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DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Parts 801, 806, and 807

[Docket No.: 111012619-2230-03]

RIN 0691-AA81

International Services Surveys and Direct Investment Surveys Reporting

AGENCY: Bureau of Economic Analysis

ACTION: Final rule.

SUMMARY: The Bureau of Economic Analysis (BEA) revises its rules to establish general guidelines for how BEA will collect data on international trade in services and direct investment surveys, which are provided for by the International Investment and Trade in Services Survey Act (the Act). In addition to the Act, the Omnibus Trade and Competitiveness Act of 1988 authorizes BEA to conduct international trade in services surveys. Currently, international trade in services and direct investment surveys are promulgated through separate rulemaking actions. This final rule modifies BEA's regulations to allow BEA to issue surveys through notices rather than through notice and comment rulemaking. It also provides a more general framework for how BEA collects data on these surveys that are required, or provided for, by the statutes. This rule will simplify and generalize existing regulations governing the procurement of information on international trade in services and direct investment.

DATES: The final rule is effective on (insert date 30 days from the date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: David H. Galler, Chief, Direct Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; email *David.Galler@bea.gov* or phone (202) 606-9835.

SUPPLEMENTARY INFORMATION: On January 6, 2012, BEA published a notice of proposed rulemaking to amend 15 CFR Parts 801, 806, and 807 to set forth general guidelines for reporting on international trade in services and direct investment surveys provided for by the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 to 3108, (the Act)), 77 FR 772. For surveys that are conducted on an ongoing basis – quarterly, annually, quinquennially – BEA proposed to issue specific reporting information regarding individual surveys through notices rather than through notice and comment rulemaking.

This rule implements the proposed rule. Under this rule, notices of specific surveys pertaining to international investment and trade in services and direct investment, including applicable report forms and instructions, will be separately published in the **Federal Register**. Only respondents notified of these surveys are required to respond to BEA surveys.

BEA received no comments on the proposed rule, and adopts the proposed rule without change. Accordingly, now surveys on international trade in services and on direct investment will be issued by a notice in the **Federal Register**, and will also be sent to individual respondents. Entities that do not receive a notice of the survey from BEA are not required to complete the survey.

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.

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 (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. The rule affects only BEA's internal procedures regarding how it conducts surveys of international trade in services and direct investment. None of the changes will have a direct effect on any businesses, large or small. Those subject to these surveys will still be required to respond to BEA's requests for information, but the requests themselves will not be subject to notice and comment rulemaking. Therefore, the effect of this final rule is to simplify and generalize existing regulations governing the procurement of information on the international trade in services and direct investment under the Act. Because there will be no impact to small entities as a result of this change to the regulations, the Chief Counsel certified that this final rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, no final regulatory flexibility analysis is required, and none has been prepared.

Paperwork Reduction Act

This rule contains no information collection requests as defined in the Paperwork Reduction Act (44 USC 3501-3521). However, as necessary the individual notices of surveys will include a description of the paperwork burden associated with completing the survey, and provide the control number from the Office of Management and Budget (OMB) for any survey issued pursuant to this rule. No one is required to answer any request by the government for information that does not contain an approved OMB control number.

List of Subjects

15 CFR Part 801

Cross-Border transactions, Credit card, Debit card, Economic statistics, Foreign investment in the United States, Foreign trade, International transactions, Penalties, Reporting and recordkeeping requirements, Travel expenses, United States investment abroad.

15 CFR Part 806

Economic statistics, Foreign investments in United States, Reporting and recordkeeping requirements, United States investments abroad.

15 CFR Part 807

Libraries.

Dated: April 15, 2012

J. Steven Landefeld,

Director, Bureau of Economic Analysis

For the reasons discussed in the preamble, 15 CFR chapter VIII is amended as follows:

1. Part 801 is revised to read as follows:

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

Sec.

801.1 Purpose.

801.2 Definitions.

801.3 Reporting requirements.

801.4 Recordkeeping requirements.

801.5 Confidentiality.

801.6 Penalties specified by law.

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).

§ 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-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.

(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.

§ 801.4 Recordingkeeping 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 which is essential for carrying out the surveys and studies provided for by the Act.

§ 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 employees (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.

(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)).

PART 806 [REMOVED AND RESERVED]

2. Under the authority of 5 U.S.C. 301, part 806 is removed and reserved.

PART 807 [REMOVED AND RESERVED]

3. Under the authority of 5 U.S.C. 301, part 806 is removed and reserved.