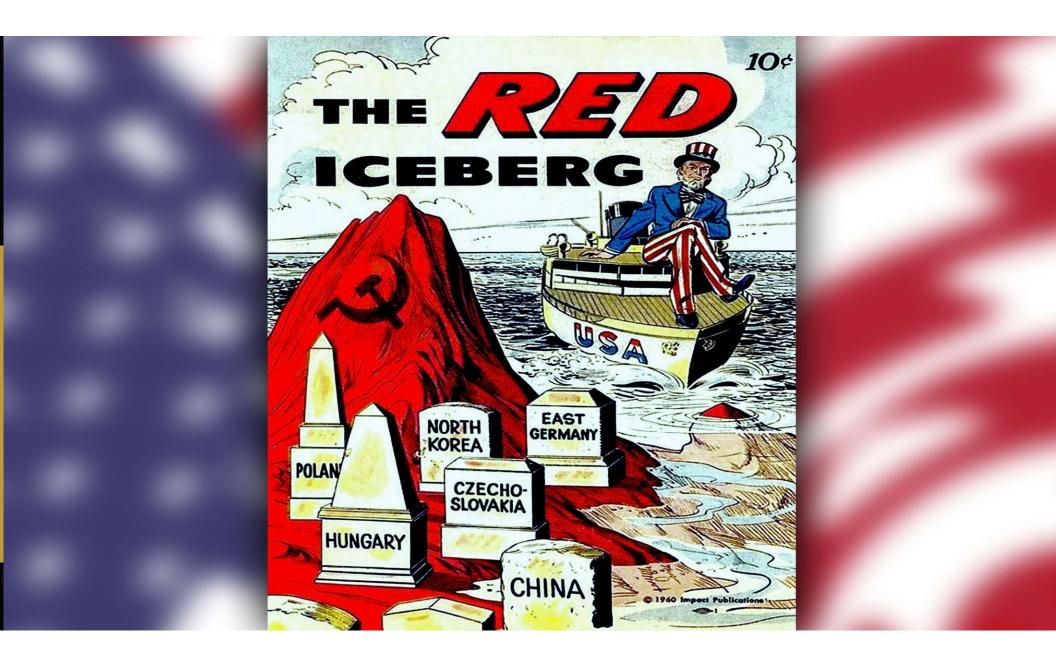


A New "Red Scare"?

NOVEMBER 2, 2023

The Ins and Outs of the US's New Program to Regulate Outbound Investment in China

GTLAW.COM





NYT June 6, 2017

Current Administration's Focus on China

NATIONAL SECURITY STRATEGY China is "the only competitor with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to advance that objective."

National Security Strategy, The White House, October 12, 2022 at pgs. 5, 23

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the government, from the White House to Congress to federal agencies, where Beijing's rise is unquestioningly viewed as an

economic and national security threat and the defining challenge of the 21st century

The New Jork Cimes https://www.nytimes.com/2019/07/20/us/politics/china-red-scare-washington.html

A New Red Scare Is Reshaping Washington

By Ana Swanson

July 20, 2019

"These are two system and one side is going to The United States and series of missteps and p American tariffs on Chi The two sides new ar forcing American comp busy constructing broa In addition to placing kinds of technologies th from purchasing Ameri American intelligence a research institutions. O universities to warn ad their laboratories to pa The administration pa stoking a new red scare collapse of a fraught bu

universities to warn adm their laboratories to pass The administration paints socking a new red scare, i "Thi worried that some p expert at the Center for 5 he cooperation on cond

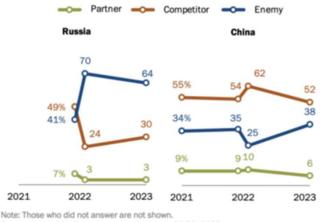
"The situation with China is different than the Cold War. The concern with the Soviet Union was primarily military. Now it's a concern about economic competitiveness."



Toby Smith, VP for Policy at Association for American Universities

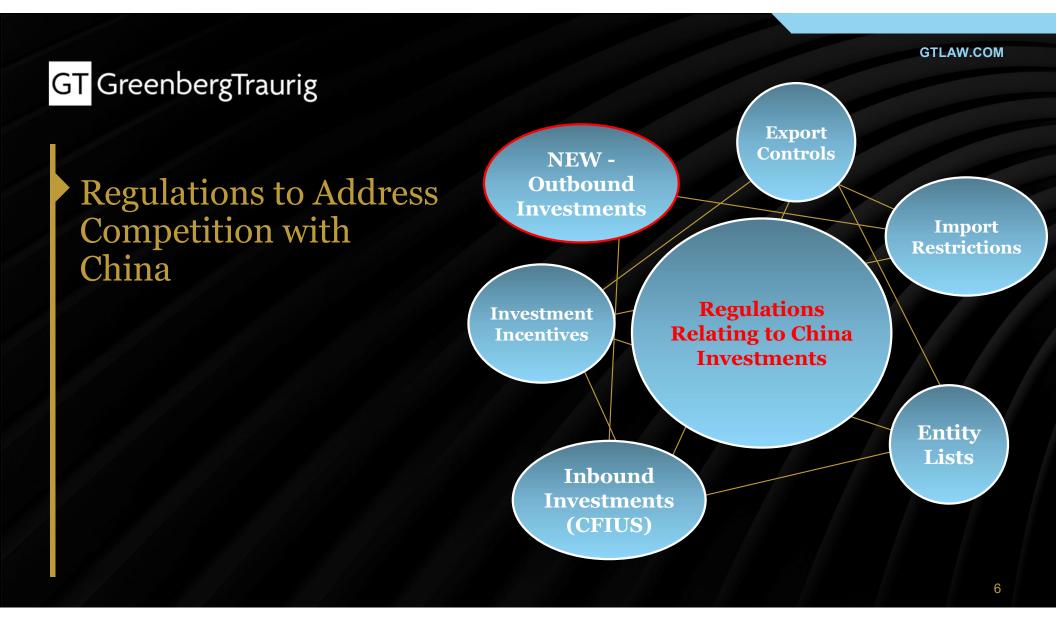
Americans are more likely to see Russia as an enemy of the U.S., China as a competitor

% of U.S. adults who say each country is a(n)___of the U.S.



Source: Survey of U.S. adults conducted March 20-26, 2023.

