



Treasury Issues Final Regulation Revising Mandatory CFIUS Declaration Requirement for Certain Critical Technology Transactions

SEPTEMBER 15, 2020

The Department of the Treasury has issued final regulations that revise the requirement for filing a mandatory declaration with the Committee on Foreign Investment in the United States (CFIUS) in connection with certain transactions involving U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. The final regulation is expected to be published in the Federal Register on September 15, 2020, and it will become effective 30 days after publication.

Under the new rule, parties will be required to file a declaration 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. This is a shift from the current regulations, under which, parties are required to file a declaration with CFIUS for certain transactions involving U.S. businesses with a connection to one or more of 27 industries identified by reference to the North American Industry Classification System (NAICS) codes.

Specifically, parties to a transaction will soon be required to evaluate whether a U.S. regulatory authorization would be required to export the U.S. business's critical technology to the direct acquirer, or to a person with a voting interest of 25% or more in the acquirer. Additionally, in certain circumstances, this 25% threshold will apply up the ownership chain of the direct acquirer's general partner (or equivalent). If U.S. regulatory authorization would be required to export the U.S. business's critical technology to these individuals or entities, the parties will be required to file a short-form declaration with CFIUS at least 30 days prior to the transaction's expected completion date. There is a carve-out to the declaration requirement if the export would be covered by certain license exceptions under the Export Administration Regulations. Parties should exercise caution when determining if their transaction is covered by the carve-out, however, as failure to file a declaration when one is required could result in a civil monetary penalty up to the value of the transaction.

For more information about CFIUS's review process or the new regulations please contact one of the attorneys listed below.

2 Min Read

Author

Cari Stinebower

Related Locations

Washington, DC

Related Topics

CFIUS

Related Capabilities

International Trade

Financial Innovation & Regulation

Financial Services

Related Regions

North America

Related Professionals



Cari Stinebower

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.