

Treasury issues proposed rule to expand CFIUS's jurisdiction over real estate transactions

July 17, 2024 | Client Update | 5-minute read

The proposed rule would create zones in which CFIUS has jurisdiction over real estate transactions around an additional 50 military installations across 30 states.

On July 8, 2024, the Treasury Department released a [notice of proposed rulemaking](#) that amends the rules of the Committee on Foreign Investment in the United States (CFIUS) governing real estate transactions to substantially expand the geographic areas subject to heightened scrutiny.¹ CFIUS's real estate rules, found at 31 CFR Part 802 (Part 802), provide a list of military installations and other sensitive government facilities around which CFIUS has authority to review not only acquisitions of operating U.S. businesses, which CFIUS can do anywhere in the United States, but of acquisitions of a wide range of interests in real estate by foreign persons. The proposed rule identifies an additional 50 military installations, spread across 30 states, to the existing list of sensitive installations around which CFIUS has heightened jurisdiction.²

CFIUS has for a number of years scrutinized acquisitions of facilities located near sensitive government facilities, but such transactions have recently been the subject of particular political and regulatory focus. For example, the Biden Administration recently issued an [order](#) requiring divestiture of land purchased by a Chinese-owned crypto mining company,³ mitigating national security concerns with respect to both the location and intended operations of the acquirer.⁴ Earlier, in 2023, CFIUS engaged in a previous round of expansion after the proposed construction of a Chinese-owned corn mill near city of Grand Forks, North Dakota attracted significant political opposition and a statement from the Air Force that the acquisition posed a national security risk, but CFIUS concluded that it did not at the time have jurisdiction over the transaction.⁵

Given the increased focus in this area, U.S. businesses and potential foreign investors and acquirors should continue to assess the potential national security risks associated with the physical location of real estate and facilities associated with a transaction.

Overview of the proposed rule

Under Part 802, CFIUS has authority to review covered real estate transactions, which are transactions in which a foreign person acquires certain property interests (including purchases, leases, or concessions) in covered real estate property that does not rise to the level of a U.S. business (over which CFIUS already has jurisdiction under its principal rules), including property located within:

- “Close proximity” (i.e., one mile from the outer boundary) of certain specified U.S. military installations;
- “Extended range” (i.e., 100 miles outward from the outer boundary) of certain specified U.S. military installations;
- Counties or other geographic areas connected to certain specified bases and military installations;

- Certain large airports and maritime ports; and/or
- Any part of certain specified U.S. military installations, to the extent located within the limits of the territorial sea of the United States.⁶

We discuss Part 802 further in [this client update](#). While Part 802 does not impose mandatory filing requirements for covered real estate transactions, it authorizes CFIUS to review covered real estate transactions for national security concerns and, if the Committee identifies concerns, to impose mitigating measures (up to and including blocking of the transaction).

