

## US Department of the Treasury

### PRA Supporting Statement

**Title: Outbound Investment Notifications**

**OMB Control Number: 1505-0282**

**RIN: 1505-AC82**

#### **PART A. JUSTIFICATION**

##### **1. Explain the circumstances that make the collection of information necessary.**

On August 9, 2023, the President issued Executive Order 14105, “Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern,” 88 FR 54867 (the Outbound Order), pursuant to his authority under the Constitution and the laws of the United States, including the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code. In the Outbound Order, the President declared a national emergency to address the threat to the United States posed by countries of concern, which seek to develop and exploit sensitive technologies or products critical for military, intelligence, surveillance, or cyber-enabled capabilities. The Outbound Order directs the Secretary of the Treasury (Secretary) to issue regulations to prohibit or require notification of certain types of transactions by a U.S. person involving a person of a country of concern that is engaged in certain activities involving specific categories of advanced technologies and products. The Outbound Order also authorizes the Secretary of the Treasury to exempt from applicable prohibitions or notification requirements any transaction or transactions determined to be in the national interest of the United States and to investigate and make requests for information relative to notifiable or prohibited transactions.

The Outbound Order identifies three categories of national security technologies and products: semiconductors and microelectronics, quantum information technologies, and artificial intelligence. In an Annex to the Outbound Order, the President identified the People’s Republic of China, along with the Special Administrative Regions of Hong Kong and Macau, as a country of concern.

As relevant to this Supporting Statement, the Outbound Order directs the Secretary to issue regulations that identify categories of notifiable transactions that involve the national security technologies and products that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, determines may contribute to the threat to the national security of the United States identified in the Outbound Order. U.S. persons are required to notify the Department of the Treasury (Treasury) of each such transaction and include relevant information about the transaction in each notification.

Concurrent with the Outbound Order, on August 9, 2023, Treasury issued an Advance Notice of Proposed Rulemaking, 88 FR 54961 (ANPRM; published August 14, 2023), to explain initial

considerations and seek public comment on implementation of the Outbound Order. On July 5, 2024, Treasury issued a Notice of Proposed Rulemaking, 89 FR 55846 (the Proposed Rule), to provide draft regulations and seek public comment on the implementation of the Outbound Order, including with respect to the notification requirement.

On November 15, 2024, Treasury published a final rule (Final Rule), 89 FR 90398, to implement the Outbound Order. As relevant to this Supporting Statement, the Final Rule requires U.S. persons to submit a notification with respect to (i) any “notifiable transaction”, as defined in the Final Rule; (ii) any transaction by a controlled foreign entity that would be a notifiable transaction if engaged in by a U.S. person; and (iii) any transaction for which a U.S. person acquires actual knowledge after the completion date of the transaction that the transaction would have been a prohibited or notifiable transaction if such knowledge had been possessed by the relevant U.S. person at the time of the transaction (collectively, “notifiable transactions and other notifiable activities”). Such notification will include relevant details on the U.S. person involved in the transaction as well as information about the transaction and the covered foreign person involved. The Final Rule requires any U.S. person that has filed a notification to respond to any questions or document requests from Treasury related to the transaction or compliance with the Final Rule; any information or documents provided to Treasury in response to such request will be deemed part of the notification under the Final Rule.

The Final Rule also requires any U.S. person that files a notification to maintain a copy of the notification filed and supporting documentation for a period of ten years from the date of the filing. Further, the Final Rule requires any person who has made any representation, statement, or certification subject to the Final Rule to notify Treasury in writing of any material omission or inaccuracy in such representation, statement, or certification. Finally, the Final Rule also requires any U.S. person seeking a national interest exemption to submit information to Treasury regarding the scope of the transaction including, as applicable, the information that is required for a notification of a notifiable transaction.

