

Treasury Proposes Regulatory Update to Sharpen and Enhance CFIUS Procedures and Enforcement Authorities to Protect National Security

April 11, 2024

WASHINGTON — Today, the U.S. Department of the Treasury, as Chair of the Committee on Foreign Investment in the United States (CFIUS), issued a Notice of Proposed Rulemaking (NPRM) to enhance certain CFIUS procedures and sharpen its penalty and enforcement authorities. The proposed rule reflects CFIUS's evolution and increased focus on monitoring, compliance, and enforcement. It also marks the first substantive update to the mitigation and enforcement provisions of the CFIUS regulations since the enactment and implementation of the Foreign Investment Risk Review Modernization Act of 2018, which amended CFIUS's governing statute (section 721 of the Defense Production Act of 1950). The proposed rule hones CFIUS's ability to accomplish its national security mission consistent with the United States' open investment policy.

CFIUS is authorized to review certain transactions involving foreign investment into businesses in the United States and certain transactions by foreign persons involving real estate in the United States in order to determine the effect of such transactions on the national security of the United States. CFIUS enforces transaction parties' compliance with its statute and regulations, as well as agreements entered into and conditions and orders imposed under such authorities, through its authority to impose civil monetary penalties and seek other remedies.

The proposed rule would refine and enhance CFIUS's authorities through the following key changes:

- Expanding the types of information CFIUS can require transaction parties and other persons to submit when engaging with them on transactions that were not filed with CFIUS;
- Instituting an extendable timeline for transaction parties to respond to risk mitigation proposals for matters under active review to assist CFIUS in concluding its reviews and investigations within the statutory time frame;

- Expanding the circumstances in which a civil monetary penalty may be imposed due to a party's material misstatement and omission, including when the material misstatement or omission occurs outside a review or investigation of a transaction and when it occurs in the context of the Committee's monitoring and compliance functions;
- Substantially increasing the maximum civil monetary penalty available for violations of obligations under the CFIUS statute and regulations, as well as agreements, orders, and conditions authorized by the statute and regulations, and introducing a new method for determining the maximum possible penalty for a breach of a mitigation agreement, condition, or order imposed;
- Expanding the instances in which CFIUS may use its subpoena authority, including when seeking to obtain information from third persons not party to a transaction notified to CFIUS and in connection with assessing national security risk associated with non-notified transactions; and
- Extending the time frame for submission of a petition for reconsideration of a penalty to the Committee and the number of days for the Committee to respond to such a petition.

“As CFIUS has refined its focus on compliance and enforcement, we've identified important enhancements to our regulations to more effectively deter violations, promote compliance, and swiftly address national security risks in connection with CFIUS reviews,” said Assistant Secretary for Investment Security Paul Rosen. “These updates reflect lessons learned in the course of our monitoring, compliance, and enforcement work and build on the 2022 CFIUS Enforcement and Penalty Guidelines.”

In assessing compliance and whether to bring an enforcement action in a particular case, CFIUS will continue to evaluate the facts and circumstances surrounding the conduct including the aggravating and mitigating factors described in the [CFIUS Enforcement and Penalty Guidelines](#).

Treasury continues to assess other aspects of CFIUS's authorities to determine whether additional regulatory enhancements are appropriate.

Treasury encourages the public to submit written comments in response to the proposed rule. Comments will be accepted for 30 days following publication in the *Federal Register*.

More information is available on the [CFIUS webpage](#).

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