

## § 801.10

processing services; construction services; data base and other information services; educational and training services; engineering, architectural, and surveying services; financial services (purchases only, by companies or parts of companies that are not financial services providers); industrial engineering services; industrial-type maintenance, installation, alteration, and training services; legal services; management, consulting, and public relations services (including allocated expenses); merchanting services (sales only); mining services; operational leasing services; other trade-related services; performing arts, sports, and other live performances, presentations, and events; premiums paid on purchases of primary insurance; losses recovered on purchases of primary insurance; research, development, and testing services; telecommunications services; and other selected services. "Other selected services" includes, but is not limited to: Agricultural services; account collection services; disbursements to fund news-gathering costs of broadcasters; disbursements to fund news-gathering costs of print media; disbursements to fund production costs of motion pictures; disbursements to fund production costs of broadcast program material other than news; disbursements to maintain government tourism and business promotion offices; disbursements for sales promotion and representation; disbursements to participate in foreign trade shows (purchases only); employment agencies and temporary help supply services; language translation services; mailing, reproduction, and commercial art; management of health care facilities; salvage services; satellite photography and remote sensing/satellite imagery services; security services; space transport (includes satellite launches, transport of goods and people for scientific experiments, and space passenger transport); transcription services; and waste treatment and depollution services. The intangible assets covered by the BE-125 survey are rights related to: Industrial processes and products; books, compact discs, audio tapes and other copyrighted material and intellectual property; trademarks, brand names, and signatures;

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performances and events pre-recorded on motion picture film and television tape, including digital recording; broadcast and recording of live performances and events; general use computer software; business format franchising fees; and other intangible assets, including indefeasible rights of users.

(ii) [Reserved]

(7) BE-150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions:

(i) A BE-150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions will be conducted covering the first quarter of the 2009 calendar year and every quarter thereafter.

(A) *Who must report.* A BE-150 report is required from each U.S. company that operates networks for clearing and settling credit card transactions made by U.S. cardholders in foreign countries and by foreign cardholders in the United States. Each reporting company must complete all applicable parts of the BE-150 form before transmitting it to BEA. Issuing banks, acquiring banks, and individual cardholders are not required to report.

(B) *Covered transactions.* The BE-150 survey collects aggregate information on the use of credit, debit, and charge cards by U.S. cardholders when traveling abroad and foreign cardholders when traveling in the United States. Data are collected by the type of transaction, by type of card, by spending category, and by country.

(ii) [Reserved]

[51 FR 7772, Mar. 6, 1986, as amended at 59 FR 53935, Oct. 27, 1994; 68 FR 69956, Dec. 16, 2003; 68 FR 75409, 75411, Dec. 31, 2003; 69 FR 50064, Aug. 13, 2004; 70 FR 48271, Aug. 17, 2005; 72 FR 5168, 5170, Feb. 5, 2007; 74 FR 15844, Apr. 8, 2009; 74 FR 41036, Aug. 14, 2009; 75 FR 35290, June 22, 2010]

### **§ 801.10 Rules and regulations for the BE-120, Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons.**

The BE-120, Benchmark Survey of Transactions in Selected Services and Intangible Assets with Foreign Persons, will be conducted covering fiscal year 2006 and every fifth year thereafter. All legal authorities, provisions,

definitions, and requirements contained in § 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 three schedules. Part I requests information needed to determine whether a report is required and which schedules apply. Part II requests information about the reporting entity. Each of the three 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 intangible assets 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 intangible assets listed in paragraph (c) of this section.

(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. 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.

(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 amounts of transactions applicable to a particular schedule are to be entered in the appropriate column(s) and, except for sales of merchanting services, these amounts must be dis-

tributed 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.

(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 reporting data in either the mandatory or voluntary section of the form, must nevertheless provide information on the reason for not reporting. 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 and intangible assets*. The BE-120 survey is intended to collect information on U.S. international trade in all types of services and intangible assets for which information is not collected in other BEA surveys and is not available to BEA from other sources. The major types of services transactions not covered by the BE-120 survey are travel, transportation, insurance (except for purchases of primary insurance), financial services (except for purchases by non-financial firms), and expenditures

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by students and medical patients who are studying or seeking treatment in a country different from their country of residence. Covered services are: Advertising services; accounting, auditing, and bookkeeping services; auxiliary insurance services; computer and data processing services; construction services; data base and other information services; educational and training services; engineering, architectural, and surveying services; financial services (purchases only, by companies or parts of companies that are not financial services providers); industrial engineering services; industrial-type maintenance, installation, alteration, and training services; legal services; management, consulting, and public relations services (including allocated expenses); merchandising services (sales only); mining services; operational leasing services; other trade-related services; performing arts, sports, and other live performances, presentations, and events; premiums paid on purchases of primary insurance; losses recovered on purchases of primary insurance; research, development, and testing services; telecommunications services; and other selected services. "Other selected services" includes, but is not limited to: Account collection services; disbursements to fund news-gathering costs of broadcasters; disbursements to fund news-gathering costs of print media; disbursements to fund production costs of motion pictures; disbursements to fund production costs of broadcast program material other than news; disbursements to maintain government tourism and business promotion offices; disbursements for sales promotion and representation; disbursements to participate in foreign trade shows (purchases only); employment agencies and temporary help supply services; language translation services; mailing, reproduction, and commercial art; medical services (non-patient—e.g., laboratory or diagnostic services); salvage services; satellite photography and remote sensing/satellite imagery services; security services; space transport (includes satellite launches, transport of goods and people for scientific experiments, and space passenger transport); transcription services; and waste treatment

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and depollution services. The intangible assets covered by the BE-120 survey are rights related to: Industrial processes and products; books, compact discs, audio tapes and other copyrighted material and intellectual property; trademarks, brand names, and signatures; performances and events pre-recorded on motion picture film and television tape, including digital recording; broadcast and recording of live performances and events; general use computer software; business format franchising fees; and other intangible assets, including infeasible rights of users.

[71 FR 75419, Dec. 15, 2006]

EFFECTIVE DATE NOTE: At 76 FR 76031, Dec. 6, 2011, § 801.10 was revised, effective Jan. 5, 2012. For the convenience of the user, the revised text is set forth 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.