**2. How, by whom, and for what purpose is the information to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The collection of information described in this Supporting Statement will be used by Treasury and the Department of Commerce (Commerce) and, as appropriate, certain other Executive Branch agencies, in connection with the analysis of notifiable transactions pursuant to the Outbound Order. The information provided in the notifications will increase the U.S. Government’s visibility into the volume and nature of U.S. person transactions involving the defined technologies and products that may contribute to the threat to the national security of the United States described in the Outbound Order. The notifications will be helpful in highlighting aggregate sector trends and related capital flows as well as inform future policy development, including any modifications to the scope of notifiable transactions and prohibited transactions. Additionally, the information will assist the Secretary in complying with the reporting requirements in Section 4 of the Outbound Order and in determining whether to grant a national interest exemption to a particular covered transaction. Information submitted to Treasury in the

notifications that is not otherwise publicly available will be protected from public disclosure unless required by law or otherwise provided in the Final Rule.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Also describe any consideration of using information technology to reduce burden.**

The collection of information described in this Supporting Statement will involve the use of electronic submission of responses. Parties will be required by regulation to submit notifications electronically to Treasury, which will disseminate such information to Commerce and, as appropriate, certain other Executive Branch agencies, in connection with the analysis of notifiable transactions pursuant to the Outbound Order.

In order to ensure that the required information is provided, parties will need to submit notifications using a fillable form available on the Treasury website. A copy of the Web form template is attached to this Supporting Statement.

Treasury has designed the information requirements to minimize burden on parties, as the information required focuses on the relevant facts pertaining to the parties themselves, the subject transaction, and the applicable product or technology at issue.

**4. Describe efforts to identify duplication.**

The information collected as set forth in the Final Rule will not be duplicative. The Final Rule requires U.S. persons to submit a notification with respect to notifiable transactions and other notifiable activities. Such information includes relevant details on the U.S. person involved in the transaction as well as information on the transaction and the foreign person involved. The Final Rule also requires any U.S. person seeking a national interest exemption to submit information to Treasury regarding the scope of the transaction including, as applicable, the information that would be required for a notification of a notifiable transaction. Under the Final Rule, a U.S. person that has filed a notification will also be required to respond to any questions or document requests from Treasury related to the transaction or compliance with the Final Rule; further, any person who has made any representation, statement, or certification subject to the rule will be required to notify Treasury in writing of any material omission or inaccuracy in such representation, statement, or certification. This information is not currently available to the U.S. Government.

In cases where some of the required information is available in other formats, it will generally be accepted. For example, a company's filing with the Securities and Exchange Commission (for purposes other than this rule) may in some cases be useful in responding to the Treasury's questions and could therefore be accepted. However, Treasury expects that a U.S. person will not be able to answer some questions with readily available documentation, and the U.S. person will therefore be asked to submit materials specifically for purposes of this Final Rule.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

The Final Rule requires U.S persons to provide certain information related to notifiable transactions and other notifiable activities, regardless of the size of the U.S. person.

Nevertheless, in the interest of maintaining an open investment climate, Treasury has endeavored to develop information gathering procedures that minimize the burden on U.S. persons, both large and small. The Final Rule accordingly contains questions that will be asked of all U.S. persons filing a notification in order to gather the information necessary to increase the U.S. Government's visibility into the volume and nature of relevant transactions.

U.S. persons who file a notification will use a fillable form that will be available online and is intended to facilitate submission through an electronic format. This fillable form will benefit anyone who submits a notification, regardless of their size, but may be especially helpful for small businesses who will be able to submit directly to Treasury through the online portal.

More broadly, the Final Rule focuses on certain transactions that are more likely to involve the transfer of intangible benefits and excludes specific types of transactions. Treasury expects that the Final Rule would have a negligible baseline impact on small businesses. The Small Business Administration's (SBA's) Table of Size Standards with respect to NAICS U.S. Industry Sector 52 "Finance and Insurance" defines a small business in this sector by dollar value rather than by number of employees, and Treasury believes that the Final Rule's obligations on U.S. persons target investments generally associated with larger institutions that more often are involved in cross-border investments related to the sectors under the Final Rule. These larger institutions are more likely to enter into transactions that would trigger the definition of covered transaction.

