ALERT MEMORANDUM

Proposed CFIUS Regulations Expand Its Jurisdiction

September 26, 2019

On September 17, 2019, the Department of the Treasury ("Treasury") issued proposed regulations ("Proposed Regulations")[1] to comprehensively implement the Foreign Investment Risk Review Modernization Act of 2018 ("FIRRMA"), which updated the statute authorizing reviews of foreign investment by the Committee on Foreign Investment in the United States ("CFIUS").[2]

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I. Introduction

The Proposed Regulations contain few surprises. In large part, they codify changes to CFIUS practice and provide greater specificity regarding areas of interest that have evolved over the past decade. They also implement important changes, already signaled in FIRRMA, to the review of transactions involving critical technology, critical infrastructure, and sensitive personal data (expanding mandatory filings by government-linked entities and CFIUS's jurisdiction over non-controlling transactions). Even these expansions, though, are generally narrowly drawn. The Proposed Regulations also further reform CFIUS's processes, including making a short-form declaration generally available for all types of transactions.

These changes build upon the existing critical technology pilot program and interim rule implementing FIRRMA.[3] The Proposed Regulations are subject to comment and not yet effective; final rules are expected to be issued late this year or early next year implementing these provisions and the critical technology pilot program, taking into account comments received on both. (The imposition of filing fees, called for by FIRRMA, will also be implemented later.) The Proposed Regulations as drafted would not apply to transactions signed, or public offers launched, prior to the effective date of the final rule. The deadline to submit comments to Treasury is October 17, 2019, and FIRRMA mandates that the final regulations enter into force by February 13, 2020.

[1] The Proposed Regulations are available at https://home.treasury.gov/system/files/206/Proposed-FIRRMA-Regulations-Part-800.pdf (primary rule) and https://home.treasury.gov/system/files/206/Proposed-FIRRMA-Regulations-Part-802.pdf (real estate provisions).

[2] To learn more about FIRRMA, see our alert memorandum, Congress Passes CFIUS Reform Bill (Aug. 7, 2018).

[3] To learn more about the pilot program and interim rule, see our alert memorandum, CFIUS Introduces Pilot Program for Mandatory Declarations of Critical Technology Investments (Oct. 16, 2018).

This memorandum provides a summary of the most significant changes contained in the Proposed Regulations and highlights implications for practitioners and investors. In addition to numerous procedural changes and clarifications, the Proposed Regulations would:

- expand mandatory filings to cover any investment with respect to which (a)(i) a foreign government has a direct or indirect 49% or greater voting stake in the acquiror and (ii) the acquisition is of at least a 25% voting stake, and (b) the U.S. business of the target (i) develops critical technology, (ii) performs specified functions with respect to critical infrastructure, or (iii) handles sensitive personal data of specified types and volumes, subject to a qualified exception for investment through U.S.-managed investment funds;

- expand CFIUS's jurisdiction over investments falling short of the more general "control" standards for businesses involving critical technology, critical infrastructure, and sensitive personal data, similar to standards previously adopted under the critical technology pilot program;

- extend CFIUS's jurisdiction to certain acquisitions of real estate not operated as a business (e.g., raw land), including foreclosure on mortgages;

- exempt investments from a to-be-specified list of friendly countries from the expanded jurisdiction applicable to critical technology, critical infrastructure, and sensitive personal data transactions, but only if the eligible country adopts a foreign investment review regime that CFIUS approves as being adequately robust and cooperative, and not with respect to "control" transactions (which appear to remain subject to mandatory filing);

- expand the short-form "declaration" process to make it an option for all transactions within CFIUS's jurisdiction; and

- make a number of important procedural changes, in particular with respect to the acquisition of contingent equity interests and secured lending.

Even where the rules applicable to critical technology, critical infrastructure, or sensitive personal data businesses (which the Proposed Regulations refers to as "TID U.S. Businesses") or real estate do not directly apply, they provide valuable guidance regarding areas of CFIUS interest in traditional reviews of acquisitions of control.

II. Impact of the Proposed Regulations

a. Mandatory filings for Foreign Governments Acquiring a "Substantial Interest" in a "TID U.S. Business"

i. *Mandatory filings*

Perhaps the most significant effect of the Proposed Regulations is their expansion of mandatory filings to transactions involving "covered investments" (see below) in TID U.S. Businesses in which a foreign government is acquiring a "substantial interest."

Whether a foreign government is acquiring a "substantial interest" in the U.S. business is a two-step test. First, a foreign government must hold a 49% or greater voting interest in the acquiror, directly or indirectly. Second, the acquisition must involve the acquisition of a 25% or greater direct or indirect voting interest in a TID U.S. Business. However, the filing requirement does not apply unless the TID Business is "unaffiliated," meaning that the "foreign person does not directly hold more than 50 percent of the outstanding voting interest or have the right to appoint more than half of the members of the board of directors or equivalent governing body."

