



DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of a modified system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Treasury (Treasury), Departmental Offices proposes to modify a system of records notice relating to the Treasury system of records titled, “Department of the Treasury, Departmental Offices .227 - Committee on Foreign Investment in the United States (CFIUS) Case Management System.”

DATES: Written comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The modification will be applicable on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** unless Treasury receives comments and determines that changes to the system of records notice are necessary.

ADDRESSES: Written comments on this notice may be submitted electronically through the Federal government eRulemaking portal at <http://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department of the Treasury (Treasury) to make the comments available to the public. Please note that comments submitted through <https://www.regulations.gov> will be public, and can be viewed by members of the public. Due to COVID-19-related restrictions, Treasury has temporarily suspended its ability to receive public comments by mail.

In general, Treasury will post all comments to <https://www.regulations.gov> without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other

supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

For questions about this notice and privacy issues, contact: Ryan Law, Deputy Assistant Secretary for Privacy, Transparency, and Records at U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220; telephone: (202) 622-5710.

SUPPLEMENTARY INFORMATION:

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of the Treasury (Treasury), Departmental Offices proposes to modify a system of records notice, 85 FR 55354, relating to the Treasury system of records titled, “Department of the Treasury, Departmental Offices .227 - Committee on Foreign Investment in the United States (CFIUS) Case Management System.” Treasury is (1) adding the authorities 44 U.S.C. 3101, and E.O. 9397 and 13478, and (2) replacing the authorities “85 FR 3112; 85 FR 3158; 85 FR 8747; 85 FR 45311” with “31 CFR Part 800 (2019); 31 CFR Parts 800-802 (2020), as amended”, to ensure that the public is aware of these additional authorities and to clarify the applicable regulatory authorities, even though the authorities are already publicly available in the United States Code, the Federal Register, and the Code of Federal Regulations.

As background, in 2007, the Foreign Investment and National Security Act of 2007 (FINSAs), Public Law 110-49, 121 Stat. 246, was enacted. FINSAs amended section 721 of the Defense Production Act of 1950, as amended (Section 721), which delineates the authorities and jurisdiction of CFIUS. FINSAs codified aspects of the structure, role, process, and responsibilities of CFIUS and the role of executive branch departments, agencies, and offices in CFIUS's review of transactions for national security concerns, and required the issuance of regulations implementing its provisions. Treasury published regulations codified at part 800 of title 31 of the Code of Federal Regulations (CFR) pursuant to a final rule 73 FR 70702 (November 21, 2008), which implemented provisions of FINSAs, and became effective as of

December 22, 2008.

In 2018, the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XII of Public Law 115-232, 132 Stat. 2173, was enacted, which further amended Section 721 by broadening the authorities of the President and CFIUS under Section 721 to review and take action to address any national security concerns arising from certain non-controlling investments and certain real estate transactions involving foreign persons. Following the enactment of FIRRMA, on October 11, 2018, Treasury published regulations in the form of an interim rule, which amended the CFIUS regulations codified at part 800 of title 31 of the CFR to implement, and make updates consistent with, certain provisions of FIRRMA that became immediately effective (October 2018 Interim Rule). *See* 83 FR 51316 (October 11, 2018). The October 2018 Interim Rule took effect on November 10, 2018. Treasury published a second interim rule codified at part 801 of title 31 of the CFR on October 11, 2018, pursuant to section 1727(c) of FIRRMA, setting forth the scope of, and procedures for, a pilot program to review certain transactions involving foreign persons and critical technologies (Pilot Program Interim Rule). *See* 83 FR 51322 (October 11, 2018). The Pilot Program Interim Rule, which took effect on November 10, 2018, implemented jurisdiction over, and established mandatory declarations for, certain transactions involving investments by foreign persons in certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies.

On January 17, 2020, Treasury published two additional rules to implement provisions of FIRRMA. *See* 85 FR 3112 (January 17, 2020); 85 FR 3158 (January 17, 2020). The rule at 85 FR 3112 amended CFIUS regulations codified at part 800 of title 31 of the CFR. These provisions specifically relate to CFIUS's authorities and the process and procedures to review: (1) a merger, acquisition or takeover by or with a foreign person that could result in foreign control of a U.S. business; (2) a non-controlling "other investment" that affords a foreign person specified access to information in the possession of, rights in, or involvement in the substantive decisionmaking of certain U.S. businesses related to critical technologies, critical infrastructure,

or sensitive personal data; (3) any change in a foreign person's rights if such change could result in foreign control of a U.S. business or an "other investment" in certain U.S. businesses; or (4) any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to circumvent the application of Section 721. The rule at 85 FR 3158 adds a part 802 to chapter VIII of title 31 of the CFR to implement FIRRMA's expansion of CFIUS's jurisdiction over transactions involving the purchase or lease by, or concession to, a foreign person of certain real estate in the United States. The rules at 85 FR 3112 and 85 FR 3158 took effect on February 13, 2020. The rule at 85 FR 3112 further clarified that the CFIUS regulations codified at part 801 of title 31 of the CFR will, going forward, apply only to transactions for which specified actions were taken on or after the effective date of the Pilot Program Interim Rule and prior to February 13, 2020, and that, subject to the applicability of the CFIUS regulations codified at part 801 of title 31 of the CFR, the CFIUS regulations codified at part 800 of title 31 of the CFR as in effect on February 12, 2020, which may be referred to as 31 CFR Part 800 (2019), will, going forward, apply only to transactions for which specified actions were taken before February 13, 2020. Except as described in the preceding sentence, the CFIUS regulations codified at part 800 of title 31 of the CFR as amended by the rule at 85 FR 3112, which may be referred to as 31 CFR Part 800 (2020), apply from February 13, 2020. Subsequent amendments (85 FR 8747, 85 FR 45311 and 85 FR 57124) were made to the regulations codified at parts 800 and 802 of title 31 of the CFR in 2020 to make certain technical corrections, make a clarifying revision to the definition of "principal place of business," establish a fee for parties filing a formal written notice of a transaction for review by CFIUS, make amendments to the definition of "substantial interest" and a related provision, and modify the mandatory declaration provision for certain foreign investment transactions involving a U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies. For clarity in light of the numerous Federal Register publications, and to incorporate all applicable regulations published in the Federal Register, the applicable regulatory authorities for this system of records will be