PEW RESEARCH CENTER

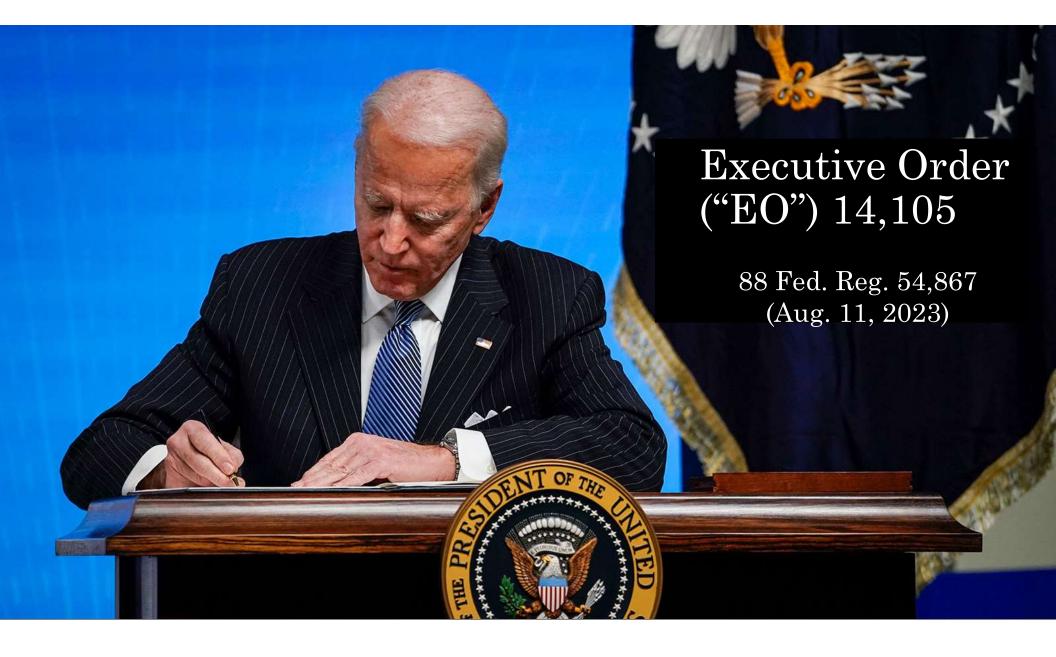


Outbound Investment in China is the new frontier in China containment

MB 35270047

52700

82



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EO 14,105

Presidential Documents Federal Registra Vol. 88, No. 154 Friday, August 11, 2023 Title 3-Executive Order 14105 of August 9, 2023 The President Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergency gencies Act (50 U.S.C. 1601 *et seq.*) (INFA), and section 301 of title 3. United States Code, 1. IOSEPH R. BIDEN IR., President of the United States of America, find that countries of concern are engaged in comprehensive. long-term strategies that direct, facilitate. or otherwise support advancements in sensitive techthat direct, lacilitate, or otherwise support advancements in sensitive tech-mologies and products that are critical to such countries "millitane, intelligence, survaillanes, in cyber-anablad capabilities, Minenwer, these romatics edimi-nate barriers between cyclicates and romanetical sectors and millitary and defense industrial saccines, not just through research and development, but also purpose of calciong milling dominance. Kapin advancement is conductors and microelocironics quantum information technologies, and artificial juriellisme, canabilities by these countries similared and conductors. artificial intelligence capabilities by these countries significantly enhances their ability to conduct activities that threaten the national security of the United States. Advancements in sensitive technologies and products in these sectors will accelerate the development of advanced computational capabilithis that will enable new applications that poss-significant national security risks, such as the development of nume applications that could provide breaking of cryptographic codes, and other applications that could provide. these countries with military advantages.

Ave part of this storagy of advancing the development of these sensitive technologies and products, commities of curvers are explaining or base the ability to exploit certain traited States couldound investments, including rerain integrible benefits that often accompary United States investments and that holp companies succeed, such as enhanced standing and prommence, managerial assistance, investment and talent networks, marked access, and enhanced access to additional financing. The commitment of the United States to open investment is a concretence of our economic policy and provides the United States with substantial benefits. Open global capital flows create valuable economic opportunities and promote competitiveness, immvation, and productivity, and the United States investment, where the investment, where not immusistent with the protection of United States national scaturity interasts. However, certain United States investments and scates are observed in countries that develop them to counter United States and products in countries that develop them to counter United States and products in countries that develop them to counter United States and State capitalities.

I therefore find that advanteement by cronatries of concern in sensitive techanlogies and products calified for the military, intelligence, surveillance, or cyber-enabled capabilities of such countries constitutes an unusual and extraordinary threat to the national security of the turited States, which has its source in whole or substantial part outside the futured States, and that certain United States investments risk exacerbating this threat. I hereby declare a national emergency to deal with this fitned.

Accordingly, I hereby order:

SUMMARY

- 1. <u>Prohibits</u> "U.S. persons" from directly or indirectly entering into certain types of transactions with a "covered foreign person" engaged in activities involving specified "covered national security technologies and products"; and
- 2. Requires <u>notification</u> to Treasury by "U.S. persons" who participate in these transactions for "covered national security technologies and products."

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EO 14,105

Presidential Documents Federal Registra Vol. 88, No. 154 Friday, August 11, 2023 Title 3-Executive Order 14105 of August 9, 2023 The President Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergency gencies Act (50 U.S.C. 1601 *et seq.*) (INFA), and section 301 of title 3. United States Code, 1. IOSEPH R. BIDEN IR., President of the United States of America, find that countries of concern are engaged in comprehensive. long-term strategies that direct, facilitate. or otherwise support advancements in sensitive techthat direct, facilitate, or otherwise support advancements in sensitive tech-nologies and products that are critical to such countries' millitary, intelligence, surveillann n, nr cyhar-ambhed capabilities. Morenver, these runntries elimi-natic barriers budween civilian and nummernical sentus and millitary and defense industrial sectors, noi just through research and development, but also by acquiring and diverting the world's cutting edge technologies, for the purposes of achieving military dominance. Rapid advancement in semi-conductors and microelocronics, quantum in formation technologies, for a militaria intelligence capabilities by these countries significantly enhances their ability to conduct activities that threaten the national security of the United States. Advancements in sensitive technologies and products in these sectors will accelerate the development of advanced computational capabilithis that will enable new applications that poss-significant national security risks, such as the development of nume applications that could provide breaking of cryptographic codes, and other applications that could provide. these countries with military advantages. As part of this strategy of advancing the development of these sensitive technologies and products, countries of concern are exploiting or have the technologies and products, channels in channel are explaining of have net ability to exploit cortain United States outbound investments, including certain intangible benefits that often accompany United States investments and that help companies succeed, such as enhanced standing and prominence, managerial assistance, investment and talent networks, market access

nence, managental assistance, investment and talent notworks, markot access, and onbanced access to additional financing. The commitment of the United States to open investment is a concretence of our economic policy and provides the United States with substantial bonefits. Open global capital flows create valuable economic opportunities and promote competitiveness, immedian, and productivity, and the United States singuests cruss-bancher investment, where not immersitent with the protection of United States rational security interests. However, create Initial States singuests cruss-bancher ancleate and increase the sources of the development of sensitive (refinologies and product in countries that develop them to counter United States and allied capabilities.

I therefore find that advancement by constrins of concern in sensitive techanlogies and products califical for the military, intelligence, surveillance, or cyber-enabled capabilities of such countries constitutes an unusual and extraordinary threat to the national security of the turited States, which has its source in whole or substantial part outside the United States, which has its source in whole or substantial part outside the United States, and that certain United States investments risk exacerbating this threat. I hereby declare a sational emergency to deal with this threat.

Accordingly, I hereby order:

SUMMARY

3. Requires Review 1 year after Regulations

 assess whether to amend the regulations, including whether to adjust the definition of "covered national security technologies and products" to add or remove technologies and products in the semiconductors and microelectronics, quantum information technologies, and artificial intelligence sectors.

