

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 proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The information collection excludes most small businesses from mandatory reporting. Companies that engage in international financial services transactions tend to be quite large. In addition, the reporting threshold for this survey is set at a level that will exempt most small businesses from reporting. The proposed BE-85 quarterly survey will be required from U.S. financial services providers whose sales of covered services to unaffiliated foreign persons exceeded \$20 million for the previous fiscal year or that expect such sales to exceed that amount during the current fiscal year, or whose purchases of covered services from unaffiliated foreign persons exceeded \$15 million for the previous fiscal year or that expect such purchases to exceed that amount during the current fiscal year. Thus, the exemption level will exclude most small businesses from mandatory coverage. Of those smaller businesses that must report, most will tend to have specialized operations and activities, so they will likely report only one type of transaction; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 801

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

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For the reasons set forth in the preamble, BEA proposes to amend 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; E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518 3 CFR, 1985 Comp., p. 348.

2. Section 801.9 is amended by adding new paragraph (c)(4) to read as follows:

§ 801.9 Reports required.

(c) *Quarterly surveys.* * * *

(4) BE-85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons:

(i) A BE-85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering the first quarter of the 2004 calendar year and every quarter thereafter.

(A) *Who must report—(1) Mandatory reporting.* Reports are required from each U.S. person who 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 sales of covered services to unaffiliated foreign persons that exceeded \$20 million for the previous fiscal year or expects sales to exceed that amount during the current fiscal year, or had purchases of covered services from unaffiliated foreign persons that exceeded \$15 million for the previous fiscal year or expects purchases to exceed that amount during the current fiscal year. These thresholds should be applied to financial services transactions with unaffiliated foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the thresholds are applied 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. financial services provider or intermediary is subject to this mandatory reporting requirement may be based on the judgement 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 who 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.

(2) *Voluntary reporting.* If a financial services provider or intermediary, or all of a firm's subsidiaries or parts combined that are financial services providers or intermediaries, had covered sales of \$20 million or less, or covered purchases of \$15 million or less during the previous fiscal year, and if covered sales or purchases are not

expected to exceed these amounts in the current fiscal year, a person is requested to provide an estimate of the total for each type of service for the most recent quarter. Provision of this information is voluntary. The estimates may be based on the reasoned judgement of the reporting entity. Because these thresholds apply separately to sales and purchases, voluntary reporting may apply only to sales, only to purchases, or to both.

(B) *BE-85 definition of financial services provider.* The definition of financial services provider used for this survey is identical in coverage to Sector 52—Finance and Insurance—of the North American Industry Classification System, United States, 2002. 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, holding companies, savings institutions, check cashing, and debit card issuing); nondepository credit intermediation (including credit card issuing, sales financing, and consumer lending); securities, commodity contracts, and other financial investments and related activities (including security and commodity futures brokers, dealers, exchanges, traders, underwriters, investment bankers, and providers of securities custody services); insurance carriers and related activities (including agents, brokers, and services providers); investment advisors and managers and funds, trusts, and other financial vehicles (including mutual funds, pension funds, real estate investment trusts, investors, stock quotation services, etc.).

(C) *Covered types of services.* The BE-85 survey covers the following types of financial services transactions (purchases and/or sales) between U.S. financial services providers and unaffiliated foreign persons: Brokerage services, including foreign exchange 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; security lending services; electronic funds transfers; and other financial services.

(ii) [Reserved]

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