

# Committee on Foreign Investment in the United States Has Expanded Its Real Estate Jurisdiction

*Stephenie Gosnell Handler, David A. Wolber, Michelle A. Weinbaum, Roxana Akbari, Mason Gauch and Chris R. Mullen\**

In this article, the authors explain that the final rules of the Committee on Foreign Investment in the United States expanding jurisdiction over real estate substantially expanded the scope of covered real estate transactions subject to national security review.

The Committee on Foreign Investment in the United States (CFIUS) has begun enforcing its final rule<sup>1</sup> (published in the Federal Register on November 7, 2024) which expands its jurisdiction over real estate transactions involving foreign persons. Of note the list of expanded locations remained unchanged between the proposed and final rule.

## **BACKGROUND: CFIUS'S JURISDICTION OVER REAL ESTATE TRANSACTIONS**

CFIUS's "Part 802"<sup>2</sup> real estate rules permit CFIUS to review acquisitions involving a foreign person purchasing, leasing, or gaining certain other land rights in property close to military installations and other sensitive areas. The rules enumerate those sensitive areas subject to review using four categories of locations in an Appendix to the rules (Appendix A):

- Part 1 lists locations for which a property may be subject to review based on its "close proximity" to a listed military installation (i.e., within one mile).
- Part 2 lists locations for which a property may be subject to review based on being within the "extended range" of a listed military installation (i.e., up to 99 miles).
- Part 3 lists counties or other geographic areas for which a property, if located within one of these areas, may subject to CFIUS review.
- Part 4 lists offshore training areas for which a property, if located within one of these areas, may be subject to CFIUS review.

\*The authors, attorneys with Gibson, Dunn & Crutcher LLP, may be contacted at shandler@gibsondunn.com, dwolber@gibsondunn.com, mweinbaum@gibsondunn.com, rakbari@gibsondunn.com, mgauch@gibsondunn.com, and cmullen@gibsondunn.com, respectively.

## AMENDMENTS TO THE LISTS OF SENSITIVE U.S. MILITARY INSTALLATIONS

The Final Rule made the following updates:

- Expanded CFIUS's jurisdiction over real estate transactions to include 40 new military installations (bringing the total to 162) in Part 1;
- Expanded CFIUS's jurisdiction over real estate transactions to include 19 new military installations (bringing the total to 65) in Part 2;
- Moved eight military installations from Part 1 to Part 2;
- Removed one installation from Part 1 and two installations from Part 2 due to their being located within other listed locations;
- Revised the definition of the term "military installation" to bring it in line with existing terms and the locations covered; and
- Updated the names of 14 installations and the location of seven others.

## TAKEAWAYS FOR TRANSACTION PARTIES

Transaction parties should take note of the following:

- *Use the Updated Location List for Diligence.* Parties must consult the most

recent version of the list of sensitive areas which can be found at 31 C.F.R. Pt. 802, Appendix A.<sup>3</sup>

- *The List of Locations Is Likely to be Expanded on an Annual Basis.* Each year, the U.S. Department of Defense and CFIUS review the list of installations in Appendix Part A and consider updates to Part 802 jurisdiction.
- *Be Mindful of Other Applicable Laws.* Even when real property plays a central role in a transaction, many transactions that involve real estate also implicate CFIUS's "Part 800" jurisdiction over controlling and non-controlling transactions. Additionally, transactions involving real estate may implicate the growing body of state and local restrictions on foreign investment, as well as other federal requirements such as the Agricultural Foreign Investment Disclosure Act (AFIDA).<sup>4</sup>

### NOTES:

<sup>1</sup> <https://www.federalregister.gov/documents/2024/11/07/2024-25773/definition-of-military-installation-and-the-list-of-military-installations-in-the-regulations>.

<sup>2</sup> <https://home.treasury.gov/system/files/206/Part-802-Final-Rule-Jan-17-2020.pdf>.

<sup>3</sup> <https://www.ecfr.gov/current/title-31/subtitle-B/chapter-VIII/part-802/appendix-Appendix%20A%20to%20Part%20802>.

<sup>4</sup> <https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/afida>.