4. Requires Report to the President 1 year after Regulations

- assessment of the effectiveness of the regulations
- advancements by China in covered technologies
- aggregate sector trends
- Recommendations as to modifications

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EO 14,105

Vol. 104, Nor. 131 Friday, August 11, 2003

Executive Order 14105 of August 9, 2023

The President

Title 3-

Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act [30 U.S.C. 1701 et eq.] [IEEPA], the National Emergencies Act [30 U.S.C. 1601 ef seq.] (NEA), and section 301 of title 3. United States Code,

L [OSEP] K. BUEN IK. President of the United States of Amorica, find that countries of concern are engaged in comprehensive. long-term strategies that direct, facilitate, or otherwise support advancements in sensitive technologies and products that are critical to such countries "millstary, intelligence, surveillance, in cylare-ambibile capabilities, Moneuver, these mantries eliminate harries: between civilian and numerical sectors and millitary and defense industrial sectors, and millitary and defense industrial sectors, and millitary and advancement in semiconductories, quantum information technologies, for the upposes of achieving millitary dominance. Kapid advancement in semiconductories, quantum information technologies, and artificial intelligence capabilities by these countries significantly enhances that will such a weat equivalent the transitive lectinologies and products and eventy of the United States. Advancements in sensitive lectinologies and products and eventy of the States. Advancement is nearbilication that additive the the theorem the national security risks, such as the heweignment of advanced computational capabilities that transitive advanced to advance strains, breaking of cappage, production in advanced transitional capabilities that transitive wave dynamics, breaking of cappage, private that could provide thas countiers with millitary dowances.

Ave part of this storagy of advancing the development of these sensitive technologies and products, commities of runnown ove exploiting or base the ability to exploit certain United States couldound investments, including remain integrible hencifs that often accompany. United States investments and that holp companies succeed, such as enhanced standing and promimence, managerial assistance, investment and talent networks, marked access, and enhanced access to additional financing. The committee of the United States to open investment in its a concretence of our economic policy and provides the United States with substantial benefits. Open global capital flows create valuable economic opportunities and promote competitiveness, immustim, and productivity, and the United States supports cruss-horder investment, below nut innusistent with the protection of Harisel States notices and increase the sources of the development of armsitive todalnologies and products in countries that develop them to counter United States and products in countries that develop them to counter United States and products in countries that develop them to counter United States and State capital titles.

I therefore find that advancement by countries of concern in sensitive techanlogies and products critical for the military, intelligence, surveillance, or cyber-enabled capabilities of such countries constitutes an unusual and extraordinary threat to the national security of the tutiod States, which has its source in whole or substantial part outside the futured States, and that certain United States investments risk exacerbating this threat. I hereby declare a national emergency to deal with this invest.

Accordingly, I hereby order:

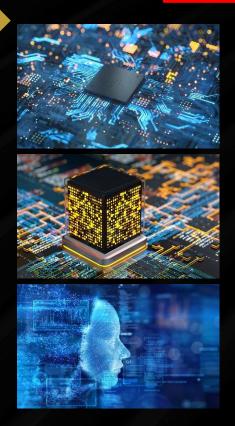
SUMMARY

Importantly, unlike CFIUS mandatory filing requirements, Treasury claims it is "not considering a case-by-case determination on an individual transaction basis as to whether the transaction is prohibited, must be notified, or is not subject to the program." 88 Fed. Reg. 54971

> Thus, private parties have obligation to determine on their own whether the prohibitions or notification requirements apply.

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"covered national security technologies and products"



"semiconductors and microelectronics"

"quantum information technologies"

"artificial intelligence"

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EO 14,105

Specifically Targets China

Federal Register/Vol. 88, No. 154/Friday, August 11, 2023/Presidential Documents 54869

> but no less than annually thereafter, the Secretary, in coordination with the Secretary of Commerce and in consultation with the heads of other relevant agencies and the Diractor of the Office of Managament and Budget, as appropriate, shall provide the President through the Assistant to the President for National Security Affairs: (a) to the extent practicable, an assessment of the effectiveness of the measures imposed under this order in addressing threats in the national security of the United States describ

security of the United States description countries of concern in covered nati-critical for such countries' military, abbrd capabilities, aggregate sector I and related capital flows in covered ucts, drawing on analysis provided b tor of National intelligence, and the appropriate: and other relevant infer-tion of this order; and

(b) recommendations, as appropriation (i) modifications to this order, inc fiel sectors or countries of concel circumvention of this order and en (ii) the establishment or expansi

to the covered national security (respect to whother any existing I action should be taken to addr of the United States identified in th

Sec. 5. Reports to the Congress, recurring and final reports to the clared in this order, consistent we 1041(c)) and section 204(c) of IKEPA Sec. 6. Official United States Gave or the regulations issued under th the conduct of the official business omployees, grantees, or contractors Sec. 7. Confidentiality. The regulat order shall address the confidentiali submitted pursuant to this order. co Ser. 8 Additional Notifications on

Sec. 8, Additional Notifications and to violate any regulation issued under (h) Subject to the regulations iss ovades or avoids, has the purpose of

of, or attempts to violate any of the prohibitions set forth in this order or any regulation issued uniter this order is prohibited.

(c) In the regulations issued under this order, the Socretary may prohibit United States persons from knowingly directing transactions if such trans-actions would be prohibited transactions pursuant to this order if engaged in by a United States person. (d) In the regulations issued under this order, the Secretary may require

United States persons to:

(i) provide notification to the Department of the Treasury of any transaction by a foreign untity controlled by such United States person that would be a notifiable transaction if engaged in by a United States person; and

(ii) take all mesonable steps to prohibit and prevent any immaction by a foreign entity controlled by such United States person that would be a prohibited transaction if engaged in by a United States person. Sec. 9. Definitions. For purposes of this order:

(a) the term "country of concern" means a country or territory listed in the Annex to this order that the President has identified to be engaging in a comprehensive, long-term strategy that directs, facilitates, or otherwise

The People's Republic of China

The Special Administrative Region of Hong Kong

The Special Administrative Region of Macau



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EO 14,105

Presidential Documents
Vel. 101. No. 131
Priday, August 11, 2023
Title 3— Executive Order 14105 of August 9, 2023

The President

Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act [30 U.S.C. 1701 et eq.] [IEEPA], the National Emergencies Act [30 U.S.C. 1601 ef seq.] (NEA), and section 301 of title 3. United States Code,

I. JOSEPH K. EIDEN IK., President of the United States of America, find that countries of Concern are engaged in comprehensive. Long-term strategies that direct, facilitate, or otherwise support advancements in sensitive technologies and products that are critical to such countries "millitary, intelligence, surveillance, or cyber-emabled capabilities. Moreover, these countries elimitary is and the support of the support

As part of this statings of advancing the development of these sensitive technologies and products, committies of numeron one exploiting or base the ability to exploit contain United States outbound investments, including retrain integrids benefits that often accompany. United States investments and that help companies succeed, such as enhanced standing and promimence, managerial assistance, investment and talent networks, market access, and enhanced access to additional financing. The committees of the United States to open investment is a cornerstone of our economic policy and provides the United States with substantial benefits. Open global capital flows create valuable economic opportunities and promote competitiveness, innuvating, and productivity, and the United States supports cross-border investment, where nut innusistent with the protection of families States national scarrily internsts. However, enrich United States investments and accelerate and incarease the sucress of the development of armsitive technologist and products in countries that develop them to counter United States and oblic capabilities.

