

# Rules and Regulations

Federal Register

Vol. 75, No. 119

Tuesday, June 22, 2010

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

#### 15 CFR Part 801

[Docket No. 0908131235-0248-02]

RIN 0691-AA73

#### **International Services Surveys: BE-180, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons**

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to set forth the reporting requirements for the BE-180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons. The BE-180 replaces a similar but more limited survey, the BE-80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons. The agency form number and survey title are being changed because the survey will include the collection of data on transactions with affiliated foreigners and unaffiliated foreigners using the same survey instrument. The BE-180 survey will be conducted once every five years beginning with fiscal year 2009.

The BE-180 survey covers financial services transactions with foreign persons. In nonbenchmark years, the estimates for these transactions will be derived from the sample data reported on BEA's follow-on survey (BE-185, Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons).

The data collected by the BE-180 will be used by BEA to estimate the financial services component of the U.S. International Transactions Accounts and other economic accounts compiled by BEA. The data also are needed by the government to monitor U.S. exports and imports of financial services; analyze their impact on the U.S. and foreign economies; support U.S. international trade policy on financial services; and assess and promote U.S. competitiveness in international trade in services. In addition, they will improve the ability of U.S. businesses to identify and evaluate market opportunities.

**DATES:** The final rule will be effective July 22, 2010.

**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](mailto:Christopher.Emond@bea.gov); or phone (202) 606-9826.

**SUPPLEMENTARY INFORMATION:** In the March 9, 2010 *Federal Register* (75 FR 10704), BEA published a notice of proposed rulemaking to amend 15 CFR Part 801 to set forth the reporting requirements for the BE-180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons.

No comments were received on the proposed rule. Thus, the proposed rule is adopted without change.

#### **Description of Changes**

The BE-180 survey is a mandatory survey and will be conducted by BEA every five years, with the initial survey covering fiscal year 2009, pursuant to the authority provided in the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108), hereinafter, "the Act" and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). For the initial survey, BEA will send the survey to potential respondents in July of 2010; responses will be due September 30, 2010.

The BE-180 will replace a similar but more limited survey, the BE-80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, unlike the BE-80, the BE-180 will include the collection of

data on transactions with both affiliated and unaffiliated foreigners. The BE-180 survey is intended to capture data on financial services transactions with foreign persons. In nonbenchmark years, the estimates for these transactions would be derived from the sample data reported on BEA's follow-on quarterly survey (BE-185, Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons).

The survey will be mandatory for those U.S. financial companies that engage in the financial services transactions in amounts that exceed the exemption level. For the BE-180, the covered financial services transactions are: (1) Brokerage services related to equity transactions, and (2) other brokerage services; (3) underwriting and private placement services; (4) financial management services; (5) credit-related services, except credit card services, and (6) credit card services; (7) financial advisory and custody services; (8) securities lending services; (9) electronic funds transfer services; and (10) other financial services. The exemption level for the survey is total sales or purchases of \$3 million during the reporting period, for the above ten categories combined. Financial companies that exceed this threshold must supply data on the amount of their financial transactions for each category, disaggregated by country and by its relationship to the foreign transactor (foreign affiliate, foreign parent group or unaffiliated). In addition, this survey will collect the following subcomponents of financial management receipts at the global level: Mutual funds, pension funds, exchange-traded funds, private equity funds, corporate portfolio, individual portfolio, hedge funds, and trusts.

U.S. financial companies that are exempt from the survey's reporting requirements because they do not meet the reporting threshold are requested to provide, on a voluntary basis, estimates of their covered financial services transactions. Any U.S. financial company that receives the BE-180 survey form from BEA, but is not required to report data because it is exempt under the regulations and chooses not to report data voluntarily, must file an exemption claim by completing pages one through five of the survey. This requirement is

necessary to ensure efficient administration of the Act by eliminating unnecessary follow-up contact. If a U.S. financial company does not receive the BE-180 survey form and is not otherwise required to report under these regulations, then the company is not required to take any action.

