

## Practice Update

# Treasury Proposes Expansion of CFIUS Real Estate Jurisdiction

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On July 19, 2024, the U.S. Department of the Treasury (Treasury) published a Notice of Proposed Rulemaking (NPRM) that seeks to expand the Committee on Foreign Investment in the United States' (CFIUS) jurisdiction over real estate transactions near sensitive military installations, and potentially puts 59 additional locations across the United States under CFIUS jurisdiction (the Proposed Rule). Parties to real estate transactions should pay close attention to, and consider participating in, the development of CFIUS's Proposed Rule. This client alert provides an overview of the Proposed Rule and the considerations parties to a real estate transaction should take into account in light of this NPRM, which comes on the heels of President Biden ordering a divestment of real estate by a foreign buyer of a site used for cryptocurrency mining near an Air Force base, reported to be the first-ever divestment of real estate ordered by CFIUS.

## Background

CFIUS is an interagency committee tasked with overseeing the national security risks of certain transactions involving foreign persons. CFIUS reviews transactions where a U.S. business is at risk of foreign control, including mergers, acquisitions, joint ventures, and takeovers. CFIUS also reviews foreign investments in U.S. businesses that deal with

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critical technologies, critical infrastructure, sensitive personal data, and real estate located near sensitive government facilities. Sensitive government facilities include military installations. If CFIUS determines that a transaction threatens U.S. national security, it may seek mitigation or recommend that the President suspend, block, or unwind that transaction.

The Proposed Rule seeks to modify the definition of “military installation,” and greatly adds to the lists of military installations over which CFIUS has jurisdiction.

## Overview of the Proposed Rule

The current CFIUS regulations set forth CFIUS’s power to review covered real estate transactions, and that includes real estate that functions as part of or is within a certain mileage of designated airports, maritime ports, or military installations. After the U.S. Department of Defense conducted a review of all its military installations, the Treasury issued this NPRM to encompass more properties, i.e., more military installations, that could become subject to CFIUS’s jurisdiction.

## Revising the Definition of “Military Installation”

CFIUS regulations define “military installation” as any site that meets certain descriptions and as identified in appendix A to part 802. As a general overview, the Proposed Rule broadens the categories of covered installations by including Space Force bases, Army depots, Army arsenals, Army military terminals, Marine Corps installations, logistics battalions, support facilities, any military range, and any relevant Naval base and air station.

## Modifying Lists of Military Installations in Appendix A

CFIUS regulations contain four lists of specific military installations deemed sensitive to national

security. The lists designate installations by site name and location (township/range). Certain foreign investments and transactions of real estate located within the boundaries set forth in the regulations are at risk of or subject to CFIUS review.

The Proposed Rule seeks to add 59 locations to the CFIUS list of military installations: 40 military installations would be added to part 1 and 19 to part 2. The Proposed Rule also makes other modifications to existing properties listed in the CFIUS regulations.

### Conclusion: Caution in Real Estate Transactions with Foreign Parties

As the Proposed Rule adds to the list of military installations, it expands CFIUS's jurisdiction to review foreign investments in real estate if within certain ranges of the expanded list. Parties to real estate transactions involving foreign investors or purchasers should take notice of this NPRM and these proposed changes. Parties to real estate transactions, including those related to hospitality, manufacturing, telecommunications, energy, and data center transactions, should carefully diligence not just the potential buyers and investors but also the location of the real estate.

The NPRM offers the opportunity to comment on the potential impacts of the Proposed Rule. The deadline to submit comments is August 19, 2024.

If you are interested in submitting comments or learning how these proposed changes impact you, please reach out to your Akerman lawyer.

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