

PART 800 [RESERVED]

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

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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).

SOURCE: 77 FR 24374, Apr. 24, 2012, unless otherwise noted.

§ 801.1 Purpose.

The purpose of this part is to provide general information on international trade in services and direct investment data collection programs and analyses under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 to 3108, as amended) (the Act). The purpose of the Act is to provide for the collection of comprehensive and reliable information pertaining to international investment, including international trade in services and direct investment, and to do so with a minimum of burden on respondents and with no unnecessary duplication of effort.

§ 801.2 Definitions.

For purposes of the Act and for reporting requirements under this part:

(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 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 profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

(g) *Services* are economic activities whose outputs are other than tangible goods. This term includes, but is not limited to, banking, other financial services, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design, engineering, management consulting, real estate, professional services, entertainment, education, and health care.

(h) *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-

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term debt obligations of a foreign person.

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

§ 801.3 Reporting requirements.

Except for surveys subject to rule-making in §§ 801.7, 801.8 and 801.9, 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(6)(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.

[80 FR 28820, May 20, 2015]

§ 801.4 Recordkeeping requirements.

In accordance with section 3104(b)(1) of title 22 of the United States Code, persons subject to the jurisdiction of the United States shall maintain any information essential for carrying out the surveys and studies provided for by the Act.

[79 FR 47575, Aug. 14, 2014, as amended at 79 FR 53291, Sept. 9, 2014; 79 FR 69759, Nov. 24, 2014]

§ 801.5 Confidentiality.

Information collected pursuant to 3104(c) of title 22 of the United States Code is confidential.

(a) Access to this information shall be available only to officials and em-

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ployees (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 § 801.6.

(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.

§ 801.6 Penalties specified by law.

(a) *Civil penalties.* Whoever fails to furnish any information required by the Act or to comply with any rule, regulation, order or instruction promulgated under the Act shall be subject to a civil penalty of not less than \$2,500, and not more than \$25,000, and to injunctive relief commanding such person to comply, or both (see 22 U.S.C. 3105(a) and (b)). These civil penalties are subject to inflationary adjustments (15 CFR 6.4.).

(b) *Criminal penalties.* Whoever willfully fails to submit any information required by the Act or willfully violates any 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

violations, upon conviction, may be punished by a like fine, imprisonment or both (see 22 U.S.C. 3105(c)).

§ 801.7 Rules and regulations for the BE-13, Survey of New Foreign Direct Investment in the United States.

The BE-13, Survey of New Foreign Direct Investment in the United States, is conducted to collect data on the acquisition or establishment of U.S. business enterprises by foreign investors and the expansion of existing U.S. affiliates of foreign companies to establish new facilities where business is conducted. Foreign direct investment is defined as the ownership or control by one foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent interest of an unincorporated U.S. business enterprise, including a branch. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and §§ 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-13 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-13, Survey of New Foreign Direct Investment in the United States, contained herein, whether or not they are contacted by BEA. Also, persons, or their agents, that are 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 this section. This may be accomplished by filing the properly completed BE-13 report (BE-13A, BE-13B, BE-13D, BE-13E, or BE-13 Claim for Exemption).

(b) *Who must report.* A BE-13 report is required of any U.S. business enterprise, except certain private funds, see exception in paragraph (b)(4) of this section, in which:

- (1) A foreign direct investment in the United States relationship is created;
- (2) An existing U.S. affiliate of a foreign parent establishes a new U.S. busi-

ness enterprise, expands its U.S. operations, or acquires a U.S. business enterprise, or;

(3) BEA requests a cost update (Form BE-13E) for a U.S. business enterprise that previously filed Form BE-13B or BE-13D.

(4) Certain private funds are exempt from reporting on the BE-13 survey. If a U.S. business enterprise is a private fund and its foreign parent does not own through the private fund 10 percent or more of the voting interest of a business enterprise that is not also a private fund or a holding company, the private fund is not required to file any BE-13 report except to indicate exemption from the survey if contacted by BEA.

(c) *Forms to be filed.* Depending on the type of investment transaction, U.S. affiliates shall report their information on one of five forms—BE-13A, BE-13B, BE-13D, BE-13E, or BE-13 Claim for Exemption.

(1) Form BE-13A—Report for a U.S. business enterprise when a foreign entity acquires a voting interest (directly, or indirectly through an existing U.S. affiliate) in that U.S. business enterprise including segments, operating units, or real estate; and

(i) The total cost of the acquisition is greater than \$3 million; and

(ii) By this acquisition, the foreign entity now owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the acquired U.S. business enterprise.

(2) Form BE-13B—Report for a U.S. business enterprise when it is established by a foreign entity or by an existing U.S. affiliate of a foreign parent; and

(i) The expected total cost to establish the new U.S. business enterprise is greater than \$3 million; and

(ii) The foreign entity owns at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the new U.S. business enterprise.

(3) Form BE-13D—Report for an existing U.S. affiliate of a foreign parent when it expands its operations to include a new existing facility where business is conducted and the expected total cost

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of the expansion is greater than \$3 million.