Treasury believes that the relevant SBA thresholds are too low to capture the type of U.S. investor likely to actively invest in an entity that engages in the identified activities related to technologies and products in the semiconductors and microelectronics, quantum information technologies, and artificial intelligence sectors that are critical for the military, intelligence, surveillance, or cyber-enabled capabilities of a country of concern. Given the applications of technologies and products in these sectors, Treasury believes investments into these sectors involving a person of a country of concern is not typical for a small business. Importantly, the Final Rule also excepts certain types of transactions, including certain investments into publicly-traded securities or into exchange-traded funds that may be more attractive or accessible to small business investors. Given the narrow scoping of what would constitute a covered transaction under the Final Rule, Treasury expects that few small businesses, as that term is defined by SBA, will be impacted by the information collection under the Final Rule.

**6. Describe the consequences to a Federal program or policy activities if the collection were not conducted or was conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

Inability to collect the information set forth in the Final Rule would impair the Secretary of the Treasury's ability to carry out the Outbound Order, which directs the Secretary to issue

regulations that require U.S. persons to provide notification of information relative to certain transactions.

Collection cannot be conducted less frequently; U.S. persons will generally provide the information for any notifiable transaction or other notifiable activity only once (unless the transaction involves the acquisition of a contingent interest in which case a notification is also required for the conversion of such contingent interest). The Final Rule will also require any person who has made any representation, statement, or certification subject to the rule to notify Treasury of any material omission or inaccuracy in such representation, statement, or certification.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner: (a) requiring respondents to prepare information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study; (f) requiring the use of a statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Under the Final Rule, a U.S. person will be required to submit information regarding a notifiable transaction or a transaction by a controlled foreign entity of that U.S. person that would be a notifiable transaction if engaged in by a U.S. person no later than 30 calendar days following the completion date of the transaction. For transactions for which the U.S. person acquired actual knowledge after the completion date of the transaction that the transaction would have been a covered transaction if such knowledge had been possessed by the relevant U.S. person at the time of the transaction, the notification will be required promptly, and in no event later than 30 calendar days following the acquisition of such knowledge as to the transaction's status.

The Final Rule requires any U.S. person that has filed a notification to respond to any questions or document requests from Treasury related to the transaction or compliance with the Final Rule within the timeframe and in the manner specified by Treasury. This requirement would assist Treasury in obtaining complete information, consistent with the requirements in the Outbound Order.

The Final Rule requires U.S. persons to maintain a copy of the notification filed and supporting documents for a period of ten years from the date of filing (consistent with the 21st Century Peace through Strength Act of 2024 (Sec. 3111, Pub. L. 118-50), which amended section 206 of IEEPA and extended the statute of limitations for violations of IEEPA from five years to ten

years). The U.S. person will be required to make such supporting documentation available upon request by Treasury.

Treasury may receive confidential information related to transactions for which a notification has been filed or a national interest exemption requested. The Final Rule includes a provision that requires Treasury to not make public any information or documentary materials submitted to Treasury that are not otherwise publicly available unless required by law or otherwise provided in the Final Rule.

**8. Summarize public comments received in response to the Federal Register notice requesting public comments and describe actions taken by the agency in response to these comments, particularly comments on cost and hour burden. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

The Proposed Rule was officially published in the Federal Register on July 5, 2024. In accordance with 5 CFR 1320.8(d)(1), Treasury solicited comments from members of the public concerning the requirements in the Proposed Rule, as well as the collection of information under the Proposed Rule.

Four commenters responded with feedback on the estimated costs of the Proposed Rule, with a focus on the estimated time and costs associated with due diligence to determine if transactions were notifiable or prohibited. No commenters specifically discussed the information collection requirements in terms of the type of information requested and compliance with such requirements. In developing the Final Rule, Treasury considered these comments. As noted in the Proposed Rule, most investment transactions, regardless of whether the investment would be potentially subject to the Final Rule, involve some level of review, diligence, assessment, and recordkeeping by the investor. For some transactions and investors, the level of information collection, retention, and diligence necessary to comply with the Final Rule may not give rise to any costs beyond what would be incurred in the absence of the Final Rule.

**9. Explain any decision to provide any payment or gift to respondents.**

No payment or gifts will be made to any respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

The Outbound Order requires that the regulations issued by Treasury address the confidentiality of information or documentary material submitted pursuant to the Outbound Order, consistent with applicable law. The Final Rule includes a provision that requires Treasury to not make public any information or documentary materials submitted to Treasury under the Final Rule that are not otherwise publicly available unless required by law or otherwise provided in the rule.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

Under the Final Rule, Treasury will not require the submission of information that would typically be considered of a sensitive nature such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. U.S. persons who submit notifications may include certain business sensitive information, and such information will be treated consistent with the Final Rule and applicable law.