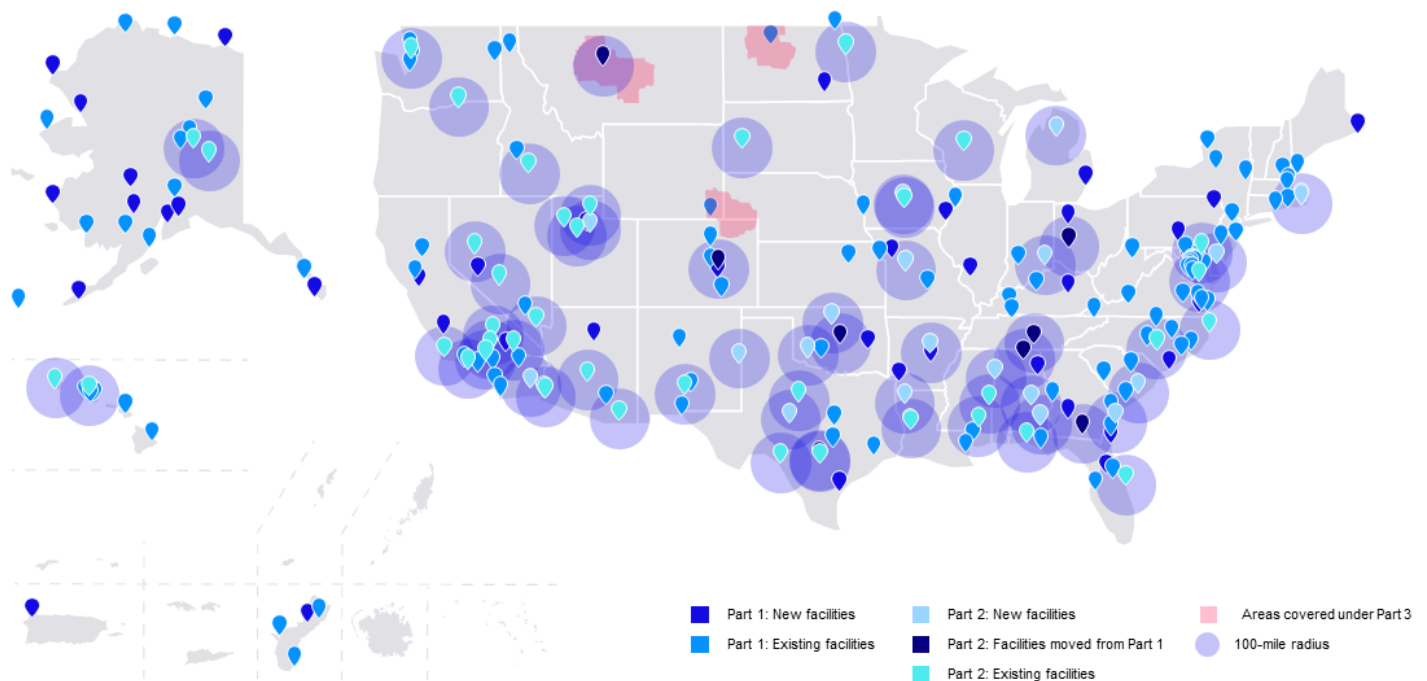
The proposed rule would make several updates to Appendix A of Part 802, which identifies the subset of facilities that qualify as covered “military installations” and are subject to CFIUS’s jurisdiction. The proposed rule would not change the scope of the current filing requirements for covered real estate transactions, and such transactions would remain voluntary under CFIUS’s regulations.

The proposed rule would specifically amend to Appendix A to:

- Add 40 additional military installations to Part 1 of Appendix A, which are the installations around which CFIUS has jurisdiction over real estate transactions within a one-mile radius of the installations;
- Add 19 military installations to Part 2 of Appendix A, which are the installations around which CFIUS has jurisdiction over real estate transactions within a 100-mile radius of the installations;
- Move eight military installations from Part 1 to Part 2, which would expand CFIUS’s jurisdiction over real estate transactions around these installations from a 1-mile to a 100-mile radius;
- Update the names of 14 military installations to reflect recent official installation name changes;⁷ and
- Update the location of seven military installations already listed in the current regulations to better reflect the installations’ approximate location.

To help illustrate the amendments the proposed rule would introduce, we provide below a visual of the military installations that would be covered by the proposed rule.

Part 802 military installations



The table provided below also provides an overview of the forthcoming changes to Appendix A, with name changes indicated in [green](#).

