

Alert | Export Controls & Economic Sanctions



March 2020

CFIUS Regulations and FIRRMA Updates: Proposed CFIUS Filing Fees Announced

The U.S. Department of Treasury has issued [proposed regulations](#) that would impose a filing fee on certain voluntary notices filed with the Committee on Foreign Investment in the United States (CFIUS). As discussed in our [Feb. 11, 2020, GT Alert](#), CFIUS is to implement a filing fee pursuant to the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). The proposed regulations were published in the Federal Register March 9, 2020.

The proposed regulations would introduce a filing fee for parties submitting full voluntary notifications for “covered transactions” as well as “covered real estate transactions.” Importantly, the proposed regulations would **not** require a filing fee for any short form declaration, mandatory notifications, and reviews unilaterally initiated by CFIUS, with the exception that filing fees are to be applied if a full voluntary notice is required after a short form declaration has been filed.

Proposed Filing Fee Schedule Based on Transaction Value

The proposed regulations adopt a tiered filing fee approach, with fees based on the value of the transaction. The proposed method of calculating transaction value, for purposes of determining the filing fee, will generally be the total value of all consideration paid in the context of the transaction, with certain exceptions. For consideration that fluctuates in value, such as securities or other non-cash assets, the proposed rule calculates value based on the closing price for the security on the previous trading day before the voluntary notice was filed with CFIUS, subject to certain exceptions. For transactions where

consideration has not yet been determined, the parties are instructed to calculate value based on a good-faith approximation of the fair market value of the duties or assets subject of the transaction on the date the parties file the notice.

Proposed Tiered Filing Fee Structure

Value of Transaction	Proposed Filing Fee
Up to \$499,999.99	No fee assessed
\$500,000 to \$4,999,999.99	\$750
\$5,000,000 to \$49,99,999.99	\$7,500
\$50,000,000 to \$249,999,999	\$75,000
\$250,000,000 to \$749,999,999.99	\$150,000
\$750,000,000 or more	\$300,000

Timing and Budgeting Considerations

The following factors included in the proposed rule will affect timing and budgeting considerations when preparing to file a voluntary notice:

- The filing fee is due at time of filing, and CFIUS will not “start the clock,” by initiating the 45-day review period, until the fee is received.
- Filing fees are to be paid to the Treasury Department via electronic payment in U.S. dollars.
- Refunds will generally not be available unless it is later determined a party has overpaid or the transaction is not a covered transaction.
- Resubmissions, where CFIUS has allowed the parties to withdraw and resubmit to include omitted or new information, will not require an additional filing fee.
- Insufficiency of payment could lead to rejection of the voluntary notice later in the process.

Parties may submit comments on the proposed rule to the Treasury Department between March 9, 2020, and April 8, 2020. Interested parties may reach out to any of the authors of this GT Alert for assistance with preparing and submitting comments.

Greenberg Traurig’s **Export Controls & Economic Sanctions** team has wide-ranging CFIUS experience, counseling both potential foreign investors as well as the U.S. targets of investment. The team provides integrated CFIUS advice from the initial stages of a proposed transaction to the conclusion of a CFIUS review, taking into account the operational and deal objectives of our clients. The CFIUS requirements continue to undergo rapid changes, and our team diligently tailors our counseling to account for the changing regulatory landscape and the transactional objectives of our clients. The team also anticipates any government policy concerns that may arise in relation to a transaction, and takes a collaborative approach to designing and implementing mitigation measures.

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