



U.S. Department of the Treasury Office of Public Affairs

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Fact Sheet: Interim Regulations for FIRRMA Pilot Program

Background

The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), signed into law in August, authorizes the Committee on Foreign Investment in the United States (CFIUS or the Committee) to conduct pilot programs to implement provisions of the legislation that did not become effective immediately upon enactment. Today, the U.S. Department of the Treasury, as chair of CFIUS, issued interim regulations to conduct a FIRRMA pilot program that addresses specific risks to U.S. national security and also will inform the Committee's work in drafting the final regulations that will fully implement FIRRMA.

The pilot program implements authorities provided in two sections of FIRRMA:

- Expands the scope of transactions subject to review by CFIUS to include certain non-controlling investments made by foreign persons in U.S. businesses involved in critical technologies related to specific industries; and
- Makes effective FIRRMA's mandatory declarations provision for transactions that fall within the specific scope of the pilot program.

Key aspects of the pilot program

CFIUS's jurisdiction is being expanded to give the Committee the authority to review "other investments" made by any foreign persons in Pilot Program U.S. Businesses (discussed below). Reviews will continue to focus exclusively on national security.

- **Type of investments covered:** The pilot program expands CFIUS's jurisdiction, consistent with FIRRMA, to allow review of certain investments by foreign persons that do not constitute an acquisition of control of a U.S. business (referred to in FIRRMA as "other investments"). For an investment to be covered under the pilot program, it would have to give the foreign investor:

- Access to any material nonpublic technical information in the possession of the target U.S. business;
 - Membership or observer rights on the board of directors or equivalent governing body of the U.S. business, or the right to nominate an individual to a position on the board of directors or equivalent governing body of the U.S. business; or
 - Any involvement, other than through voting of shares, in substantive decisionmaking of the U.S. business regarding the use, development, acquisition, or release of critical technology.
- **Foreign persons covered:** The pilot program covers all foreign persons and is not country-specific.
 - **U.S. businesses covered:** The pilot program covers any U.S. business that produces, designs, tests, manufactures, fabricates, or develops a critical technology that is: (1) utilized in connection with the U.S. business’s activity in one or more Pilot Program Industries (discussed below); or (2) designed by the U.S. business specifically for use in one or more Pilot Program Industries (“Pilot Program U.S. Businesses”).
 - **Critical technologies covered:** The pilot program covers all critical technologies, as defined by FIRRMA, including emerging and foundational technologies controlled pursuant to the Export Control Reform Act of 2018.
 - **Industries covered:** The pilot program covers 27 industries, identified by their respective North American Industry Classification System (NAICS) code (“Pilot Program Industries”). The U.S. Government carefully developed the list of pilot program industries for which certain strategically motivated foreign investment could pose a threat to U.S. technological superiority and national security.
 - **Mandatory declarations:** The pilot program establishes mandatory declarations (*i.e.*, abbreviated notices that generally should not exceed five pages in length) for foreign transactions involving Pilot Program U.S. Businesses that are within the purview of CFIUS (*i.e.*, both controlling investments and “other investments”).
 - Declarations must be filed at least 45 days prior to a transaction’s expected completion date. The Committee will have 30 days to take action.
 - Parties may choose to file a notice under CFIUS’s standard procedures rather than a declaration.
 - Parties that are required to file with CFIUS and do not do so can be assessed a civil monetary penalty up to the value of the transaction.

In accordance with FIRRMA, the pilot program will commence on November 10, 2018, 30 days following publication of the regulations in the Federal Register. It will end no later than the date on which the final FIRRMA regulations are implemented.

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