The amendments to Part 802 also provide an informative indication of locations that CFIUS may consider sensitive if a foreign person acquires control of a U.S. business with facilities in those areas. CFIUS can consider the security implications of foreign control over a target company's facilities and their proximity to sensitive locations regardless of whether they fall within the scope of Part 802, and it has in fact in the past taken action under CFIUS's general jurisdiction to prohibit transactions of operating businesses in proximity to sensitive facilities (including Fallon Naval Air Station, Trump Tower, and Naval Amphibious base Coronado). The inclusion of an area in Part 802 signals that CFIUS has heightened concerns with real estate-related national security risks in the area, or at least with respect to the identified facilities, and may indicate a heightened risk that CFIUS will have security-related concerns with a proposed transaction – although the area covered by Part 802 is now so large as to cover a significant fraction of the United States.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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- ¹ Amendments to the Definition of Military Installation and the List of Military Installations in Regulations Pertaining to Certain Transaction by Foreign Persons Involving Real Estate in the United States, available at <https://home.treasury.gov/system/files/206/NPRMPart802MilitaryInstallationsFINAL.pdf>.
- ² The proposed rule would also make corresponding revisions to the definition of "military installation" at 31 CFR 802.227 by introducing a range of technical amendments to paragraphs (e), (f), (g), (l), (m), and (n) of 31 CFR 802.227.
- ³ Order of May 13, 2024, Regarding the Acquisition of Certain Real Property of Cheyenne Leads by MineOne Cloud Computing Investment I L.P., 89 Fed. Reg. 43,301 (May 16, 2024).
- ⁴ U.S. Treasury Department, Statement on the President's Decision Prohibiting the Acquisition by MineOne Cloud Computing Investment I L.P. of Real Estate, and the Operation of a Cryptocurrency Mining Facility, in Close Proximity to Francis E. Warren Air Force Base (May 13, 2024), available at <https://home.treasury.gov/news/press-releases/jy2335>.
- ⁵ See N.Y. Times, "Air Force Says Proposed Chinese-Owned Mill in North Dakota Is 'Significant Threat'" (Jan. 31, 2023), available at <https://www.nytimes.com/2023/01/31/us/corn-mill-fufeng-china-north-dakota.html?searchResultPosition=2>; Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States, 88 Fed. Reg. 57,348 (Sep. 22, 2023).
- ⁶ 31 CFR 802.211.
- ⁷ See Department of Defense, *DOD Begins Implementing Naming Commission Recommendations* (Jan. 5, 2023), <https://www.defense.gov/News/News-Stories/Article/Article/3260434/>.

Appendix A

The table below shows the proposed rule's updates to Part 1 and Part 2 of Appendix A. Under Part 802, CFIUS has authority to review transactions within 1-mile radius of installations listed in Part 1 of Appendix A. CFIUS has authority to review transactions within a 100-mile radius of installations listed in Part 2. Renamed installations are listed in the chart below in **green**.

Site Name	Location
Part 1	
New Facilities	
Anniston Army Depot	Anniston, AL
Barter Island Regional Radar Site	Barter Island, AK
Blue Grass Army Depot	Richmond, KY
Camp Blaz	Dededo, GU
Camp Navajo	Bellemont, AZ
Camp Roberts	San Miguel, CA
Cold Bay Regional Radar Site	Cold Bay, AK
Detroit Arsenal	Warren, MI
Hawthorne Army Depot	Hawthorne, NV
Indian Mountain Regional Radar Site	Indian Mountain, AK
Iowa Army Ammunition Plant	Middletown, IA
Joint Base Myer-Henderson Hall	Arlington, VA
Joint Systems Manufacturing Center – Lima	Lima, OH
Kenai Regional Radar Site	Kenai, AK
Kotzebue Regional Radar Site	Kotzebue, AK
Lake City Army Ammunition Plant	Independence, MO
Letterkenny Army Depot	Chambersburg, PA
Lisburne Regional Radar Site -	Cape Lisburne, AK
Marine Corps Logistics Base Albany	Albany, GA
Marine Corps Logistics Base Barstow	Barstow, CA
Marine Corps Support Facility Blount Island	Jacksonville, FL
McAlester Army Ammunition Plant	McAlester, OK
Military Ocean Terminal Concord	Concord, CA
Military Ocean Terminal Sunny Point	Brunswick County, NC
Naval Air Station Corpus Christi	Corpus Christi, TX
Naval Logistics Support Activity Ketchikan	Ketchikan, AK
Naval Logistics Support Activity LaMoure	LaMoure, ND
Naval Logistics Support Annex Orlando	Okahumpka, FL
Naval Logistics Support Facility Aguada	Aguada, PR
Naval Logistics Support Facility Cutler	Cutler, ME
Naval Suffolk Facility	Suffolk, VA
Pine Bluff Arsenal	White Hall, AR