(4) Form BE-13E—Report for a U.S. business enterprise that previously filed Form BE-13B or BE-13D. Form BE-13E collects updated cost information and will be collected annually until the establishment or expansion of the U.S. business enterprise is complete.

(5) Form BE-13 Claim for Exemption—Report for a U.S. business enterprise that:

(i) Was contacted by BEA but does not meet the requirements for filing Forms BE-13A, BE-13B, or BE-13D; or

(ii) Whether or not contacted by BEA, met all requirements for filing Forms BE-13A, BE-13B, or BE-13D except the \$3 million reporting threshold.

(d) *Due date.* The BE-13 forms are due no later than 45 calendar days after the acquisition is completed, the new U.S. business enterprise is established, the expansion is begun, the cost update is requested, or a notification letter is received from BEA by a U.S. business enterprise that does not meet the filing requirements for the survey.

[81 FR 72521, Oct. 20, 2016]

§ 801.8 Requirements for the BE-10, Benchmark Survey of U.S. Direct Investment Abroad—2014.

A BE-10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 2014. 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 requirements 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—2014, 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 this section. 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 29, 2015, or June 30, 2015, 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 2014 fiscal year.

(2) If the U.S. person had no foreign affiliates during its 2014 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 2014 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 2014 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. It must also file

Form(s) BE-10B, C, and/or D for its foreign affiliates, whether held directly or indirectly.

(2) Form BE-10B must be filed for each majority-owned foreign affiliate 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 2014 fiscal year.

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

(i) For each majority-owned foreign affiliate 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 2014 fiscal year, and

(ii) For each minority-owned foreign affiliate 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 2014 fiscal year.

(4) Form BE-10D must be filed for majority- or minority-owned foreign affiliates 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 2014 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 29, 2015, for those U.S. Reporters filing fewer than 50, and June 30, 2015, 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 2014 fiscal year, it must file a BE-10 Claim for Not Filing by May 29, 2015.

[79 FR 69043, Nov. 20, 2014]

§ 801.9 Rules and regulations for the BE-180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons—2014.

A BE-180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons will be conducted covering 2014. All legal authorities, provisions, definitions, and requirements contained in §§801.1 through 801.2 and 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-180 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and in instructions accompanying the report forms.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons—2014, contained herein, whether or not they are contacted by BEA to ensure complete coverage of financial services transactions between U.S. financial services providers and foreign persons. Also, a person, or its agent, that is contacted by BEA about reporting in this survey, either by sending 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-180 survey by the due date; or,

(2) If exempt, by completing pages one through five of the BE-180 survey and returning them to BEA.

(b) *Who must report.* (1) A BE-180 report is required of each U.S. person that is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and that had transactions (either sales or purchases) directly with foreign persons in all financial services combined in excess of \$3,000,000 during its fiscal year covered by the survey on an accrual basis. The \$3,000,000 threshold should be applied to financial services transactions with foreign persons

by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the \$3,000,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

(i) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory 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.

(ii) Reporters that file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated).

(2) *Voluntary reporting.* If, during the fiscal year covered, sales or purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries, or parts, combined that are financial services providers or intermediaries, are \$3,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed records search. Because the \$3,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply only to sales, only to purchases, or to both.

(3) *Exemption claims.* Any U.S. person that receives the BE-180 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-180 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) *BE-180 definition of financial services provider.* The definition of financial services provider used for this survey is identical to the definition of the term as used in the North American Industry Classification System, United States, 2012, Sector 52—Finance and Insurance, and holding companies that own or influence, and are principally engaged in making management decisions for these firms (part of Sector 55—Management of Companies and Enterprises). For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, savings institutions, credit unions, and other depository credit intermediation); non-depository credit intermediation (including credit card issuing, sales financing, and other non-depository credit intermediation); activities related to credit intermediation (including mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation); securities and commodity contracts intermediation and brokerage (including investment banking and securities dealing, securities brokerage, commodity contracts and dealing, and commodity contracts brokerage); securities and commodity exchanges; other financial investment activities (including miscellaneous intermediation, portfolio management, investment advice, and all other financial investment activities); insurance carriers; insurance agencies, brokerages, and other insurance related activities; insurance and employee benefit funds (including pension funds, health and welfare funds, and other insurance funds); other investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles); and holding companies that own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

(d) *Covered types of services.* The BE-180 survey covers the following types of financial services transactions (sales or

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purchases) between U.S. financial services companies and foreign persons; brokerage services related to equity transactions; other brokerage services; underwriting and private placement services; financial management service (including fees for mutual funds, pension funds, exchange-traded funds, private equity funds, corporate portfolio, individual portfolio, hedge funds, trusts, and other); 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.

(e) *Due date.* A fully completed and certified BE-180 report, or qualifying exemption claim with pages one through five completed, is due to be filed with BEA not later than October 1, 2015.

[80 FR 28820, May 20, 2015]

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