



DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

Docket No.: 110112021-1680-03

RIN 0691-AA76

International Services Surveys: Amendments to the BE-120, Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final Rule.

SUMMARY: This final rule amends the regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to set forth the reporting requirements for the BE-120, Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons. The amended regulations for the BE-120 include both definition changes and the addition of three schedules to better collect data in accordance with new international economic accounting standards. In addition, this rule changes the BE-120 survey title from “Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons” to “Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons” because the term “intellectual property” is better understood by U.S. respondents.

The BE-120 survey covers transactions in selected services and intellectual property with foreign persons in benchmark years. In non-benchmark years, the universe estimates for these transactions are derived from sample data reported on BEA’s follow-on survey, which is the Quarterly Survey of Transactions in Selected

Services and Intangible Assets with Foreign Persons (BE-125).

The data collected by the BE-120 will be used by BEA to estimate the trade in services component of the U.S. International Transactions Accounts and other economic accounts compiled by BEA. The data are also needed by the U.S. government to monitor U.S. exports and imports of selected services and intellectual property; analyze their impact on the U.S. and foreign economies; support U.S. international trade policy for selected services and intellectual property; and assess and promote U.S. competitiveness in international trade in services. In addition, the data will improve the ability of U.S. businesses to identify and evaluate market opportunities.

DATES: The final rule is effective [INSERT 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Chris Emond, Chief, Special Surveys Branch, Balance of Payments Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; e-mail Christopher.Emond@bea.gov; or phone (202) 606-9826.

SUPPLEMENTARY INFORMATION: This rule amends 15 CFR 801.10 to update certain reporting requirements for the BE-120, Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons. The revised regulations for the BE-120 include both definition changes and the addition of three schedules to better collect data in accordance with new international standards. In addition, this rule would change the title of the BE-120 survey and make other non-substantive format changes to the regulations.

In the August 12, 2011 **Federal Register** (76 Fed. Reg. 50158-50161), BEA

published a notice of proposed rulemaking to amend 15 CFR 801.10 to set forth the reporting requirements for the BE 120, Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons. No comments were received on the proposed rule. Thus, the proposed rule is adopted without change.

Description of Changes

Upon the effective date of this rule, BEA will conduct the revised BE-120 survey every five years, with the initial survey covering fiscal year 2011, pursuant to the authority provided by the International Investment and Trade in Services Survey Act (P.L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108), hereinafter, “the Act.” The revised BE-120 survey covers purchases from and sales to foreign persons of any of the 36 types of services or intellectual property listed in paragraph 801.10(c) in benchmark years. In non-benchmark years, the universe estimates for these transactions are derived from sample data reported on BEA’s follow-on survey, which is the Quarterly Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons (BE-125). BEA will send the survey to potential respondents in March of 2012; responses will be due by June 30, 2012.

This rule revises the regulations for the BE-120 to collect data on a mandatory basis for the same services categories that were covered by the previous version of the survey. However, this rule revises the definition of covered services; some of the services categories that were included in the “other selected services” category in the prior survey will be collected separately. These services include agricultural services; disbursements to fund production costs of motion pictures; disbursements to fund news-

gathering costs and production costs of program material other than news; and waste treatment and depollution services. This rule also makes non-substantive format changes to the definition of covered services for better organization. Specifically, this rule numbers the types of services or intellectual property into a list of 36 transactions.

In addition, this rule revises the regulations for the BE-120 survey to include three new schedules, Schedules D, E and F, to collect, on a voluntary basis, additional information related to intellectual property, contract manufacturing services, and merchanting services. The regulations at 15 U.S.C. 801.10(b)(ii) are amended to describe the three new schedules, to indicate the entity that is to complete each schedule, and to provide instructions for the type of data to be reported. For example, Schedule D is to be completed by a U.S. person who engages in contract manufacturing services transactions with foreign persons. Schedule E is to be completed by a U.S. person who engages in intellectual property transactions with foreign persons. Schedule F is to be completed by U.S. persons who engage in merchanting services transactions with foreign persons. Responses from these schedules will help BEA determine whether respondents are able to supply data in a manner that will allow BEA to publish statistics on international services transactions in accordance with international economic accounting guidelines.

Finally, this rule changes the BE-120 survey title from “Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons” to “Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons” because the term “intellectual property” is better understood by U.S. respondents.

BEA maintains a continuing dialogue with respondents and with data users, including its own internal users, to ensure that, as far as possible, the required data serve their intended purposes and are available from existing records, that instructions are clear, and that unreasonable burdens are not imposed. In reaching decisions about the questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely responses (for example, whether the data are available on respondents' books), and BEA's experience in previous benchmark, annual, and quarterly surveys.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108), which provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection.

In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibilities under the Act for performing functions concerning international trade in services to the Secretary of Commerce, who has redelegate them to BEA.

Data from the survey are needed to monitor U.S. exports and imports of selected services and intellectual property; analyze their impact on the U.S. and

foreign economies; compile and improve the U.S. international transactions, national income and product, and input-output accounts; support U.S. international trade policy for services and intellectual property; assess and promote U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

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 as that term is defined under E.O. 13132.

Paperwork Reduction Act

The collection-of-information requirement in this final rule has been approved by the Office of Management and Budget (OMB) under Control Number 0608-0058 pursuant to the requirements of the Paperwork Reduction Act.

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 Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number.