Site Name	Location
Pueblo Chemical Depot	Pueblo, CO
Red River Army Depot	Texarkana, TX
Romanzof Regional Radar Site	Cape Romanzof, AK
Scott Air Force Base	St. Clair County, IL
Scranton Army Ammunition Plant	Scranton, PA
Sparrevohn Regional Radar Site	Sparrevohn, AK
Tatalina Regional Radar Site	Tatalina, AK
Tooele Army Depot	Tooele, UT
Existing Facilities	
Adelphi Laboratory Center	Adelphi, MD
Air Force Maui Optical and Supercomputing Site	Maui, HI
Air Force Office of Scientific Research	Arlington, VA
Andersen Air Force Base	Yigo, GU
Army Futures Command	Austin, TX
Army Research Lab—Orlando Simulations and Training Technology Center	Orlando, FL
Army Research Office	Durham, NC
Beale Air Force Base	Yuba City, CA
Biometric Technology Center Defense Forensics and Biometrics Agency	Clarksburg, WV
Buckley Space Force Base	Aurora, CO
Camp MacKall	Southern Pines, NC
Cape Cod Air Force Station	Sandwich, MA
Cape Newenham Long Range Radar Site	Cape Newenham, AK
Cavalier Space Force Station	Cavalier, ND
Cheyenne Mountain Space Force Station	Colorado Springs, CO
Clear Air Force Station	Anderson, AK
Creech Air Force Base	Indian Springs, NV
Davis-Monthan Air Force Base	Tucson, AZ
Defense Advanced Research Projects Agency	Arlington, VA
Eareckson Air Station	Shemya, AK
Eielson Air Force Base	Fairbanks, AK
Ellington Field Joint Reserve Base	Houston, TX
Fairchild Air Force Base	Spokane, WA
Fort Belvoir	Fairfax County, VA
Fort Bliss	El Paso, TX
Fort Campbell	Hopkinsville, KY and Clarksville, TN

Site Name	Location
Fort Carson	Colorado Springs, CO
Fort Cavazos	Killeen, TX
Fort Detrick	Frederick, MD
Fort Drum	Watertown, NY
Fort Eisenhower	Augusta, GA
Fort Gregg-Adams	Petersburg, VA
Fort Knox	Elizabethtown, KY
Fort Leavenworth	Leavenworth County, KS
Fort Leonard Wood	Pulaski County, MO
Fort Meade	Anne Arundel County, MD
Fort Moore	Columbus, GA
Fort Riley	Junction City, KS
Fort Shafter	Honolulu, HI
Fort Sill	Lawton, OK
Fort Stewart	Hinesville, GA
Fort Yukon Long Range Radar Site	Fort Yukon, AK
Francis E. Warren Air Force Base	Cheyenne, WY
Guam Tracking Station	Inarajan, GU
Hanscom Air Force Base	Lexington, MA
Holloman Air Force Base	Alamogordo, NM
Holston Army Ammunition Plant	Kingsport, TN
Joint Base Anacostia-Bolling	Washington, DC
Joint Base Andrews	Camp Springs, MD
Joint Base Elmendorf-Richardson	Anchorage, AK
Joint Base Langley-Eustis	Hampton, VA and Newport News, VA
Joint Base Lewis-McChord	Tacoma, WA
Joint Base McGuire-Dix-Lakehurst	Lakehurst, NJ
Joint Base Pearl Harbor-Hickam	Honolulu, HI
Joint Expeditionary Base Little Creek-Fort Story	Virginia Beach, VA
Kaena Point Satellite Tracking Station	Waianae, HI
King Salmon Air Force Station	King Salmon, AK
Kirtland Air Force Base	Albuquerque, NM
Kodiak Tracking Station	Kodiak Island, AK
Los Angeles Air Force Base	El Segundo, CA
MacDill Air Force Base	Tampa, FL
Marine Corps Air Ground Combat Center Twentynine Palms	Twentynine Palms, CA