I therefore find that advanteement by cronatries of concern in sensitive techanlogies and products calified for the military, intelligence, surveillance, or cyber-enabled capabilities of such countries constitutes an unusual and extraordinary threat to the national security of the turited States, which has its source in whole or substantial part outside the futured States, and that certain United States investments risk exacerbating this threat. I hereby declare a national emergency to deal with this fitned.

Accordingly, I hereby order:

What is the justification for the new regulations?

• *"Countries of concern"* (i.e. CHINA) are *"exploiting outbound investments"*

- "intangible benefits" of outbound investments including
 - enhanced standing and prominence
 - managerial assistance
 - investment and talent networks,
 - market access
 - enhanced access to additional financing.

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Executive Order 14105 of August 9, 2023

Presidential Documents	
	Presidential Documents

Title 3—

The President

Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act [30 U.S.C. 1701 et seq.] (IEEPA), the National Emergencies Act [30 U.S.C. 1601 ef seq.] (NEA), and section 301 of title 3, United States Code,

I. JOSEPH K. BIDEN IK., President of the United States of Amorica, find that countries of concern are engaged in comprehensive. longeterm strategies that direct, facilitate, or otherwise support advancements in sensitive technologies and products that are critical to such countries military, intelligence, surveillance, nr cyher-smabble capabilities. Moneuver, these romaties eliminate herriers between civilian and rummerial sectors and military and defense industrial sectors, no i just through research and development, but also by acquiring and diverging the world's cutting edge technologies, for the purposes of achieving military dominance. Rapid advancement in semiconductors and microelectronics, quantum information technologies, fuely and aritificial intelligence capabilities by these countries departed accurate the unicelent technologies in the sectors will accelerate the development of Astroned transformational capabilities that threaten the national security of the United States. Advancements in sensitive technologies and products in these sectors will accelerate the development of Astroned tompational capabilities have the shored tompational capabilities by these countries development of Astroned tompational capabilities have the shored tompational capabilities have the shored tompational capabilities have the shored tompational capabilities that the shored tompational capabilities have the shored tompational capabilities and the advance tompational capabilities accurate the shored tompational capabilities and the advance tompational capabilities takes, such as the development of Anored tompational capabilities are accurated as the advance tompational capabilities accurate the advance tompational capabilities and the advance tompational capabilities are constrained to accurational capabilities accurate the advance tompational capabilities accurate the advance tompati

As part of this storage of advancing the development of these sensitive technologies and products, commises of runnown are explaining or base the ability to exploit octain. United States outbound investments, including certain integrids hencifis that often accompany. United States investments and that help companies succeed, such as enhanced standing and promimence, managerial assistance, investment and telent networks, marked access, and enhanced access to additional financing. The committeent of the United States to open investment is a concretone of our economic policy and provides the United States with substantial benefits. Open global capital flows create valuable economic opportunities and promote competitiveness, immediate accelerative interview of the protection of United States national scenarily intervals. However, certain United States investments may accelerate and incomes the success of the development of sensitive todenologies and producties in countries that develop them to counter United States and products in countries, that develop them to counter United States and alter capitalities.

I therefore find that advancement by constricts of concern in sensitive techanlogies and products critical for the military, intelligence, surveillance, or cyber-enabled capabilities of such constricts are unusual and extraordinary threat to the national security of the Luited States, which has its source in whole or subsimital part outside the United States, and that certain United States investments risk exacerbating this threat. I hereby deciare a autional emergency to deal with this threat.

Accordingly, I hereby order:

<u>What is the justification for the new</u> <u>regulations?</u>

National Security

- China "conduct[s] activities that threaten the national security of the United States"
- Certain outbound investments "accelerate the development of advanced computational capabilities"
 - development of more sophisticated weapons systems,
 - breaking of cryptographic codes,
 - other applications that could provide these countries with military advantages.

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EO 14,105

 Freiend Register
 Presidential Documents

 Vet. Bit. No. 151
 Priod

 Friday, August 11, 2023
 Presidential Documents

 Title 3—
 Executive Order 14105 of August 9, 2023

 The President
 Addressing United States Investments in Certain

Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act [30 U.S.C. 170 *et seq.*] [IEEPA]. the National Emergencies Act (50 U.S.C. 1601 *et seq.*] (NEA), and section 301 of title 3, United States Code,

I. JOSEHH K. BUER. IK., Prosident of the United States of Amorica, find that countries of concern are engaged in comprehensive. Ong-term strategies that direct, facilitate, or otherwise support advancements in sensitive technologies and products that are critical to such countries' military, intelligence, surveillance, ar cycline are critical to such countries. Minimum and the functions butteem civilian and numerical sentens: and military and defenses industrial sectors, not just through research and development, but also by acquiring and diverting the world's cutting edge technologies, and artificial intelligence, capabilities by these countries simificantly enhances their ability to conduct activities that threaten the national security of the United States. Advancements in sensitive technologies and products in these sectors will earbite new applications had possibilities that weepons systems, head, and else to development to advanced computational capabilities when there any but complate activities that threat metanical security of the United States. Advancements in sensitive technologies and products in these sectors will earbite new applications that poss significant national security to the United States and products with military advances.

Ave part of this storagy of advancing the development of these sensitive technologies and products, commities of curvers are explaining or base the ability to exploit certain traited States couldound investments, including rerain integrible benefits that often accompary United States investments and that holp companies succeed, such as enhanced standing and prommence, managerial assistance, investment and talent networks, marked access, and enhanced access to additional financing. The commitment of the United States to open investment is a concretence of our economic policy and provides the United States with substantial benefits. Open global capital flows create valuable economic opportunities and promote competitiveness, immvation, and productivity, and the United States investment, where the investment, where not immusistent with the protection of United States national scaturity interasts. However, certain United States investments and scates are observed in countries that develop them to counter United States and products in countries that develop them to counter United States and products in countries that develop them to counter United States and State capitalities.

