended rules and forms to address the registration, disclosure and reporting requirements for asset-backed securities ("ABS") under the Securities Act of 1933³ (the "Securities Act") and the Securities Exchange Act of 1934⁴ (the "Exchange Act").⁵ As part of this rulemaking, we adopted Regulation AB,⁶ a new principles-based set of disclosure items forming the basis for disclosure with respect to ABS in both Securities Act registration statements and Exchange Act reports. Compliance with the revised rules was phased in; full compliance with the revised rules became effective January 1, 2006. One of the significant features of Regulation AB is Item 1105, which requires, to the extent material, static pool information to be provided in the prospectus included in registration statements for ABS offerings.⁷ While the disclosure required by Item 1105 depends on factors such as the type of underlying asset and materiality, the information required to be disclosed can be extensive. For example, a registrant may be required to disclose multiple performance metrics in periodic increments for prior securitized pools of the sponsor for the same asset type in the last five years.⁸

¹ 17 CFR 232.312.

² 17 CFR 232.10 *et seq.*

³ 15 U.S.C. 77a *et seq.*

⁴ 15 U.S.C. 78a *et seq.*

⁵ See *Asset-Backed Securities*, Release No. 33-8518 (Dec. 22, 2004) [70 FR 1506] (adopting release related to Regulation AB and other new rules and forms related to asset-backed securities) (hereinafter, the "2004 Adopting Release").

⁶ 17 CFR 229.1100 *et seq.*

⁷ See Form S-1 (17 CFR 239.11) and Form S-3 (17 CFR 239.13) under the Securities Act. Static pool information indicates how groups, or static pools, of assets, such as those originated at different intervals, are performing over time. By presenting comparisons between originations at similar points in the assets' lives, the data allows the detection of patterns that may not be evident from overall portfolio numbers and thus may reveal a more informative picture of material elements of portfolio performance and risk.

⁸ 17 CFR 229.1105.