

Client Alert

International Trade

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Department of Treasury Issues Proposed Rule Expanding CFIUS Real Estate Jurisdiction

The Proposed Rule expands CFIUS's authority to review certain transactions by foreign persons involving real estate close to over 50 additional military installations.

On July 8, 2024, the U.S. Department of the Treasury ("Treasury") issued a [Notice of Proposed Rulemaking](#) (the "Rule") expanding the jurisdiction of the Committee of Foreign Investment in the United States ("CFIUS") over certain real estate transactions by foreign persons. Under the Rule, CFIUS would have the authority to review certain transactions involving real estate near 59 additional military installations across 30 states. Comments to the Rule are due 30 days after its publication in the Federal Register.

Pursuant to the Foreign Investment Risk Review Modernization Act of 2018 ("FIRRMA"), as implemented by 31 C.F.R. Part 802 ("Part 802"), CFIUS has the authority to review for national security risks the purchase, or lease by, or concession to, a foreign person of real estate in the United States that is in "close proximity" or "extended range" of "covered real estate." "Covered real estate" includes military installations identified in Appendix A to Part 802.

The Rule proposes several amendments to Appendix A to enhance CFIUS's authority to review the foreign purchase, lease, or concession of land in the United States. These proposed amendments are prompted by the Department of Defense's ("DoD") recent assessment of military installations that should be within CFIUS's jurisdiction based on factors such as the operations, assets, missions, and trainings at each installation.



KEY QUESTIONS

- **How has CFIUS’s jurisdiction been expanded?** The Rule proposes expanding CFIUS’s jurisdiction to cover certain transactions by foreign persons involving real estate that is:
 - **Within “close proximity” (i.e., 1 mile)** of 40 additional military installations located in Alabama, Alaska, Arkansas, Arizona, California, Colorado, Florida, Georgia, Guam, Illinois, Iowa, Kentucky, Maine, Michigan, Missouri, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Texas, Utah, and Virginia; or
 - **Within “extended range” (i.e., 99 additional miles)** of 19 additional military installations and 8 military installations that were previously subject to CFIUS’s jurisdiction only when real estate was in “close proximity” to the installation. The additional military installations are located in Alabama, Arkansas, California, Delaware, Georgia, Indiana, Iowa, Louisiana, Massachusetts, Michigan, Missouri, New Mexico, Oklahoma, South Carolina, Texas, and Utah.ⁱ

Furthermore, the Rule updates (1) the names of 14 military installations consistent with recommendations by DoD’s Naming Commission and name changes following the establishment of Space Force and (2) the location of 7 military installations to assist the public in identifying the installations.

Consistent with these amendments, the Rule revises the definition of “military installations” in Part 802 to further include:

- Space Force bases, stations, and major annexes;
 - Army depots, arsenals, and military terminals;
 - Marine Corps installations, logistics battalions, and support facilities;
 - Any military range, as defined in 10 U.S.C. § 101(f)(1), regardless of location or ownership; and
 - Any Naval base and air station, including major support activities and annexes.
- **What prompted this expanded jurisdiction?** Over the past several years, the U.S. government has become increasingly concerned about the national security risks posed by the foreign acquisition of U.S. land. For example, federal and state legislators as well as administration officials expressed concerns regarding CFIUS’s determination that it lacked jurisdiction to review the acquisition of 370 acres near Grand Forks Air Base in North Dakota by the Chinese company, Fufeng Group. Likely in response, Treasury then proposed amending its regulations to provide CFIUS with authority over certain real estate transactions near 8 additional military installations in Arizona, California, Iowa, North Dakota, South Dakota, and Texas. (See [88 Fed. Reg. 29003](#)).

In addition, CFIUS recently issued a proposed rule to enhance its identification and enforcement of foreign investments in the United States not filed with CFIUS (“non-notified transactions”) that pose national security risks (See [89 Fed. Reg. 26107](#)). Consistent with CFIUS’s continued enforcement of non-notified transactions, President Biden on May 13, 2024, issued an executive order requiring the divestment of 12 acres near F.E. Warren Air Force Base, a facility hosting nuclear missiles. MineOne Wyoming Data Center LLC (“MineOne”), a company ultimately owned by Chinese nationals, had acquired the property in June 2022 (See [89 Fed. Reg. 43301](#)). MineOne did not notify CFIUS of its acquisition and subsequently established cryptocurrency mining operations – presumably including computing and networking assets – on the property. CFIUS was made aware of the transaction based on



a public tip, and following its review of the transaction, determined that national security risks exist, which could not be mitigated by a negotiated agreement, given the proximity to F.E. Warren Air Force Base and the foreign-sourced specialized equipment on the MineOne property.

Especially in light of this history, the recent Rule signals that CFIUS will be attentive to and closely evaluating foreign person acquisitions of real estate in the United States to ensure such transactions do not threaten the national security of the United States.

NEXT STEPS

First, if your company has questions or comments on the Rule, it should submit comments by the deadline so that it can shape the final regulations. Experienced counsel can be helpful in drafting and filing those comments on behalf of clients.

Second, your company should consider whether new investments in real estate would trigger CFIUS's expanded jurisdiction. Transactions involving real estate in over 30 states may be within CFIUS's authority to review in the near future, potentially impacting deal diligence, risks, and timelines. Engaging CFIUS counsel early in the deal process may help mitigate against risks associated with potential CFIUS filings or clearance.

Third, companies should be aware that the Rule signals CFIUS's increasing attention to reviewing foreign persons' investment in the United States for national security risks. In addition to closely evaluating filings made to CFIUS regarding foreign investments, CFIUS has devoted resources to identifying non-notified transactions. It has significant authority to review and impose conditions on transactions to mitigate national security risks – even years after the close of a non-notified transaction. Accordingly, parties to transactions involving foreign buyers should carefully consider whether a filing to CFIUS is mandatory, and if not, whether a filing to CFIUS is advisable. Engaging CFIUS counsel with strong experience in this area can help your company navigate these considerations, especially as CFIUS's authority and enforcement continue to expand.

King & Spalding has a global footprint, substantial industry experience, and deep bench of former trade and national security government officials. It is uniquely positioned to guide companies through navigating CFIUS risks and the CFIUS filing process.

ABOUT KING & SPALDING

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¹ The Rule proposes removing three sites currently included in Appendix A (Cape Code Air Force Station, Iowa National Guard Joint Force Headquarters, and Lackland Air Force Base) because they are located within military installations that would be added to the Appendix by the Rule.