



DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[170322303-8069-01]

RIN 0691-AA87

International Services Surveys: BE-120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to set forth the reporting requirements for the mandatory BE-120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons. This survey applies to the 2017 fiscal reporting year. The benchmark survey covers the universe of transactions in selected services and intellectual property and is BEA's most comprehensive survey of such transactions. For the 2017 benchmark survey, BEA is making changes to the reporting requirements of the survey, the data items collected, and the design of the survey form to satisfy changing data needs and to improve data quality and the effectiveness and efficiency of data collections.

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

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE-50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; phone (301) 278-9189; or via email at Christopher.Stein@bea.gov.

SUPPLEMENTARY INFORMATION: On November 15, 2017, BEA published a notice of proposed rulemaking that set forth the revised reporting criteria for the BE-120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons (82 FR 52863). No comments on the proposed rule were received.

This final rule amends 15 CFR part 801 to set forth the reporting requirements for the BE-120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons.

BEA typically conducts the BE-120 survey once every five years under the authority of the International Investment and Trade in Services Surveys Act (22 U.S.C. 3101-3108).

In 2012, BEA established regulatory guidelines for collecting data on international trade in services and direct investment (77 FR 24373; April 24, 2012). This final rule, unlike most annual or quarterly BEA surveys conducted pursuant to the Act, amends those regulations to require a response from persons subject to the reporting requirements of the BE-120, whether or not they are contacted by BEA.

The benchmark survey covers the universe of selected services and intellectual property transactions with foreign persons and is BEA's most detailed survey of such transactions. In nonbenchmark years, the universe estimates covering these transactions are derived from the sample data reported on BEA's BE-125 Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons. The purpose of the benchmark survey is to obtain

universe data, including data from respondents not subject to filing on an ongoing quarterly basis, that will be used, in conjunction with quarterly data collected on the companion BE-125 survey, to produce estimates of selected services components for BEA's international transactions accounts (ITAs), national income and product accounts, and industry accounts. These data are also used to monitor U.S. trade in services, to analyze the impact on the U.S. economy and on foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in services, to conduct trade promotion, and to improve the ability of U.S. businesses to identify and evaluate market opportunities.

Description of Changes

This final rule amends the regulations (15 CFR part 801) and the survey form for the BE-120 benchmark survey. These amendments include changes to the reporting requirements for those not subject to reporting on the mandatory schedule(s) of the survey, changes in data items collected, and changes to the design of the survey form.

BEA changes the reporting requirements for reporters with transactions in covered services below the threshold for mandatory reporting on the schedule(s) of the survey (\$2 million in combined sales or \$1 million in combined purchases for fiscal year 2017). *All* reporters, regardless of the amount of their transactions in covered services are required to provide a total dollar amount for their sales and purchases, as applicable, *by transaction type*.

BEA adds and modifies some items on the benchmark survey form. The following items are added to the benchmark survey:

- (1) Mandatory questions are added to collect information on contract manufacturing services.

Reporters are required to provide a description of the primary manufactured (finished) good and the materials received or provided for further processing. Reporters are required to identify, on mandatory Schedule(s) A and B, as applicable, the foreign country(ies)

involved in the transaction(s) and to distribute the amounts reported for each country according to whether the foreign person is the U.S. person's foreign affiliate, part of the U.S. person's foreign parent group, or an unaffiliated foreign person. As a result of respondent feedback obtained through various agency outreach efforts, BEA has decided not to collect the additional proposed aggregate and country-level detail on sales and purchases to foreign persons for: 1) the cost of materials received or provided for use in the manufacturing process, 2) the primary country of origin of the inputs used, 3) the final value of the product returned after the manufacturing service was completed, and 4) the primary country of destination of the finished product.

