

Treasury Proposes Expanding CFIUS Jurisdiction Over Land Deals Near Military Installations

May 8, 2023

On Friday, May 5, 2023, the U.S. Department of the Treasury (Treasury) published a proposed rule that would expand the list of military installations subject to the jurisdiction of the Committee on Foreign Investment in the United States (CFIUS) with respect to certain real estate transactions involving foreign entities. Treasury is providing an opportunity for public comment on the proposed rule, which closes on **June 5, 2023**.

As background, under the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Congress authorized CFIUS to review the purchase, lease, or concession of certain real estate located near military installations or other U.S. government facilities or properties that are sensitive for reasons relating to national security. Treasury identified the military installations triggering CFIUS jurisdiction under this new authority in a final rule published in January 2020. The final rule noted that the military installations included on the list “were determined by the Department of Defense based upon an evaluation of national security considerations” and that the Department of Defense would “continue on an ongoing basis to assess its military installations and the geographic scope set under the rule to ensure appropriate application in light of national security considerations.”

Since then, high-profile land purchases by foreign companies near U.S. military bases, such as a recent acquisition by Chinese-owned Fufeng Group to build and operate a wet corn milling plant near Grand Forks Air Force Base in North Dakota, have prompted calls for CFIUS to expand jurisdiction over land purchases near additional

Authors

Nova J. Daly
Senior Public Policy Advisor
202.719.3282
ndaly@wiley.law

Hon. Nazak Nikakhtar
Partner
202.719.3380
nnikakhtar@wiley.law

Daniel P. Brooks
Partner
202.719.4183
dbrooks@wiley.law

Paul J. Coyle
Associate
202.719.3446
pcoyle@wiley.law

Practice Areas

Committee on Foreign Investment in the United States (CFIUS)
National Security

military installations as well as agricultural purchases.

The proposed rule would add the following eight sites to Part 2 of Appendix A to 31 C.F.R. Part 802, which contains the List of Military Installations and Other U.S. Government Sites triggering CFIUS jurisdiction:

- Air Force Plant 42 in Palmdale California;
- Dyess Air Force Base in Abilene, Texas;
- Ellsworth Air Force Base in Box Elder, South Dakota;
- Grand Forks Air Force Base in Grand Forks, North Dakota;
- Iowa National Guard Headquarters in Des Moines, Iowa;
- Lackland Air Force Base in San Antonio, Texas;
- Laughlin Air Force Base in Del Rio, Texas; and
- Luke Air Force Base in Glendale, Arizona.

The addition of these military installations would allow CFIUS to review the purchase, lease, or concession of real estate located within a 100-mile radius of the sites unless an exception applies. Notably, the proposed rule does not propose any amendments to the existing carveout in the CFIUS regulations for real estate located within an “urbanized area” or “urban cluster.” Even if the military installations identified above are added to Appendix A, this exception would generally preclude CFIUS from reviewing the purchase, lease, or concession of real estate located within an urbanized area or urban cluster unless the real estate were located within a mile of the site.

Wiley has unparalleled CFIUS and National Security practices and capabilities that leverage the expertise of our former senior U.S. government leaders and renowned professional experts with extensive experience representing domestic and international companies in complex transactions involving nearly every industry sector. Please reach out to any of the authors listed on this alert should you have any questions about this proposed rule or CFIUS regulations governing foreign investment.

Patrick Griffo, a Law Clerk at Wiley Rein LLP, contributed to this alert.