

CFIUS Proposes Expanded Real Estate Jurisdiction

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On July 8, 2024, the U.S. Department of the Treasury (Treasury) issued a Notice of Proposed Rulemaking (NPRM) which, if implemented, would expand the U.S. geographical areas in which the Committee on Foreign Investment in the United States (CFIUS) has the jurisdiction to review real estate transactions.

Since the enactment of the Foreign Investment Risk Review Modernization Act of 2018, CFIUS has had the authority to review the purchase or lease by, or concession to, foreign persons of real estate located near specified U.S. military installations. CFIUS conducts these reviews to identify and mitigate national security concerns, such as the risk that sensitive activities at an acquired property or nearby military installation could be exposed to foreign surveillance or intelligence.

CFIUS currently has jurisdiction to review covered real estate transactions within one mile of 130 specified military installations, and within a 100-mile radius of an additional 40 installations. In the NPRM, it proposes expanding this list to:

- Add 40 installations with a one-mile radius.
- Add 19 with a 100-mile radius.
- Increase the range of eight already listed installations from a one- to a 100-mile radius.

See July 8, 2024, Department of Treasury press release, [“Treasury Issues Proposed Rule to Expand CFIUS Coverage of Real Estate Transactions Near Military Installations.”](#)

CFIUS will accept public comment for 30 days following the NPRM’s publication in the Federal Register, which is expected the week of July 15, 2024.

The proposed rules are not particularly surprising given the intense political and media focus on Chinese acquisition of agricultural land and other real estate over the past two years. While the proposed rule would substantially expand the geographic scope of CFIUS’ jurisdiction over real estate transactions, we think in most cases the new rule will have only modest effects, even for agriculturally-focused businesses.

When initially proposed, the real estate jurisdiction was expected to generate approximately 350 filings per year, but those never materialized, largely due to the wholly voluntary nature of real estate jurisdiction and the limited national security risks posed by most real estate acquisitions versus the acquisition of an existing U.S. business. For example, calendar year 2022 saw only six filings for covered real estate transactions. However, in May of this year, President Biden prohibited a transaction involving real estate acquired in June 2022 for development of specialized cryptocurrency mining operations and which was in close proximity to a strategic missile base.

The rule would not change the voluntary nature of CFIUS real estate filings, nor would it change the national security-focused risk assessment that CFIUS conducts with respect to such transactions.

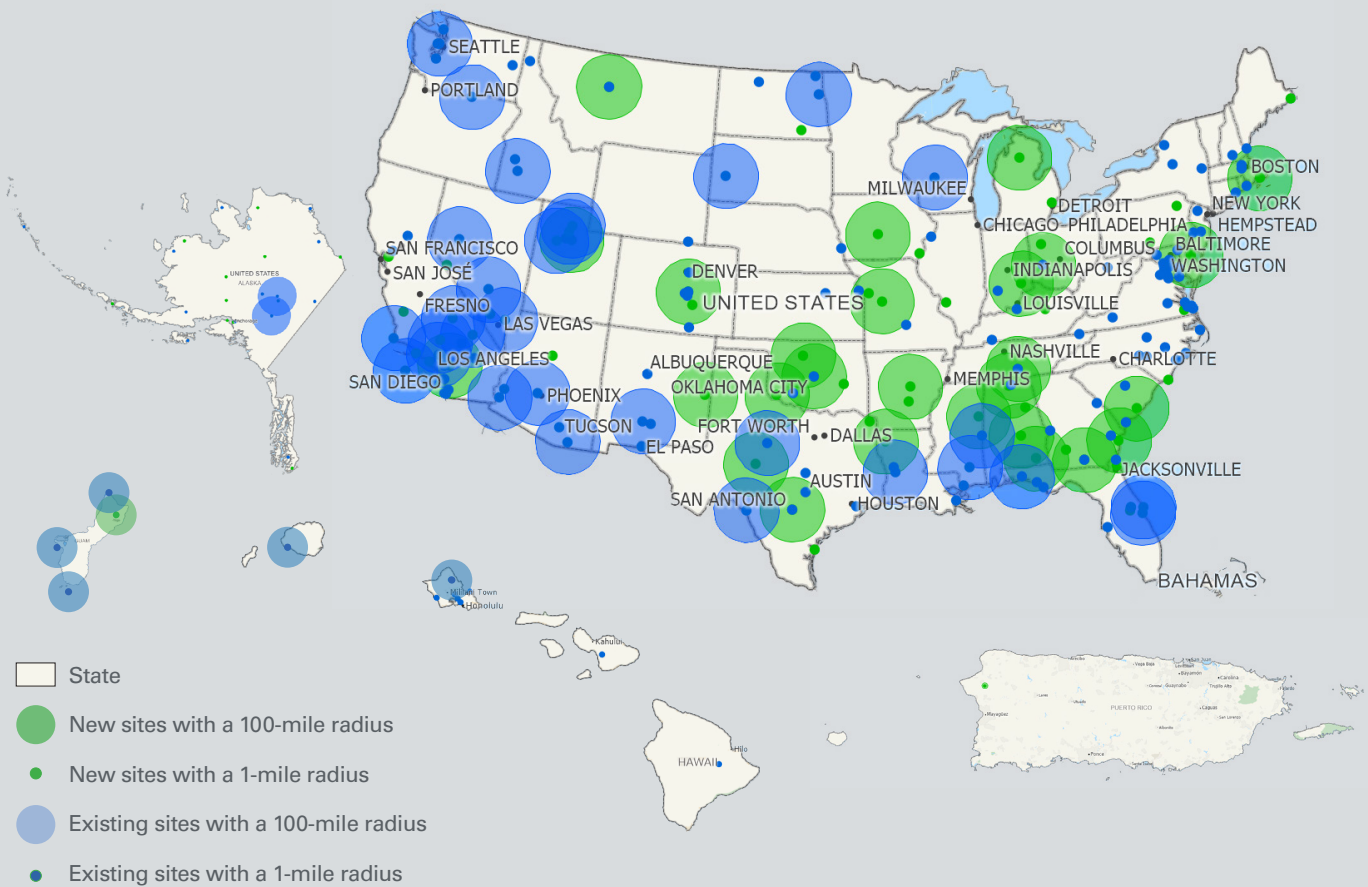
These incremental changes stand in some contrast to other federal and state initiatives. Several bills have been proposed in Congress — although none have passed both houses — suggesting a variety of ways to increase CFIUS’ jurisdiction over, and in some cases presumed denial of, such investments; for example, the proposed [Protecting U.S. Farmland and Sensitive Sites From Foreign Adversaries Act](#) (H.R. 4577).

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Moreover, several states have adopted aggressive legal regimes to address the perceived threat, although some of those are already subject to litigation challenging their constitutionality on a variety of grounds. (See [Florida Senate Bill 264](#), which would limit certain interests in real estate for persons from “foreign countries of concern.”)

In short, while the proposed rules may impact some real estate investors, they change the landscape much less than other potential actions in the field.

Current and Proposed Areas of CFIUS Real Estate Jurisdiction



Note: 1-mile radius sites are not shown to scale. Sites identified in Parts 3 and 4 of 31 C.F.R. §800, Appendix A are not shown.

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