Special rules apply to limited partnerships. A foreign government is considered to have a "substantial interest" in a limited partnership if it (1) holds 49% or more of the voting interest in the general partner or (2) is a limited partner and holds 49% or more of the voting interest of the limited partners. However, this rule does not apply to an "investment fund"[4] that is managed exclusively by a U.S. general partner (or equivalent) and, consistent with the critical technology pilot program, the relevant limited partner cannot control the fund,[5] any advisory committee on which it sits does not control investment decisions or decisions relating to portfolio companies,[6] and it does not have any rights in connection with the portfolio company that would qualify as a "covered investment" (see below).

ii. *Excepted investors*

The Proposed Regulations set forth guidance for excluding certain "excepted investors" from the definition of "covered investments" and "covered real estate transactions" (but not "covered transactions"; i.e., any investment with sufficient control rights over a U.S. business to be considered a "covered transaction" under the prior regime is still subject to mandatory filing). The practical effect of the exception is thus very narrow: first, the definition itself is narrow, and second, by its terms it applies

[4] The Proposed Regulations define "investment fund" as any entity that is an "investment company," as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), or would be an "investment company" but for one or more of the exemptions provided in section 3(b) or 3(c) thereunder.

[5] This includes the authority to (1) approve, disapprove, or otherwise control investment decisions of the investment fund; (2) approve, disapprove, or otherwise control decisions made by the general partner, managing member, or equivalent related to entities in which the investment fund is invested; or (3) unilaterally dismiss, prevent the dismissal of, select, or determine the compensation of the general partner, managing member, or equivalent.

[6] Note that a waiver of a potential conflict of interest, a waiver of an allocation limitation, or a similar activity, applicable to a transaction pursuant to the terms of an agreement governing an investment fund shall not be considered to constitute control of investment decisions of the investment fund or decisions relating to entities in which the investment fund is invested.

only to transactions falling in the narrow gap between "covered investments" and "covered transactions," discussed further below.

The criteria require that the foreign investor have a "substantial connection" (based on nationality of the ultimate beneficial owner and place of incorporation) to one or more "excepted foreign states." "Substantial connection" is very narrowly defined; the foreign investor and each of its parent entities must meet all of the following conditions:

- Incorporation under the laws of an excepted foreign state or the United States;
- Principal place of business in an excepted foreign state or the United States;
- All members and observers of the board of directors are citizens solely of the United States or an excepted foreign state;
- All shareholders holding 5% or more of the entity are solely citizens of, a governmental entity of, or entities organized under the laws of and headquartered in the United States or an excepted foreign state; and
- In the case of publicly traded entities listed primarily in an excepted foreign state or in the United States, a majority, and in the case of all other entities, 90% of shareholders must be solely citizens of, a governmental entity of, or entities organized under the laws of and headquartered in the United States or an excepted foreign state.

A foreign person is also disqualified from being an excepted investor if it, or any of its parents or subsidiaries, has been found to violate CFIUS's regulations, U.S. sanctions, or U.S. export controls, or that has been convicted of or entered into a deferred prosecution agreement or non-prosecution agreement with the Department of Justice with respect to, any felony. Finally, if at any point during the three years following the transaction, an excepted investor no longer meets the location, jurisdiction of organization, and board member requirements (or an individual owner acquires a non-excepted nationality), the transaction is retroactively disqualified as from the completion date. (It is unclear whether a mandatory notification requirement would then apply.)

The definition of "excepted foreign states" is also quite narrow and requires a two-step test. First, the country must be included in a list of "eligible foreign states" that will be published on the Treasury website, which the Proposed Regulations indicate will be narrowly drawn. In addition, starting two years after the effective date of the Proposed Regulations, CFIUS must certify that the country "has established and is effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security," based on a set of factors to be published.

The use of a "white list" of countries subject to lessened scrutiny is a significant departure from prior CFIUS practice, though one foreshadowed by FIRRMA. However, the exception as proposed will be difficult to qualify for, particularly for public companies, and will have a very limited impact. Perhaps the most interesting facet of the proposal is its use as a "carrot" to induce allied jurisdictions to introduce and enforce security-related foreign investment controls and to cooperate with the United States.

b. "TID U.S. Business"

The definition of "TID U.S. Business" (Technology, Infrastructure, Data) is central to many of the new provisions of the Proposed Regulations. A TID U.S. Business is, as noted, is any U.S. business that develops critical technology, performs specified functions with respect to critical infrastructure, or handles sensitive personal data of specified types and volumes.

i. *Critical Technology*

"Critical technology U.S. businesses" are businesses that produce, design, test, manufacture, fabricate, or develop one or more "critical technologies." The definition of "critical technologies" is unchanged from the critical technologies pilot program. It includes a wide range of export-controlled technologies, as well as "emerging and foundational technologies" to be controlled pursuant to the Export Control Reform Act of 2018.[7]

