



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

**Date:** September 11, 2020  
**Contact:** Treasury Public Affairs, (202) 622-2960

### **Fact Sheet: CFIUS Final Regulations Revising Declaration Requirement for Certain Critical Technology Transactions**

The Treasury Department issued final regulations that revise the requirement for certain transactions involving U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies to be filed with the Committee on Foreign Investment in the United States (CFIUS). The regulations take effect 30 days after publication in the Federal Register and will replace the declaration requirement at 31 C.F.R. 800.401(c) in place since February 13, 2020, that is based upon a U.S. business’s connection with one or more of 27 designated industries that were identified by North American Industry Classification System code. Instead, the mandatory filing will be based on whether certain U.S. Government export control authorizations would be required to export, reexport, transfer (in country), or retransfer such U.S. business’s critical technology to certain transaction parties or their owners.

The regulations also make clarifying amendments to the definition of “substantial interest,” and a number of conforming and technical revisions to other provisions.

The Treasury Department published a notice of proposed rulemaking on May 21, 2020, and allowed the public an opportunity to provide comments to the proposed rule through June 22, 2020. The Treasury Department considered the public comments in issuing the final regulations.

This fact sheet describes key aspects of the final regulations. The full text of the final regulations, along with a summary of the public comments to the proposed rule, can be found on the Treasury Department website at <http://www.treasury.gov/cfius>.

## **Key Aspects of the Rule**

**Applies to certain covered transactions involving critical technologies:** Except for limited clarifying amendments and technical edits, the rule applies to certain transactions involving U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. In particular, the rule requires declarations in connection with covered transactions where certain U.S. Government authorizations would be required to export, reexport, transfer (in country), or retransfer a U.S. business's critical technology to certain transaction parties or others in the ownership chain. The definition of "U.S. regulatory authorization" specifies the regulatory licenses or authorizations required under the four main U.S. export control regimes that, if applicable in the context of a particular transaction, would trigger a mandatory declaration.

**Requires evaluation of certain transaction parties or their owners:** The rule requires transaction parties to evaluate whether a U.S. regulatory authorization would be required for the hypothetical export activity of the U.S. business's critical technology to the direct acquirer, or to a person with 25 percent or more voting interest, direct or indirect, in such direct acquirer. It also clarifies that, in certain circumstances, this 25 percent percentage threshold would apply up the ownership chain of the direct acquirer's general partner (or equivalent).

**Provides carve-outs to the declaration requirement:** The rule includes carve-outs to the declaration requirement where the foreign person and critical technologies would qualify for certain license exceptions under the Export Administration Regulations (*i.e.*, certain elements of license exception ENC, license exception TSU, and certain elements of license exception STA).

**CFIUS process unchanged:** The rule does not change CFIUS's mandatory declaration process:

- Parties must file at least 30 days prior to a transaction's expected completion date.
- CFIUS will have 30 days to take action on a declaration.
- Parties to a transaction required to be filed with CFIUS may instead choose to file a notice under CFIUS's standard procedures.
- A civil monetary penalty can be assessed up to the value of the transaction where parties fail to file a mandatory declaration.

**CFIUS still largely voluntary:** The rule only applies to a subset of the covered transactions over which CFIUS has jurisdiction. CFIUS still has jurisdiction over other transactions involving critical technologies and, while not required, parties may choose to file either a notice or declaration with CFIUS in order to potentially receive a "safe harbor" letter regarding the transaction reviewed.

**Clarifying edits to definition of "substantial interest":** Declarations are also required for certain covered transactions where a foreign government has a "substantial interest" in a foreign person that will acquire a "substantial interest" in a TID U.S. business (*i.e.*, a business involved in critical technologies, critical infrastructure, or sensitive personal data). The rule makes clarifying amendments the definition of "substantial interest," which establishes how to determine the percentage interest held indirectly by one entity in another.

###