described pursuant to this modification of the system of records notice as “31 CFR Part 800 (2019); 31 CFR Parts 800-802 (2020), as amended.”

Pursuant to Section 721 and its implementing regulations, CFIUS assesses or reviews, and may subsequently investigate (in the case of a review), transactions that could result in foreign control of a U.S. business and certain non-controlling investments and certain real estate transaction involving foreign persons to determine the effects of such transactions on the national security of the United States. As part of CFIUS’s national security processes, Treasury, as chair of CFIUS, disseminates information submitted by parties to the transaction and other available information to certain Executive Branch agencies. Among other things, CFIUS evaluates certain personal identifier information of individuals associated with the foreign person engaged in the transaction and certain parent entities (*e.g.*, for purposes of conducting background checks), which informs CFIUS’s determination of the effects of a transaction on the national security of the United States. At times, this may include personal identifier information of U.S. nationals if a U.S. national is a board member or officer of, has an ownership interest in, or has another relevant role related to, an entity engaged in a transaction before CFIUS or its parent entities. CFIUS may also receive certain personal identifier information of a U.S. national who is involved in a transaction as an individual if, for example, such individual is selling real estate in a transaction filed with CFIUS. In addition, CFIUS may collect personal identifier information for other purposes associated with its national security functions, including, for example, personal identifier information related to a security officer or other person who may be involved in mitigating a risk posed to national security. This system of records supports CFIUS’s collection of transaction information for analysis in the performance of its assessments, reviews and investigations of transactions, and for other purposes associated with its national security functions.

Further, pursuant to section 3101 of title 44 of the United States Code, “[t]he head of each Federal agency must make and preserve records containing adequate and proper

documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities." The system of records supports CFIUS in making and preserving records as required under 44 U.S.C. 3101, and, accordingly, this modification to the system of records notice adds 44 U.S.C. 3101 as an additional legal authority for the system of records.

The system may include records from other systems of records both within Treasury and in records provided by certain other Executive Branch agencies for the purpose of facilitating CFIUS's assessment, review and investigation of transactions. Such records may include social security numbers, names, and other identifying data provided by the Social Security Administration and utilized by CFIUS pursuant to, *inter alia*, Executive Order 9397 (November 22, 1943), as amended by Executive Order 13478, 73 FR 70239 (November 18, 2008), and, therefore, this modification to the system of records notice adds these Executive Orders as additional legal authorities for the system of records.

In maintaining its records, CFIUS is obligated to comply with its governing statute, and to the extent not inconsistent with that statute, generally applicable laws. Any records from another Treasury system of records or another Executive Branch agency's system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k), which may also be included in this system of records, retains the same exempt status such records have in the system for which such exemption is claimed. Additionally, pursuant to section 721(c) of the Defense Production Act of 1950, as amended, 50 U.S.C. 4565(c), and subject to certain exceptions provided therein, any information or documentary material filed with CFIUS under Section 721 is exempt from disclosure under the Freedom of Information Act, as amended (FOIA), 5 U.S.C. 552, and no such information or documentary material may be made public.

The related information collections have been submitted to the Office of Management and Budget (OMB) under control number 1505-0121.

Treasury has included this established system in its inventory of record systems. Below is the description of the Treasury, Departmental Offices .227 - CFIUS Case Management System.

Treasury provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the U.S. Senate, and the OMB, pursuant to 5 U.S.C. 552a(r) and OMB Circular A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act," dated December 23, 2016.

Ryan Law,

Deputy Assistant Secretary for Privacy,

Transparency, and Records.

SYSTEM NAME AND NUMBER:

Department of the Treasury, Departmental Offices .227 - Committee on Foreign Investment in the United States (CFIUS) Case Management System.

SECURITY CLASSIFICATION: Classified.

SYSTEM LOCATION:

Records are maintained at the Departmental Offices:

1500 Pennsylvania Avenue, NW

Washington, DC 20220

SYSTEM MANAGER(S):

Departmental Offices:

a. Director of Business Operations, Office of International Affairs

U.S. Department of the Treasury

1500 Pennsylvania Avenue, NW

Washington, DC 20220

b. Chief Information Officer, U.S. Department of the Treasury

1750 Pennsylvania Avenue, NW,

Washington, DC 20220

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C. 4565; 44 U.S.C. 3101; 31 U.S.C. 321; 5 U.S.C. 301; E.O. 9397, 11858, 12333, 12968, 13478, and 13526, as amended; 31 CFR Part 800 (2019); 31 CFR Parts 800-802 (2020), as amended.

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HISTORY:

85 FR 55354, September 4, 2020; 85 FR 58308, September 18, 2020

[FR Doc. 2021-02262 Filed: 2/3/2021 8:45 am; Publication Date: 2/4/2021]