- (2) Mandatory questions are added to collect new information on services transactions that were conducted remotely, e.g. where both the supplier and the consumer are in their respective territories when the service is delivered. This information will be collected for both sales of services performed remotely for foreign persons by U.S. persons and for purchases of services performed remotely by foreign persons for U.S. persons. For transactions in selected services, respondents are required to check a box identifying the percentage of their transactions that were conducted remotely, and to identify if this information was sourced from their accounting records or from recall/general knowledge. As a result of respondent feedback obtained through various agency outreach efforts, BEA has decided not to collect this new information for other modes of delivery of services.

In addition, this final rule makes the following modifications to the survey form:

- (1) Mandatory Schedules A and B are expanded to collect additional detail on intellectual property (IP) transactions. A U.S. person who engages in IP transactions with foreign persons is required to distribute their sales (receipts) and/or purchases (payments)

according to the type of transaction and the type of IP. The covered transaction types are: (1) transactions for the rights to use IP, (2) transactions for the rights to reproduce and/or distribute IP, and (3) transactions for the outright sales or purchases of IP. Reporters are required to identify the foreign country(ies) involved in the transaction(s) and to distribute the amounts reported for each country according to whether the foreign person is the U.S. person's foreign affiliate, part of the U.S. person's foreign parent group, or an unaffiliated foreign person.

- (2) Research and development services are broken out into two categories: 1) provision of customized and non-customized R&D services, and 2) other R&D services, including testing.
- (3) Engineering, architectural, and surveying services are broken out into three categories: 1) architectural services; 2) engineering services; 3) surveying, cartography, certification, testing, and technical inspection services. The current category of industrial engineering services has been dropped and captured within engineering services.
- (4) Management, consulting, and public relation services are broken out into three categories: 1) market research services; 2) public opinion polling services; and 3) other management, consulting, and public relations services. Trade exhibition and sales convention services are collected separately.
- (5) Database and other information services are broken out into two components: 1) news agency services, and 2) other information services.
- (6) Computer services are expanded into three categories: 1) computer software, including end-user licenses and customization services; 2) cloud computing and data storage services; and 3) other computer services.
- (7) Several service categories previously collected under "Other selected services" are

collected separately. These services include audiovisual services, artistic-related services, health services, heritage and recreational services, other personal services, disbursements for sales promotion and representation, photographic services (including satellite photography), and space transport services.

(8) Mandatory Schedule C only collects related goods details for construction services.

Mining services as well as the three new categories that replace engineering, architectural, and surveying services (see (3) above) are collected on Schedule A.

(9) The identification of transaction types and voluntary reporting of additional country and affiliation detail has been streamlined. All reporters, regardless of the amount of their transactions in covered services are required to provide a total dollar amount for their sales and purchases, as applicable, by transaction type. Reporters with transactions below the threshold have the option to voluntarily report information on transactions by country and by affiliation on the standard reporting schedules.

In addition, BEA has redesigned the format and wording of the survey. The new design incorporates improvements made to other BEA surveys as well as enhancements from a recent cognitive review conducted with selected survey respondents. Survey instructions and data item descriptions have been changed to improve clarity and ensure the benchmark survey form is more consistent with other BEA surveys.

Executive Order 12866

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

Executive Order 13771

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866. Additionally, this rule is not subject to the requirements of Executive Order 13771 because this rule results in no more than *de minimis*

costs.

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 was submitted to the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520 (PRA). OMB approved the reinstatement of the information collection under OMB control number 0608-0058.

Notwithstanding any other provisions of 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-120 survey is expected to result in the filing of reports from approximately 15,500 respondents. Approximately 11,500 respondents will report mandatory data on the survey, and approximately 4,000 will file exemption claims. The respondent burden for this collection-of-information will vary from one respondent to another but is estimated to average 1) 23 hours for the 5,000 respondents that file mandatory or voluntary data by country and affiliation for relevant transaction types on the mandatory schedules; 2) 4 hours for the 6,500 respondents that file mandatory data by transaction type but not by country or affiliation—including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information; and 3) 1 hour for other responses. Thus, the total respondent burden for this survey is estimated at 145,000 hours, or

about 9.5 hours (145,000 hours/15,500 respondents) per response, compared to 105,000 hours, or about 7 hours (105,000/15,000) for the previous BE-120 benchmark survey in 2011. The increase in burden hours is due to an increase in the size of the respondent universe as well as changes to the reporting requirements and content of the survey.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the final rule should be sent to both BEA via email at Christopher.Stein@bea.gov and to OMB, O.I.R.A., Paperwork Reduction Project 0608-0058, Attention PRA Desk Officer for BEA, Kerrie Leslie, via email at OIRA_Submission@omb.eop.gov.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), that this action 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 final regulatory flexibility analysis was prepared, as no comments were received regarding the determination that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