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Accordingly, I hereby order:

<u>What is the justification for the new</u> <u>regulations?</u>

"I hereby declare a national emergency to deal with this threat"

attest 3

Federal Register/Vol. 88, No. 155/Monday, August 14, 2023/Proposed Rules

V-171 [Amended]

From Lexington, KY: INT Lexington 251° and Louisville, KY, 114° radials; Louisville; Terre Haute. IN; Danville, IL; Peotone, IL; INT Peotone 281° and Joliet, IL, 173° radials; to Joliet. From Nodine, MN; INT Nodine 298° and Farmington, MN, 124° radials; to Farmington, From Alexandria, MN; INT Alexandria 321" and Grand Forks, ND, 152" radials; to Grand Forks. + * *

Issued in Washington, DC. on August 8,

2023. Karen L. Chiodini. Acting Manager, Bules and Regulations Group

[FR Doc. 2023-17359 Filed 8-11-23: 8:45 am] BILLING CODE 4910-13-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 60, 70, 71, 72, 75, and 90 [Docket No. MSHA-2023-0001]

BIN 1219-AB36

Lowering Miners' Exposure to **Respirable Crystalline Silica and** Improving Respiratory Protection

AGENCY: Mine Safety and Health Administration, Department of Labor, ACTION: Proposed rule; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSIIA) is extending the comment period on the proposed rule entitled Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection published in the Federal Register on July 13, 2023, with an established public comment period that is scheduled to end on August 28, 2023. In response to requests for additional time to develop and submit comments on the proposed rule, MSHA is extending the comment period for an additional 15 days-that is, from August 28, 2023. to September 11, 2023.

DATES: The comment period for the proposed rule that was published on July 13, 2023, at 88 FR 44852 is extended. All comments must be submitted by midnight Eastern Time on September 11, 2023

ADDRESSES. All enhancesions must include RIN 1219-AB36 or Docket No. MSHA-2023-0001. You should not include personal or proprietary information that you do not wish to disclose publicly. If you mark parts of a comment as "business confidential information, MSHA will not post those

parts of the comment. Otherwise, MSHA respirable crystalline silica, a will post all comments without change, including any personal information provided, MSHA cautions against submitting personal information. You may submit comments and informational materials, clearly, identified by RIN 1219-AB36 or Docket Id. No. MSHA-2023-0001, by any of the following methods: 1 Federal eBulemaking Portal https://www.regulations.gov. Follow the online instructions for submitting comments for MSHA-2023-0001 2. Emoil: zzMSHA-comments@ dol.gov. Include "RIN 1219-AB36" in the subject line of the message.

3. Regular Mail: MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5450. Hand Delivery or Courier: MSHA, Office of Standards, Regulations, and

Variances, 201 12th Street South. Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Before visiting MSHA in person, call 202-693-9440 to make an appointment Docket. For access to the docket to read comments, hearing transcripts,

supporting materials, and other documents, go to https:// www.regulations.gov. The docket can also be reviewed in person at MSHA. Office of Standards, Regulations, and Variances, 201 12th Street South. Arlington, Virginia, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. Before visiting MSHA in person, call 202-693-9440 to make

an appointment. Email Notification. To subscribe to receive an email notification when MSHA publishes rulemaking documents in the Federal Register, go to https:// public.govdeliverv.com/accounts/ USDOL/subscriber/new.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances MSHA, at: silicaNPRM@dol.gov (email);

202-693-9440 (voice): or 202-693-9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On July 13, 2023, MSHA nublished in the Federal Register the proposed rule entitled Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection (88 FR 44852). The proposed rule is available at the Federal eRulemaking Portal. https:// regulations.gov. and at MSHA's website, https://www.msha.gov. The proposed rule would amend MSHA's existing standards to better protect miners

against occupational exposure to

carcinogen, and to improve respiratory protection for all airborne hazards. The public comment period for this proposed rule was scheduled to close on August 28, 2023, 45 days after publication of the proposed rule. MSHA received requests from commenters for both an extension of the commen period and for no extension of the comment period. Several requested that there not be any extension, so that a final rule can be promulgated without delay to prevent additional diseases among miners. Others requested that the comment neriod he extended to prepare comments, gather data and information and address the questions MSHA raised in the proposal. Generally, those requesters asked for an additional 60, 90

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or 120 days. After reviewing these comments. MSHA has determined that it is appropriate to extend the public comment period until September 11. 2023, in order to provide stakeholders and interested parties an additional 15 days to review the proposal and prepare comments.

Authority and Signature (Authority: 30 U.S.C. 811)

Dated: August 8, 2023. Christopher J. Williamson

nt Secretary of Labor for Mine Safety and Health FR Dot. 2023-17370 Filed 8-11-23: 8:45 am BILLING CODE 4520-43-P

DEPARTMENT OF THE TREASURY Office of Investment Security

31 CFR Chapter VIII

[Docket ID TREAS-DO-2023-0009] RIN 1505-AC82

Provisions Pertaining to U.S. Investments in Certain National

Security Technologies and Products in Countries of Concern AGENCY: Office of Investment Security,

Department of the Treasury. ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Executive Order of August 9, 2023, "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern" (the Order). directs the Secretary of the Treasury (the Secretary) to issue regulations that identify categories of transactions involving technologies and products that may contribute to the threat to the

Department of **Treasury Advance** Notice of Proposed Rulemaking (ANPRM) 88 Fed. Reg. 54,961-72

(Aug. 14, 2023)



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ANPRM

Federal Register/Vol. 40. No. 155/Monday, August 14, 2023/Proposal Rules

Variances, 201 12th Street South

regulations.gov. and at MbetA's wouse https://www.msha.gov. The proposed rule would amend MSHA's axisting standards to better protect miners onainst occupational exposure to

numbers.

V-171 [Amended]

1-3

Issued in Washington, DC, on August 8, Karen L. Chiodini Acting Monager, Bules and Regulations [FR Doc. 2023-19:559 Filed 8-11-0.3; otts and

BILLING DODE 4910-13-P

DEPARTMENT OF LABOR Mine Safety and Health Administration

30 CFR Parts 56, 57, 60, 70, 71, 72, 75, and 90

[Docket No. MSHA-2023-0001] RIN 1219-AB36

Lowering Miners' Exposure to

Respirable Crystalline Silica and Improving Respiratory Protection

AGENCY: Mine Safety and Health Administration, Department of Labor. ACTION: Proposed rule; extension of common period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the comment period on the propusal rule ontitled Lowering Minors' Exposure to Respirable Crystalline Silica and in the second Improving Bespiratory Protection ished in the Federal Revister on published in the Federal Register on July 13, 2023, with an established public comment period that is scheduled to end on August 28, 2023. In response to requests for additions, time to develop and submit comments on the oused rule, MSHA is extend us the comment period for an additional 13 days—that is, from August 28, 2023, to tember 11, 2023. DATES: The common period for the proposed rule that was published on July 18, 2028, at 88 FR 44852 is extended. All comments must be submitted by midnight Fastern Time on