#### 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), and Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). Section 4(a) of the International Investment and Trade in Services Survey Act 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 re-delegated them to BEA.

Data from the survey are needed to monitor U.S. exports and imports of financial services; 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 on financial services; 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 sufficient to warrant preparation of a Federalism Assessment 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 0608–0062 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 collection will display this number.

The benchmark survey is expected to result in the filing of reports from approximately 8,000 respondents. Approximately 1,000 respondents will report mandatory or voluntary data on the survey and approximately 7,000 will file exemption claims. The respondent burden for this collection of information will vary from one respondent to another, but is estimated to average ten hours, including time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information for the respondents that file mandatory or voluntary data, and two hours for exemption claim responses. Thus, the total respondent burden for the survey is estimated at 24,000 hours.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule should be sent to: (1) The Bureau of Economic Analysis via mail to U.S. Department of Commerce, Bureau of Economic Analysis, Chris Emond, Chief, Special Surveys Branch (BE-50) Washington, DC 20230, via e-mail at [Christopher.Emond@bea.gov](mailto:Christopher.Emond@bea.gov), or by FAX at 202–606–5318; and (2) the Office of Management and Budget, Office of Information and Regulatory Affairs, Control Number 0608–0062, PRA Desk Officer for BEA, via e-mail at [pbugg@omb.eop.gov](mailto: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, a 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: June 2, 2010.

**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. Amend § 801.9 by revising paragraph (a) to read as follows:

#### § 801.9 Reports required.

(a) *Benchmark surveys.* Section 4(a)(4) of the Act (22 U.S.C. 3103) provides that benchmark surveys of trade in services between U.S. and foreign persons be conducted, but not more frequently than every 5 years. General reporting requirements, exemption levels, and the years of coverage for the BE-120 survey may be found in § 801.10. General reporting requirements, exemption levels, and the years of coverage for the BE-140 survey may be found in § 801.11. More detailed instructions are given on the forms themselves; and general reporting requirements, exemption levels, and the years for coverage for the BE-180 survey may be found in § 801.12.

\* \* \* \* \*

#### § 801.11 [Removed]

■ 3. Remove § 801.11.

#### § 801.12 [Redesignated as § 801.11]

■ 4. Redesignate § 801.12 as § 801.11.  
 ■ 5. Add new § 801.12 to read as follows:

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

(a) The BE-180, Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons, will be

conducted beginning with fiscal year 2009 and every fifth year thereafter. More detailed instructions are given on the report forms and instructions.

(b) *Who must report-* (1) *Mandatory reporting.* A report is required from 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. However, submission of this information is voluntary. Because the \$3,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply to sales, to purchases, or to both.

(3) *Exemption claims.* Entities that receive the BE-180 survey but are not subject to the mandatory reporting requirements and choose not to report data voluntarily must file an exemption claim by completing pages one through

five of the BE-180 survey and returning them to BEA.

(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, 2007, 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 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.

[FR Doc. 2010-14996 Filed 6-21-10; 8:45 am]

BILLING CODE 3510-06-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 30

#### Foreign Futures and Options Transactions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is granting an exemption to firms designated by Bursa Malaysia Derivatives Berhad (Bursa Derivatives), a subsidiary of Bursa Malaysia Berhad (Bursa Malaysia), from the application of certain of the Commission's foreign futures and options regulations based upon substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Regulation 30.10, which permits persons to file a petition with the Commission for exemption from the application of certain of the Regulations set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

**DATES:** *Effective Date:* June 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** Andrew V. Chapin., Associate Director or Andrea Musalem, Attorney-Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* (202) 418-5430 or (202) 418-5167. *E-mail:* [achapin@cftc.gov](mailto:achapin@cftc.gov) or [amusalem@cftc.gov](mailto:amusalem@cftc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission has issued the following Order:

*Order Under CFTC Regulation 30.10 Exempting Firms Designated by Bursa Malaysia Derivatives (Bursa Derivatives) From the Application of Certain of the Foreign Futures and Options Regulations the Later of the Date of Publication of the Order Herein in the Federal Register or After Filing of*