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

Dated January 17, 2018.

Brian C. Moyer,

Director, Bureau of Economic Analysis.

For 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 AND SURVEYS OF DIRECT INVESTMENT

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; 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 § 801.3 to read as follows:

§ 801.3 Reporting requirements.

Except for surveys subject to rulemaking in §§ 801.7, 801.8, 801.9, 801.10, and 801.11, reporting requirements for all other surveys conducted by the Bureau of Economic Analysis shall be as follows:

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Director of the Bureau of Economic Analysis in the FEDERAL REGISTER prior to the implementation of a survey;

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code, persons notified of these surveys and 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; and

(c) Persons not notified in writing of their filing obligation by the Bureau of Economic Analysis are not required to complete the survey.

3. Add § 801.11 to read as follows:

§ 801.11 Rules and regulations for the BE-120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons - 2017.

The BE-120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons will be conducted covering fiscal year 2017. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 and 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-120 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

- (a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons – 2017, contained in this section, whether or not they are contacted by BEA. Also, a person, or its agent, that is contacted by BEA about reporting on this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by:
- (1) Completing and returning the BE-120 by the due date of the survey; or
 - (2) If exempt, by completing the determination of reporting status section of the BE-120 survey and returning it to BEA by the due date of the survey.
- (b) *Who must report.* A BE-120 report is required of each U.S. person that had sales to foreign persons or purchases from foreign persons in the services and intellectual property categories covered by the survey during its 2017 fiscal year.
- (c) *What must be reported.* (1) A U.S. person that had combined sales to foreign persons that exceeded \$2 million or combined purchases from foreign persons that exceeded \$1 million in the services and intellectual property categories covered by the survey during its 2017 fiscal year, on an accrual basis, is required to provide data on total sales and/or purchases of each of the covered types of services and intellectual property transactions and must disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated). The \$2 million threshold for sales and the \$1 million threshold for purchases should be applied to services and intellectual property transactions with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the \$2 million threshold for sales and \$1 million threshold for purchases apply separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both. The determination of whether a

U.S. company is subject to this reporting requirement may be 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 manual records search.

(2) A U.S. person that had combined sales to foreign persons that were \$2 million or less or combined purchases from foreign persons that were \$1 million or less in the intellectual property or services categories covered by the survey during its 2017 fiscal year, on an accrual basis, is required to provide the total sales and/or purchases for each type of transaction in which they engaged. The \$2 million threshold for sales and the \$1 million threshold for purchases should be applied to services and intellectual property transactions with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the \$2 million threshold for sales and \$1 million threshold for purchases apply separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

(i) Voluntary reporting: If, during fiscal year 2017, combined sales were \$2 million or less, on an accrual basis, the U.S. person may, in addition to providing the required total for each type of transaction, report sales at a country and affiliation level of detail on the applicable mandatory schedule(s). Provision of this additional detail is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed records search.

(ii) If, during fiscal year 2017, combined purchases were \$1 million or less, on an accrual basis, the U.S. person may, in addition to providing the

required total for each type of transaction, report purchases at a country and affiliation level of detail on the applicable mandatory schedule(s).

Provision of this additional detail is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed records search.