Site Name	Location
Marine Corps Air Station Beaufort	Beaufort, SC
Marine Corps Air Station Cherry Point	Cherry Point, NC
Marine Corps Air Station Miramar	San Diego, CA
Marine Corps Air Station New River	Jacksonville, NC
Marine Corps Air Station Yuma	Yuma, AZ
Marine Corps Base Camp Lejeune	Jacksonville, NC
Marine Corps Base Camp Pendleton	Oceanside, CA
Marine Corps Base Hawaii	Kaneohe Bay, HI
Marine Corps Base Hawaii, Camp H.M. Smith	Halawa, HI
Marine Corps Base Quantico	Quantico, VA
Mark Center	Alexandria, VA
Minot Air Force Base	Minot, ND
Naval Air Station Joint Reserve Base New Orleans	Belle Chasse, LA
Naval Air Station Oceana	Virginia Beach, VA
Naval Air Station Oceana Dam Neck Annex	Virginia Beach, VA
Naval Air Station Whidbey Island	Oak Harbor, WA
Naval Base Guam	Apra Harbor, GU
Naval Base Kitsap Bangor	Silverdale, WA
Naval Base Point Loma	San Diego, CA
Naval Base San Diego	San Diego, CA
Naval Base Ventura County—Port Hueneme Operating Facility	Port Hueneme, CA
Naval Research Laboratory	Washington, DC
Naval Research Laboratory—Blossom Point	Welcome, MD
Naval Research Laboratory—Stennis Space Center	Hancock County, MS
Naval Research Laboratory—Tilghman	Tilghman, MD
Naval Station Newport	Newport, RI
Naval Station Norfolk	Norfolk, VA
Naval Submarine Base Kings Bay	Kings Bay, GA
Naval Submarine Base New London	Groton, CT
Naval Surface Warfare Center Carderock Division—Acoustic Research Detachment	Bayview, ID
Naval Support Activity Crane	Crane, IN
Naval Support Activity Orlando	Orlando, FL
Naval Support Activity Panama City	Panama City, FL
Naval Support Activity Philadelphia	Philadelphia, PA
Naval Support Facility Carderock	Bethesda, MD
Naval Support Facility Dahlgren	Dahlgren, VA

Site Name	Location
Naval Support Facility Indian Head	Indian Head, MD
Naval Weapons Station Seal Beach Detachment Norco	Norco, CA
New Boston Air Station	New Boston, NH
Offutt Air Force Base	Bellevue, NE
Oliktok Long Range Radar Site	Oliktok, AK
Orchard Combat Training Center	Boise, ID
Peason Ridge Training Area	Leesville, LA
Pentagon	Arlington, VA
Peterson Space Force Base	Colorado Springs, CO
Picatinny Arsenal	Morris County, NJ
Piñon Canyon Maneuver Site	Tyrone, CO
Pohakuloa Training Area	Hilo, HI
Point Barrow Long Range Radar Site	Point Barrow, AK
Portsmouth Naval Shipyard	Kittery, ME
Radford Army Ammunition Plant	Radford, VA
Rock Island Arsenal	Rock Island, IL
Rome Research Laboratory	Rome, NY
Seymour Johnson Air Force Base	Goldsboro, NC
Shaw Air Force Base	Sumter, SC
Southeast Alaska Acoustic Measurement Facility	Ketchikan, AK
Tin City Long Range Radar Site	Tin City, AK
Travis Air Force Base	Fairfield, CA
Tyndall Air Force Base	Bay County, FL
Combat Capabilities Development Command Soldier Center	Natick, MA
Watervliet Arsenal	Watervliet, NY
Part 2	
New Facilities	
Altus Air Force Base	Altus, OK
Barksdale Air Force Base	Bossier City, LA
Camp Dodge	Johnston, IA
Camp Grayling	Grayling, MI
Camp Williams	Bluffdale, UT
Cannon Air Force Base	Clovis, NM
Chocolate Mountain Aerial Gunnery Range	Niland, CA