**12. Provide estimates of the hour burden of the collection of information. Also provide estimates of annualized cost to respondents for the hour burdens.**

The Final Rule requires U.S persons to provide information on notifiable transactions and other notifiable activities. The primary direct costs to respondents associated with the Final Rule relates to (a) transaction diligence to determine whether a given transaction would be subject to either the notification requirement or the prohibition as described in the Final Rule; and (b) if the transaction is determined to be subject to a notification requirement or if the U.S. person is seeking a national interest exemption, preparing and submitting the information to Treasury.

The annual time burden on respondents is estimated to be up to 28,620 person hours. This estimate is based on Treasury’s projection to receive information from around 180 entities per year, with each respondent spending an estimated 50 to 90 person hours per notification. This estimate includes time for reviewing the rule, conducting diligence, reviewing submission instructions, gathering the data needed, and completing and reviewing the collection of information.

No. Respondents	No. Responses Per Respondent	No. Annual Responses	Hours Per Response	Total Burden
180	1.77	318	50-90	15,900 – 28,620

The estimated annual cost would be approximately \$3.5 to \$8.3 million. This estimate assumes between 15,900 and 28,620 person hours per year, based on an average cost of \$221 to \$290 per hour (combination of legal fees and company employee time).

**13. Provide an estimate for the total annual cost burden to respondents or record-keepers not included in Item 12 and Item 14.**

The Final Rule requires U.S. persons to maintain a copy of the notification filed and supporting documents for a period of ten years from the date of filing. The estimated total cost burden to a respondent or record-keeper is negligible as the copy of the notification and supporting documents can be stored electronically.

**14. Provide estimates of annualized costs to the Federal Government.**

Treasury estimates that initial IT development costs would be between \$4 million and \$8 million with an additional \$2 million to \$3 million required to maintain the systems and the underlying technology being leveraged to support the capabilities. Treasury and other relevant agencies, including Commerce, may incur additional costs, besides those estimated above. This includes other responsibilities related to the implementation of the Final Rule such as analyzing notifications submitted as well as complying with the reporting requirements under the Outbound Order. Furthermore, costs may be associated with efforts to promote compliance with the notification requirement and prohibition, potentially including education on the requirements, development of guidance and frequently asked questions, and conducting stakeholder outreach.

Treasury does not currently have specific estimates for these costs but anticipates that there will be personnel costs of less than \$2 million associated with the implementation of the Final Rule in Fiscal Year 2025, with additional personnel costs going forward and also to include outreach and enforcement once the program is fully operational.

These estimates do not include costs associated with other lines of effort related to the Final Rule, such as investigation and enforcement. Nor does it include IT-related costs or other similar expenses incurred by the Federal Government for program-related work. Therefore, these figures underestimate the total annual costs to the Federal Government that will result from the Final Rule, although the extent of that underestimation is unknown and difficult to precisely quantify.

**15. Explain the reasons for any program changes or adjustments.**

This is a request for a new OMB Control Number in connection with the Final Rule.

**16. For collections of information whose results will be published, outline plans for tabulation and publication. Provide the time schedule for the entire project.**

As a general matter, the information to be collected will not be published. However, the Final Rule allows for the disclosure of information submitted to Treasury that is not otherwise publicly available under certain circumstances, including when the Secretary determines such disclosure is in the national interest. Treasury anticipates such disclosure to be rare and limited to circumstances in which the Secretary identifies a national interest that disclosure could help to address, to include national security interests, law enforcement needs, or the promotion of compliance with the Final Rule. Since such a determination depends on specific facts and circumstances related to information submitted to Treasury, no time schedule can be made available. Furthermore, information collected may be used to fulfill obligations under the Outbound Order, which may include the publication of anonymized data.

**17. If seeking approval to not display the expiration date for OMB approval, explain the reasons that display would be inappropriate.**

No such approval is sought.

**18. Explain each exception to the certification statement.**

There are no exceptions.

**PART B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.