(3) Exemption claims: Any U.S. person that receives the BE-120 survey form from BEA, but is not subject to the reporting requirements, must file an exemption claim by completing the determination of reporting status section of the BE-120 survey and returning it to BEA by the due date of the survey. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(d) *Covered types of services.* Services transactions covered by this survey consist of sales and purchases related to certain intellectual property rights (see paragraphs (d)(1) through (18) of this section for a list of intellectual property-related transactions covered by this survey) and sales and purchases of selected services (see paragraphs (d)(19) through (59) of this section for a list of services covered by this survey). The transactions (sales or purchases) between U.S. companies and foreign persons covered by the BE-120 survey are:

- (1) Rights related to the use of a patent, process, or trade secret to produce and/or distribute a product or service;
- (2) Outright sales of proprietary rights related to patents, processes, and trade secrets;
- (3) Rights to use books, music, etc., including end-user rights related to digital content;
- (4) Rights to reproduce and/or distribute books, music, etc.;
- (5) Outright sales of proprietary rights related to books, music, etc.;

- (6) Rights to use trademarks;
- (7) Outright sales of proprietary rights related to trademarks;
- (8) Rights to use recorded performances and events, including end-user rights related to digital content;
- (9) Rights to reproduce and/or distribute recorded performances and events;
- (10) Outright sales of proprietary rights related to recorded performances and events;
- (11) Rights to broadcast and record live performances and events;
- (12) Rights to reproduce and/or distribute general use computer software;
- (13) Outright sales of proprietary rights related to general use computer software;
- (14) Fees associated with business format franchising;
- (15) Outright sales of proprietary rights related to business format franchising;
- (16) Rights to use other intellectual property;
- (17) Rights to reproduce and/or distribute other intellectual property;
- (18) Outright sales of proprietary rights related to other intellectual property;
- (19) Accounting, auditing, and bookkeeping services;
- (20) Advertising services;
- (21) Auxiliary insurance services;
- (22) Computer software, including end-user licenses and customization services;
- (23) Cloud computing and data storage services;
- (24) Other computer services;
- (25) Construction services;
- (26) News agency services (excludes production costs related to news broadcasters);
- (27) Other information services;
- (28) Education services;

- (29) Architectural services;
- (30) Engineering services;
- (31) Surveying, cartography, certification, testing and technical inspection services;
- (32) Financial services;
- (33) Maintenance services;
- (34) Installation, alteration, and training services;
- (35) Legal services;
- (36) Market research services;
- (37) Public opinion polling services;
- (38) Other management, consulting, and public relations services;
- (39) Merchanting services (net receipts);
- (40) Mining services;
- (41) Operational leasing;
- (42) Trade-related services, other than merchanting services;
- (43) Artistic-related services;
- (44) Premiums paid on primary insurance;
- (45) Losses recovered on primary insurance;
- (46) Provision of customized and non-customized research and development services;
- (47) Other research and development services;
- (48) Telecommunications services;
- (49) Health services;
- (50) Heritage and recreational services;
- (51) Audiovisual and production services;
- (52) Contract manufacturing services;

- (53) Disbursements for sales promotion and representation;
- (54) Photographic services (including satellite photography services);
- (55) Space transport services;
- (56) Trade exhibition and sales convention services;
- (57) Agricultural services;
- (58) Waste treatment and depollution services; and
- (59) Other selected services n.i.e. (not included elsewhere).

(e) *Types of transactions excluded from the scope of this survey.* (1) Sales and purchases of goods. Trade in goods involves products that have a physical form, and includes payments or receipts for electricity.

(2) Sales and purchases of financial instruments, including stocks, bonds, financial derivatives, loans, mutual fund shares, and negotiable CDs. (However, securities brokerage is a service).

(3) Income on financial instruments (interest, dividends, capital gain distributions, etc).

(4) Compensation paid to, or received by, employees.

(5) Penalties and fines and gifts or grants in the form of goods and cash (sometimes called “transfers”).

(f) *Due date.* A fully completed and certified BE-120 report, or qualifying exemption claim with the determination of reporting status section completed, is due to be filed with BEA not later than June 29, 2018 (or by July 30, 2018 for respondents that use BEA’s eFile system).

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