Seutember 11, 2023 September 11, 2023. ADDRESSES: All adjunitations must include RIN 1210. AB36 or Ibuckel Nu., MSHA-2023-0001. You should not include personal or proprietary information that you do not wish to olicolose publicly. If you mark parts of a comment as "bushness confidential". information. MSHA will not upst those

parts of the comment, Otherwise, MSHA vol I post all comments without change including any personal information provided MSHA controls against rospirable crystalline siline, a
carcinogen, and to improve respiratory
protection for all aithorne hazards.
The public comment period for this
proposed rule was scheduled to close on
August 28, 2023, 4-4 days after admitting personal information. You may submit comments and informational materials, clearly publication of the proposed rule. MSHA received requests from commences for identified by RIN 1210 AB36 or Docke Id. No. MSIIA-2023-0001, by any of the both an exclosion of the comment. tollowing methods: 1. Poderal attalomaking Portal: period and for no extension of the commont period. Several requested that https://www.regulations.gov. Pollow the on-the instructions for submitting comments for MSHA-2023-0001. there not be any extension, so that a final rule can be promulgated without delay to prevent additional diseases Email: zzMSHA-commentes ol.gov. include "RIN 1219–AB36" in among miners. Others requested that the old gover instability "INN 1219-AUSM" in the subject Inc of the message, and and address the questions MSHA single Sumfardis, Regular Mail: MSHA, Cillian of Sumfardis, Regular Mail: MSHA, Cillian of Sumfardis, Regular Mail: MSHA, Single All Tab News Family, Single All Summary and Address the questions MSHA single in the popolal. Generally, Hoese requestive sekol for an add tional 60,0,0 and the stability of the stability of the stability of the All Summary and Summary and the stability of the All Summary and Summary and the stability of the All Summary and S comment period be extended to prepare comments period to execute to prepare comments, gather data and information, and address the questions MSHA raised in the proposal. Generally, those requesters asked for an additional 60, 90 m120 linear

Brockel. For access to the nocket In road comments, hearing transcripts, supporting materials, and other documents, go to https:// www.rogalitions.gov. The docket near also be reviewed in person at MSHA. Office of Standards, Regulations, and Authority and Signature (Authority: 30 U.S.C. 811) Tated: August 6 Christopher I. Williamson

Assistant Successry of Leber for Mine Kafely and Health: Variances, 201-1215 Street South, Arlington, Virginia, botwoon 0 a m. and a p.m. Monday through Friday, except Federal holiciays, Before visiting MSHA in person, call 202-681-9110 to make [FK Duc. 2022-17370 Filled 8-11-30: 8:45 en: BILLING CODE 4520-43-F

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In person, call 202-e81-810 to make urppointum. Edual Natifiestica. To subscribe to Torsive as main boffkatic environment MSLN publishe and main pleasance mathic synchrony remains comment USDD/subscriber/mains. Department of the subscriberton Department of the subscriberton Office of Investment Office of Investment Office of Investment I CFR Chapter VIII (Decket D REAS-DO-RN 1955-AC82 DEPARTMENT OF THE TREASURY Office of Investment Security

[Docket ID TREAS-DO-2023-0009]

FOR FURTHER INFORMATION CONTACT: S.

Por outries reconstruction contraction Annule Nap, Distance, Office of the analysis of the an Provisions Pertaining to U.S. Investments in Certain Nation

AGENCY: Office of Investment Security. Department of the Treasury ACTION: Advance not co of proposed rulemaking.

numbers. SUPPLINENTARY INCOMMUND. Du July 13. 2023. MSILA published in Iluo Federal Register ful proposed rulu antifield *Lowering Miners: Expressive to Despitoble (Systemine Silica on Uluo Tec Despitoble (Systemine Silica on Uluo Tec* SUMMARY: The Executive Order of August 9: 2023, "Addressing Entired Status Investments in Cardain Nation, Sociarity Technologies and Products Granitics of Connorn," (the Order), directs the Semetary of the Treasury Secretary In issue regulations that ury (the directs the self-reary of the Treasury (t Secretary) to issue regulations that identify categories of transactions involving technologies and products that may contribute to the threat to the

Published 3 days after EO

- Neither the EO nor the ANPRM directly implements new restrictions or obligations.
- Posed 83 questions across 17 topics
 - 23 are directed at defining categories and subcategories of "covered national security technologies and products"
- Comment period closed on September 28, ۲ 2023
- Over 60 comments submitted

GT GreenbergTraurig

Who do the rules apply to?

- Proposed definition of "U.S. person" includes "any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States, including any foreign branches of any such entity, and any person in the United States."
 - Comports with the standard definition in U.S. sanctions practice
 - Does <u>**not**</u> include foreign subsidiaries of U.S. businesses directly, but proposed rules would place obligations on U.S. parents, or other controlling U.S. entities, to enforce the rules at their non-U.S. controlled entities.

88 Fed. Reg. at 54,971



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Who do the rules apply to?

- Proposed definition of "U.S. person" Public Comments
 - Does it apply only to the U.S. person entity or individual undertaking the covered transaction and not to other parties involved in or tangential to the transaction, including third-party financial institutions?
 - How does it apply to dual citizens?
 - Should the definition be mutually exclusive with definition of covered foreign person to prevent situations where a company is classified as both?
 - Are non-U.S. companies that have U.S. nationals as board members or senior employees a "U.S. person"?
 - Are parent companies of U.S. subsidiaries considered "U.S. persons"?



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Who do the rules apply to?

- Proposed definition of "covered foreign person"
 - 1. a "person of a country of concern" (i.e. China) that is engaged in, or that a U.S. person knows or should know will be engaged in, an identified activity with respect to a "covered national security technology or product"; or
 - 2. a person whose direct or indirect subsidiaries or branches are referenced in item (1) and which, individually or in the aggregate, comprise more than 50 percent of that person's consolidated revenue, net income, capital expenditure, or operating expenses.



88 Fed. Reg. at 54,964

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Who do the rules apply to?

- Proposed definition of "covered foreign person" Public Comments
 - Difficulty in making determination whether covered activity comprises more than 50 percent of a foreign person's revenue, net income, or other metrics ("50% Rule") due to unavailability of information such as Chinese banking and ownership information
 - 50% Rule is ambiguous as to whether it refers to an operating company employing personnel engaged in the covered activity, or whether a holding company may be considered "engaging in" the covered activity
 - Requests for Treasury to publish and maintain a fixed list of entities determined to be "covered foreign persons," along the lines of Commerce's existing Entity List or Treasury's sanction lists



What is a "covered transaction"?

Federal Register/Vol. 88, No. 155/Monday, August 14, 2023/Proposed Rules 54964

laws of the United States or any a as on one context Status or any jurisdiction within the United Status, including any foreign branches of any such only, and any person in the United Status.

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A U.S. person's direct or indirect:

- Acquisition of an equity interest or contingent equity interest in a covered foreign person;
- Provision of debt financing to a covered foreign person where such debt financing is convertible to an equity interest;
- Greenfield investment that could result in the establishment of a covered foreign person; or
- Establishment of a joint venture, wherever located, that is formed with a covered foreign person or could result in the establishment of a covered foreign person

88 Fed. Reg. at 54,964

What is a "covered transaction"?

54964 Federal Register/Vol. 88, No. 155/Monday, August 14, 2023/Proposed Rules

laws of the United States or any is as or our truthed States or any jurisdiction within the United States, including any foreign branches of any such only, and any person in the United States. nifed States. The Freasury Department is -

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 with cancellation consequences made prior to the issuance of the Order. The ensury Department may, after the effective rate of the regulations, request information about transactions by U.S. persons that were completed or agreed to after the date of the issuance of the Order to better inform the development

PUBLIC COMMENTS •

- Want clarification that passive investments by both LPs and non-LPs, venture capital and private equity investments, and other transactions are not covered
- Major financial institution and investment commenters urged Treasury to clarify that regulations do not restrict services provided by these institutions to their customers



What are Notifiable and Prohibited Transactions?

