

CFIUS Pilot Program Declarations

November 15, 2018

The U.S. Department of the Treasury recently published a “Declaration Submission Form” for the new short-form “declarations” introduced by the Committee on Foreign Investment in the United States’ (CFIUS) recently launched pilot program covering foreign investments in U.S. critical technology companies. Whereas the CFIUS review process was previously a voluntary process with CFIUS’s jurisdiction limited to transactions that could result in foreign control of a U.S. business, the new pilot program requires mandatory filings for certain controlling and even non-controlling critical technology investments at least 45 days prior to closing. For these “pilot program covered transactions,” CFIUS allows for the submission of short-form declarations rather than full CFIUS notices.

Parties to a pilot program covered transaction that opt to submit a declaration in lieu of a formal notice must respond to each item on the Declaration Submission Form. The information required broadly covers three main areas:

1. information describing the nature of the transaction under review, including a description of its structure, sources of financing, and whether the foreign person involved will gain rights or access to information;
2. information regarding the pilot program U.S. business, including identifying information, a summary of its business activities, a statement of all critical technologies it produces, and details of prior interactions with the U.S. Government; and
3. information regarding the foreign person engaged in the transaction, including the ultimate parent of the foreign person, details on foreign government ownership interests in the foreign person, and a summary of the business activities

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Practice Areas

Committee on Foreign Investment in the United States (CFIUS)
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of the foreign person.

In addition to this information, the form requires that certain attachments be included with the declaration. These include a list of addresses of all locations of the pilot program U.S. business, an organizational chart of the ultimate parent of the foreign person, and an explanation of ownership interests and rights in the foreign person held by a foreign government or foreign government-controlled entity.

Upon receipt of a declaration and a determination that it meets the requirements set forth in 31 C.F.R. § 801.403, CFIUS will accept the declaration and circulate it for review by all CFIUS agencies. This assessment period ends no later than 30 days after it has commenced (unless the 30th day is not a business day, in which case the assessment period ends on the next business day). When reviewing a declaration, CFIUS has the discretion to:

1. request that the parties file a formal written notice;
2. inform the parties to the transaction that CFIUS is not able to complete action under Section 721 with respect to the transaction on the basis of the declaration and that the parties may file a formal written notice to seek written confirmation that CFIUS has concluded all action under Section 721 with respect to the transaction;
3. initiate a unilateral review of the transaction; or
4. notify the parties in writing that the Committee has concluded all action with respect to the transaction.

Wiley Rein has an unparalleled CFIUS and national security practice that draws on senior government-level experience with CFIUS member agencies and numerous representations of domestic and international companies in complex transactions involving nearly every industry sector subject to CFIUS review. Should you have any questions regarding the CFIUS pilot program and the required declarations, please do not hesitate to contact one of the members of our CFIUS and national security practice listed on this alert.

**Jonathan Babcock, a Law Clerk in Wiley Rein's International Trade practice, contributed to this alert.*