Site Name	Location
Columbus Air Force Base	Columbus, MS
Dover Air Force Base	Delmarva, DE
Fort Novosel	Dale County, AL
Goodfellow Air Force Base	San Angelo, TX
Joint Base Cape Cod	Sandwich, MA
Joint Base Charleston	North Charleston, SC
Little Rock Air Force Base	Little Rock, AR
Maxwell-Gunter Air Force Base	Montgomery, AL
Muscatatuck Urban Training Center	Butler, IN
Townsend Bombing Range	McIntosh County, GA
Vance Air Force Base	Enid, OK
Whiteman Air Force Base	Knob Noster, MO
Facilities Moved from Part 1	
Arnold Air Force Base	Coffee County and Franklin County, TN
Joint Base San Antonio	San Antonio, TX
Malmstrom Air Force Base	Great Falls, MT
Moody Air Force Base	Valdosta, GA
Redstone Arsenal	Huntsville, AL
Schriever Space Force Base	Colorado Springs, CO
Tinker Air Force Base	Midwest City, OK
Wright-Patterson Air Force Base	Dayton, OH
Existing Facilities	
Aberdeen Proving Ground	Aberdeen, MD
Air Force Plant 42	Palmdale, CA
Camp Shelby	Hattiesburg, MS
Cape Canaveral Space Force Station	Cape Canaveral, FL
Dare County Range	Manns Harbor, NC
Dyess Air Force Base	Abilene, TX
Edwards Air Force Base	Edwards, CA
Eglin Air Force Base	Valparaiso, FL
Ellsworth Air Force Base	Box Elder, SD
Fallon Range Complex	Fallon, NV
Fort Greely	Delta Junction, AK
Fort Huachuca	Sierra Vista, AZ

Site Name	Location
Fort Irwin	San Bernardino County, CA
Fort Johnson	Vernon Parrish, LA
Fort Liberty	Fayetteville, NC
Fort Wainwright	Fairbanks, AK
Grand Forks Air Force Base	Grand Forks, ND
Hardwood Range	Necedah, WI
Hill Air Force Base	Ogden, UT
Iowa National Guard Joint Force Headquarters	Des Moines, IA
Lackland Air Force Base	San Antonio, TX
Laughlin Air Force Base	Del Rio, TX
Luke Air Force Base	Glendale, AZ
Mountain Home Air Force Base	Mountain Home, ID
Naval Air Station Meridian	Meridian, MS
Naval Air Station Patuxent River	Lexington Park, MD
Naval Air Weapons Station China Lake	Ridgecrest, CA
Naval Base Kitsap—Keyport	Keyport, WA
Naval Base Ventura County—Point Mugu Operating Facility	Point Mugu, CA
Naval Weapons Systems Training Facility Boardman	Boardman, OR
Nellis Air Force Base	Las Vegas, NV
Nevada Test and Training Range	Tonopah, NV
Pacific Missile Range Facility	Kekaha, HI
Patrick Space Force Base	Cocoa Beach, FL
Tropic Regions Test Center	Wahiawa, HI
Utah Test and Training Range	Barro, UT
Vandenberg Space Force Base	Lompoc, CA
West Desert Test Center	Dugway, UT
White Sands Missile Range	White Sands Missile Range, NM
Yuma Proving Ground	Yuma, AZ