The benchmark survey is expected to result in the filing of reports from approximately 15,000 respondents. Approximately 7,500 respondents will report either mandatory or voluntary data on the survey and approximately 7,500 will file exemption

claims. The respondent burden for this collection of information will vary from one respondent to another, but is estimated to average twelve hours for the respondents that file mandatory or voluntary data. This estimate includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. For other responses, the estimate is two hours. Thus, the total respondent burden for the survey is estimated at 105,000 hours.

Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the final rule should be sent both to Christopher.emond@bea.gov and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project, Attention PRA Desk Officer for BEA, via email 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, under provisions of the

Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule. As a result, final regulatory flexibility analysis is not required and none was prepared.

List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: November 22, 2011

J. Steven Landefeld

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR Part 801, as follows:

PART 801 – SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101-3108; and E.O. 11961, 3 CFR, 1977 Comp., p.86, as amended by E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Revise § 801.10 to read as follows:

§ 801.10 Rules and regulations for the BE–120, Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons.

The BE–120, Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons, will be conducted covering fiscal year 2011 and every fifth year thereafter. All legal authorities, provisions, definitions, and requirements contained in section 801.1 through 801.9(a) are applicable to this survey. Additional rules and regulations for the BE–120 survey are given in paragraphs (a) through (c) of this section. More detailed instructions and descriptions of the individual types of transactions covered are given on the report form itself.

(a) The BE–120 survey consists of two parts and six schedules. Part I requests information needed to contact the respondent and the reporting period. Part II requests information needed to determine whether a report is required and information about the reporting entity. Each of the six schedules covers one or more types of transactions and is to be completed only if the U.S. reporter has transactions of the type(s) covered by the particular schedule.

(b) *Who must report* —(1) *Mandatory reporting*. A BE–120 report is required from each U.S. person that had sales to foreign persons that exceeded \$2 million during the fiscal year covered of any of the types of services or intellectual property listed in paragraph (c) of this section, or had purchases from foreign persons that exceeded \$1 million during the fiscal year covered of any of the types of services or intellectual property listed in paragraph (c) of this section. Because the reporting threshold (\$2 million for sales and \$1 million for purchases) applies separately to sales and purchases, the

mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(i) The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed records search.

(ii) U.S. persons that file pursuant to this mandatory reporting requirement must complete Parts I and II of Form BE-120 and all applicable schedules. The total values of transactions applicable to schedules A, B, and C are to be entered in the appropriate column(s) and, except for sales of merchanting services, these amounts must be distributed among the countries involved in the transactions. For sales of merchanting services, the data are not required to be reported by individual foreign country, although this information may be provided voluntarily. Schedule D is to be completed by a U.S. person who engages in contract manufacturing services transactions with foreign persons. Schedule E is to be completed by a U.S. person who engages in intellectual property transactions with foreign persons. Schedule F is to be completed by U.S. persons who engage in merchanting services transactions with foreign persons.

(iii) Application of the exemption levels to each covered transaction is indicated on the schedule for that particular type of transaction. It should be noted that an item other than sales or purchases may be used as the measure of a given type of transaction for purposes of determining whether the threshold for mandatory reporting of the transaction is exceeded.

(2) *Voluntary reporting.* If, during the fiscal year covered, the U.S. person's total transactions (either sales or purchases) in any of the types of transactions listed in paragraph (c) of this section are \$2 million or less for sales or \$1 million or less for purchases, the U.S. person is requested to provide an estimate of the total for each type of transaction. Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed records search. Because the exemption threshold applies separately to sales and purchases, the voluntary reporting option may apply only to sales, only to purchases, or to both sales and purchases.

(3) Any U.S. person that receives the BE-120 survey form from BEA, but is not subject to the mandatory reporting requirements and chooses not to report voluntarily, must file an exemption claim by completing pages one through five of the BE-120 survey and returning it to BEA. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(c) *Covered types of services.* The services covered by the BE-120 include sales and purchases for the following transactions (transaction types 1 – 8 include rights to use, rights to distribute, or outright sales or purchases):

- (1) Rights related to industrial processes and products;
- (2) Rights related to books, CD's, digital music, etc.;
- (3) Rights related to trademarks;
- (4) Rights related to performances and events pre-recorded on motion picture film and

TV tape (including digital recordings);

(5) Rights related to broadcast and recording of live performances and events;

(6) Rights related to general use computer software;

(7) Business format franchising fees;

(8) Other intellectual property;

(9) Accounting, auditing, and bookkeeping services;

(10) Advertising services;

(11) Auxiliary insurance services;

(12) Computer and data processing services;

(13) Construction services;

(14) Data base and other information services;

(15) Educational and training services;

(16) Engineering, architectural, and surveying services;

(17) Financial services (purchases only);

(18) Industrial engineering services;

(19) Industrial -type maintenance, installation, alteration, and training services;

(20) Legal services;

(21) Management, consulting, and public relations services (includes expenses allocated to/from a parent and its affiliates);

(22) Merchanting services;

(23) Mining services;

(24) Operational leasing services;

(25) Trade-related services, other than merchanting services;

- (26) Performing arts, sports, and other live performances, presentations, and events;
- (27) Premiums paid on primary insurance (payments only);
- (28) Losses recovered on primary insurance;
- (29) Research and development services;
- (30) Telecommunications services;
- (31) Agricultural services;
- (32) Contract manufacturing services;
- (33) Disbursements to fund production costs of motion pictures;
- (34) Disbursements to fund news-gathering costs and production costs of program material other than news;
- (35) Waste treatment and depollution services; and
- (36) Other selected services.

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