GT GreenbergTraurig

Semiconductors and Microelectronics

Notifiable

- <u>Integrated Circuit Design</u> IC design which is not otherwise prohibited
- <u>Integrated Circuit Fabrication</u>: IC fabrication which are not otherwise prohibited
- <u>Integrated Circuit Packaging</u>: IC packaging which are not otherwise prohibited.

88 Fed. Reg. 54,967–68

Prohibited

- Technologies that Enable Advanced Integrated Circuits
 - Software for Electronic Design Automation
 - IC Manufacturing Equipment: development or production of front-end semiconductor fabrication equipment designed to be exclusively used for the volume fabrication of ICs
- <u>Advanced Circuit Design and Production</u>
 - *Advanced IC Design*: Design of ICs that exceed the thresholds in Export Control Classification Number ("ECCN") 3A090, or integrated circuits designed for operation at or below 4.5 Kelvin.
 - Advanced IC Fabrication: Fabrication of IC (i.e. the process of forming devices such as transistors, poly capacitors, non-metal resistors, and diodes, on a wafer of semiconductor material) that meet any of the following criteria:

GT GreenbergTraurig

Semiconductors and Microelectronics

Notifiable

Prohibited

(i) Logic ICs using a nonplanar transistor architecture or with a technology node of 16/14 nanometers or less, including but not limited to fully depleted silicon-on-insulator (FDSOI) integrated circuits;

(ii) NAND memory with 128 layers or more;

(iii) DRAM using 18µm half-pitch or less;

(iv) Integrated circuits manufactured from a gallium-based compound semiconductor;

(v) ICs using graphene transistors or carbon nanotubes; or

(vi) ICs designed for operation at or below 4.5 Kelvin.

Semiconductors and Microelectronics

Notifiable

Prohibited

• Advanced IC Packaging: IC packaging that support 3-D integration of ICs, using silicon vias or through mold vias, where "packaging of integrated circuits" is defined as the assembly of various components, such as the IC die, lead frames, interconnects, and substrate materials, to form a complete package that safeguards the semiconductor device and provides electrical connections between different parts of the die.

• Supercomputers:

 Installation or sale to third-party customers of a supercomputer, which are enabled by advanced ICs, that can provide a theoretical compute capacity of 100 or more double-precision (64-bit) petaflops or 200 or more singleprecision (32-bit) petaflops of processing power within a 41,600 cubic foot or smaller envelope

29

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Quantum Information Technologies

Notifiable

[NONE, as of now]

88 Fed. Reg. 54,968

Prohibited

- Quantum Computers and Components
 - Production of a quantum computer (defined as a computer that performs computations that harness the collective properties of quantum states, such as superposition, interference, or entanglement), dilution refrigerator, or two-stage pulse tube cryocooler.
- Quantum Sensors
 - Development of a quantum sensing platform designed to be exclusively used for military end uses, government intelligence, or mass-surveillance end uses.
- Quantum Networking and Quantum Communication Systems:
 - Development of a quantum network or quantum communication system designed to be exclusively used for secure communications, such as quantum key distribution.

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AI Systems

PROPOSED DEFINITION: "an engineered or machine-based system that can, for a given set of objectives, generate outputs such as predictions, recommendations, or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy."

88 Fed. Reg. 54,969

GT GreenbergTraurig

Notifiable

- Development of software that incorporates an AI system and is designed to be exclusively (or primarily) used for:
 - i. Cybersecurity applications, digital forensics tools, and penetration testing tools;
 - ii. Control of robotic systems;
 - iii. Surreptitious listening devices that can intercept live conversations without consent of parties involved;
 - iv. Non-cooperative location tracking (including international mobile subscriber identity (IMSI) Catchers and automatic license plate readers); or
 - v. Facial recognition.

AI Systems

Prohibited

Development of software that incorporates an AI system and is designed to be exclusively (or primarily) used for military, government intelligence, or mass-surveillance end uses.

88 Fed. Reg. 54,968–69

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Are there exceptions?

Treasury is considering a category of "**excepted transactions**" that "present a lower likelihood of concern":

- Investments in <u>publicly traded securities</u>, index funds, mutual funds, ETFs, or similar instruments (including associated derivatives) offered by an investment company or by a private investment fund;
- <u>Passive investments by a limited partner (</u>"LP") into a VC fund, PE, fund of funds, or other pooled investment funds below a to be determined *de minimis* threshold (to be set by Treasury).
- <u>Acquisitions of equity or other interest</u> owned or held by a "covered foreign person" in an entity or assets located outside of a "country of concern" (i.e. China) where the "U.S. person" is acquiring all interests in the entity or assets held by "covered foreign persons";
- An <u>intracompany transfer of funds</u> from a U.S. parent company to a subsidiary located in China; or
- A transaction made pursuant to a <u>binding</u>, <u>uncalled capital commitment</u> entered into before the date of the EO.



⁸⁸ Fed. Reg. 54,965

GT GreenbergTraurig

Are there exceptions?

EXCEPTION TO THE EXCEPTION

NOT an "excepted transaction" if the transaction

- Provides a U.S. person "rights beyond those reasonably considered to be standard minority shareholder protection"
 - "Membership or observer rights on, or the right to nominate an individual to a position on, the board of directors or an equivalent governing body of the covered foreign person"; or
 - "Any other involvement, beyond the voting of shares, in substantive business decisions, management, or strategy of the covered foreign person."



88 Fed. Reg. 54,965

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Are there exceptions?

Treasury also identified transactions that would not fall within the definition of "covered transaction"

- 1. University-to-university research collaborations;
- 2. Contractual arrangements or the procurement of material inputs for any of the "covered national security technologies or products" (such as raw materials);
- 3. Intellectual property licensing arrangements;
- 4. Bank lending;
- 5. Processing, clearing, or sending of payments by a bank;
- 6. Underwriting services;
- 7. Debt rating services;
- 8. Prime brokerage;
- 9. Global custody;
- 10. Equity research or analysis; or
- 11. Other services secondary to a transaction.



88 Fed. Reg. 54,965

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Are there exceptions?

PUBLIC COMMENTS

- Requests for a waiver application system
- Requests for an advisory opinion process, through which Treasury could provide advance notice of whether a particular transaction would be notifiable or prohibited.

What are obligations of US Persons with respect to controlled foreign entities?

- 1. Notify Treasury of "any transaction by a foreign entity *controlled by such United States person* that would be a notifiable transaction if engaged in by a United States person" and
- 2. "take **all reasonable steps** to prohibit and prevent any transaction by a foreign entity controlled by such United States person that would be a prohibited transaction if engaged in by a United States person."



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What are reasonable steps to prohibit a transaction by a foreign entity controlled by United States person?

Such reasonable steps could explicitly include the following:

- i. Relevant binding agreements between a U.S. person and the relevant controlled foreign entity or entities;
- ii. Relevant internal policies, procedures, or guidelines that are periodically reviewed internally;
- iii. Implementation of periodic training and internal reporting requirements;
- iv. Implementation of effective internal controls;
- v. Testing and auditing function; and
- vi. The exercise of governance or shareholder rights, where applicable

88 Fed. Reg. at 54,971



Is there a knowledge requirement?

