



CFIUS Proposes Additional Real Estate Areas for Foreign Investment Review

On Friday, May 5, 2023, the U.S. Department of the Treasury issued a notice of proposed rulemaking, 88 Fed. Reg. 29003 (May 5, 2023), regarding additions to the list of “covered real estate transactions” subject to review by the Committee on Foreign Investment in the United States (CFIUS). The proposed rule would amend the CFIUS regulations at 31 C.F.R. § 802.227 by adding **eight new, previously unlisted sites to those identified in Appendix A of that provision as “military installations.” The rule would render certain transactions by foreign persons in real estate, or in certain real estate interests, in those areas subject to review by CFIUS for potential national security concerns.**

CFIUS’ authority for such review is pursuant to section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). Regulations issued in 2020 extended CFIUS’ authority to cover transactions providing foreign investors with certain rights in specifically designated real estate in proximity to listed ports and military or government facilities.

The proposed eight sites are:

- Air Force Plant 42, Palmdale, CA
- Dyess Air Force Base, Abilene, TX
- Ellsworth Air Force Base, Box Elder, SD
- Grand Forks Air Force Base, Grand Forks, ND
- Iowa National Guard Joint Forces Headquarters, Des Moines, IA

- Lackland Air Force Base, San Antonio, TX
- Laughlin Air Force Base, Del Rio, TX
- Luke Air Force Base, Glendale, AZ

Furthermore, the proposed rule would place these installations on Part 2 of Appendix A, the list for which the review jurisdiction applies within an “extended range”—99 miles—of the installation.

As a practical matter, what this means is that, if finalized, this rule would expand CFIUS jurisdiction to review covered foreign investment transactions within those areas. Any foreign, or foreign-funded, developer or investor investing in real estate or facilities within 99 miles of the listed installations (and not qualifying as an “excepted real estate foreign state,” “excepted real estate investor” or other transactional exemption specified in section 802) will want to consider building into their deal timelines due allowance for careful review (with counsel) as to whether the transaction is a “covered real estate transaction,” and to prepare and submit a declaration (in accordance with 31 C.F.R. § 802.402) or notice (31 C.F.R. § 802.501) as appropriate. Such filing is normally prudent in transactions where CFIUS jurisdiction is applicable, as clearance from the Committee provides the best assurance against subsequent Committee review—and potential required changes or mitigation measures (or even possible divestiture)—after closing.

Note that the regulations point out that U.S. Government assessment of military installations and the geographic scope required to protect their security will “continue on an ongoing basis,” indicating that the Appendix A lists



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will likely see further changes and additions over time. Potential investors should continue to monitor the regulations to stay informed of possible changes.

The notice states that interested persons may submit comments on the proposed rule—due no later than June 5, 2023—either electronically through the U.S. Government portal at <https://www.regulations.gov> or by mail to:

U.S. Department of the Treasury
Attn: Meena Sharma
Deputy Director of Investment Security and
International Relations
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

Additional Assistance

For further information regarding the proposed rule, the regulations (including available exemptions), or other matters regarding foreign investment, please contact James Kevin Wholey at jwholey@phillipslytle.com, (212) 617-2714; any member of the [Phillips Lytle International Team](#); or the [Phillips Lytle attorney with whom you have a relationship](#). ■



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