- Most Treasury sanctions programs typically apply a strict liability standard
- ANPRM states that a "knowledge standard" could be adopted across the program. 88 Fed. Reg. 54,969–70
 - Most likely a U.S. person would "need to know, or reasonably should know" from an appropriate amount of due diligence, "that it is undertaking a transaction involving a covered foreign person and that the transaction is a covered transaction." 88 Fed. Reg. 54,970
 - Knowledge would also be inferred from a conscious or willful avoidance of facts. 88 Fed. Reg. 54,969



What is "knowingly directing" transactions?

- 1. Defines this standard to capture actions where a U.S. person "orders, decides, approves, or otherwise causes to be performed a transaction that would be prohibited under these regulations if engaged in by a U.S. person,"
- 2. U.S. person has "actual knowledge, or should have known, about the conduct, the circumstance, or the result."

88 Fed. Reg. at 54,971

What is "knowingly directing" transactions?

- Proposed due diligence and knowledge requirements Public Comments
 - Should there be a "safe harbor" or a "reasonable reliance" standard, to allow U.S. persons to rely on diligence responses from the prospective investee or foreign partner?
 - Should knowledge requirement be based only on information available to the U.S. person at the time of the transaction, not based on information available later?
 - Should Treasury to publish extensive guidance that describes relevant due diligence steps, red flags, and other specific examples of sufficient practices to meet the standard for "reasonable and appropriate" due diligence?

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What are the penalties?

EO envisions both civil and criminal penalties for violations of the proposed regulations. 88 Fed. Reg. at 54,870

1. <u>CRIMINAL Penalties</u> – "refer potential criminal ... violations to the Attorney General."

88 Fed. Reg. 54,972

2. <u>CIVIL Injunctive Relief</u>

"nullify, void, or otherwise compel the divestment of any prohibited transaction entered into after the effective date" of the implementing regulations.

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What are the penalties?

3. <u>CIVIL Monetary Penalties</u>

Penalties up to the maximum allowed under International Emergency Economic Powers Act (currently US **\$356,579** per violation) (88 Fed. Reg. 2,229 Jan. 13, 2023) for:

- i. Material misstatements made in or material omissions from information or documentary material submitted or filed with Treasury;
- ii. The undertaking of a prohibited transaction; or
- iii. The failure to timely notify a transaction for which notification is required.



88 Fed. Reg. 54,972

Will the Regulations Apply Retrospectively or Prospectively?

- Almost all commenters agreed that the EO and the regulation should be prospective, not retroactive,
 - Only apply to transactions and investments made after rules finalization
- Currently, the proposed rules are ambiguous as to whether Treasury would seek to exercise authority to unwind transactions completed before final rules are adopted

Will the Regulations Apply Retrospectively or Prospectively?

• HOWEVER

- Treasury intends definition of covered transaction "to be forward-looking, and not to cover transactions and the fulfillment of uncalled, binding capital commitments with cancellation consequences made prior to the issuance of the Order." 88 Fed. Reg. 54964
- Treasury states that it "would not use [its] authority to unwind a transaction that was not prohibited at the time it was completed." 88 Fed. Reg. 54972

When will the regulations come into effect?

SHORT ANSWER: There is no effective date set, but probably Q4 2024 or Q1 2025

- Usually an extended timeline for regulations
- Broad list of 83 specific questions for public comment
- Public comments closed on September 28, 2023
- At some undefined point, Treasury will issue a Proposed Notice of Rulemaking setting out the near-final version of the regulations and allowing for one more period of public comment.
- Final rules will come into effect at some point after public comment period ends, which is very likely months away.
- CFIUS is illustrative. Took about 18 months (August 2018 law passage to February 2020 final rules effective)

GT GreenbergTraurig Potential Legal Challenge



The Honorable Janet Yellen Scentrary. U.S. Department of the Treasury 1500 Pennsylvania Ave. NW Washington, D.C. 20220

Re: 88 FR 54961; RIN 1505-AC82; "Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern"

Dear Secretary Yellen:

I am writing to commont on the advance notice of proposed rulomaking (ANPEM) cited above, which the Department of the Treasure (Treasure) issued pursuant to Executive Order 14105. While I am pleased that the scope of this E.O. was less broad than some had anticipated, the ANPEM illustrates that the Administration's proposed policy on outbound investment is arbitrary. rolice on baseless assumptions, and in contrin places is incoherent

As T indicated to Tensaury Assistant Scorentary Paul Rosen during his testimony before the Committee on Soptember 13, 2023, delegating the implementation of E.O. 14105 to the Office of Investment Security (OLS) makes no sense: Treasury's Office of Poreign Assets Control (OFAC) already administers couldourd investment-related prohibitions agained. China (NS-CMC List) and Russia (SSI List), as well as blocking sanctions that encompass outbound investment. OFAC has many years of experience currying out this work. supported by sround 300 Treasury staff. Of Si has no comparable experisor inangower.

In addition, the Assistant Scretary for Investment Scenity is prohibited from engaing in the ANPIGW proposed outbound expide controls, as they are clearly momented to the inhound mission of the Committee on Foreign Investment in the United States (CFIUS). As Assistant Scretary Rosen himself teathied before Congress: This program will be administered separately from CFIUS: "Under Section 72140(d)(A)(ii) the Defense Production Act of 1960, the Assistant Scretary may only carry out CFIUS duries, a limitation that the Financial Services Committee fully understood when creating the position. This formed part of the Foreign Investment Risk Review Modernization Act of 2016 (FURRM), the same legislative effect that rejected outboard functions for CFIUS.

For the reasons detailed above. Treasury should reissue the ANPRM under an appropriate official with OFAC or the Office of Terrorism and Financial Intelligence.

⁴ https://docs.house.gov/meetings/BA/BA(0/20230913/116333/HHRG-118-BA00-Warate-RosenP-20230913.pdf

- Chairman McHenry raised legal issues with the proposed regulations:
 - Asserting that the Office of Investment Security cannot statutorily implement the regulation, and
 - Questioning reliance on the International Emergency Economic Powers Act (IEEPA) as part of the authority for the regulation, describing its use as "novel."
- Could set up litigation over final regulations

How to Prepare for the Impending Regulations

- Monitor final regulations to determine scope of rules on outbound foreign investment
- Carefully trace and document due diligence efforts when investments may relate to China and covered technologies;
- Ensure that agreements between a U.S. person and the relevant controlled foreign entity or entities have binding requirements not to enter prohibited transactions under the new rules;
 - Include a representation and warranty regarding compliance with new regulations;

How to Prepare for the Impending Regulations

- Review client internal policies, procedures, or guidelines;
 - Ensure proper reporting procedures are in place to prevent unauthorized investments
 - Implement periodic training on reporting requirements
- Review current and future mergers, acquisitions, and investments for with regard to ownership, board membership, and technologies involved.





Harold Davis

Shareholder

Intellectual Property and Technology / International Trade Practice