Note that a target does not have to operate in one of the specified industries under the critical technology pilot program in order to be a "critical technology U.S. business." The pilot program covers a subset of those businesses, but the "TID U.S. Business" definition used for the mandatory filing requirement and to expand CFIUS's jurisdiction is broader, covering all companies making or developing controlled critical technologies. Thus, there would be two sets of regulations governing critical technologies: the pilot program regulations will continue to require mandatory filings by any foreign acquiror for covered investments in critical technology U.S. businesses that develop or make the technologies in connection with one of 27 sensitive industries, and the Proposed Regulations would expand CFIUS jurisdiction over non-controlling investments in critical technology U.S. businesses and require acquirors in which a foreign government has a substantial interest to make a mandatory filing, in each case across all industries.

ii. *Critical Infrastructure*

The definition of "TID U.S. Business" contains a two-step test for transactions relating to critical infrastructure: first, the transaction must relate to particular types of infrastructure, and second, the target must perform specified functions corresponding to the type of infrastructure. The types and functions

[7] Specifically, "critical technologies" includes: (a) defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations (ITAR) (22 C.F.R. parts 120-130); (b) items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 C.F.R. parts 730-774) and controlled (1) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or (2) for reasons relating to regional stability or surreptitious listening; (c) specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 C.F.R. part 810 (relating to assistance to foreign atomic energy activities); (d) nuclear facilities, equipment, and material covered by 10 C.F.R. part 110 (relating to export and import of nuclear equipment and material); (e) select agents and toxins covered by 7 C.F.R. part 331, 9 C.F.R. part 121, or 42 C.F.R. part 73; and (f) emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018.

are set out in Appendix A to part 800 of the Proposed Regulations (attached as Exhibit 1). The types of critical infrastructure include the following:

- Telecommunication and information services, fiber optic cables serving a military installation, IP networks with access to other IP networks via settlement-free peering, or internet exchange points supporting public peering;
- Certain submarine cables and co-located data centers or facilities;
- Satellites or satellite systems providing services directly to the Defense Department or a component thereof;
- U.S. facilities manufacturing certain "specialty metal," "covered material," or carbon, alloy, and armor steel plate;
- Certain electric energy systems, or facilities providing electric power to or located near military installations;
- Petroleum and crude facilities above certain barrel-per-day capacities, certain LNG terminals or storage facilities, or interstate petroleum and liquefied natural gas pipelines above certain barrel-per-day capacities;
- Systemically-important financial market utilities, securities exchanges, or certain technology service providers;
- Defense Department Strategic Rail Corridor Network rail lines; certain air and maritime ports and related marine terminals; and
- Public water systems serving a certain population size or military installation, as well as industrial control systems used by a public water system or treatment works.

Appendix A is a complex but critical tool for determining whether a particular transaction falls within the expanded jurisdiction and mandatory filing requirements of the Proposed Regulations. An example illustrates the contours of this analysis. Assume that a proposed transaction involves a U.S. business that deals with interstate natural gas pipelines with outside diameters of 20 or more inches (Column 1, part xxiii). If the target owns or operates the pipelines, then it is a TID U.S. Business subject to expanded jurisdiction and potential mandatory filing; if the U.S. business manufactures or services the pipelines, then it is not (Column 2, part xxiii), but the acquisition may still be subject to CFIUS's jurisdiction and voluntary notification if control rights are acquired.

iii. *Sensitive Personal Data*

Businesses that collect certain categories of "sensitive personal data" deemed to pose a risk to national security would also be TID U.S. Businesses subject to expanded jurisdiction and mandatory filing. The Proposed Regulations apply a three-part test.

First, in most cases the requirements apply only to transactions involving a U.S. business that:

- "targets or tailors" its products or services to any agency or military department with intelligence, national security, or homeland security responsibilities, or their personnel and contractors (broadly defined to include not just differentiated offerings but also discounting, marketing, or retail arrangements specific to those populations, such as a military discount or a retail outlet on a military post);

- maintains or collects covered data on greater than one million individuals; or
- has a demonstrated business objective to maintain or collect covered data on greater than one million individuals, where covered data is an integrated part of the U.S. business's primary products or services.

Genetic data is covered regardless of the nature of the business.

Second, the following types of data are covered:

- Genetic data;
- Data that could be used to identify an individual's financial distress or hardship;
- Data in a consumer credit report, unless obtained from a credit reporting agency for a statutorily permitted purpose;
- Data relating to the physical, mental, or psychological health of an individual;
- Non-public electronic communications between or among users of the business's products or services (if a primary purpose of the product/service is to facilitate third-party user communications), such as e-mails or chat messages;
- Geolocation data;
- Biometric data;
- Data stored/processed for generating state or federal government ID cards;
- Data concerning U.S. government personnel security clearance or security clearance status; or
- Data in an application for employment in a position of public trust.

Third, the data must be "identifiable." Data is identifiable if it is linked to any of the following (non-exclusive) list of personal identifiers:

- Name;
- Physical address;
- Email address;
- Social security number;
- Phone number; or
- Other information that identifies a specific individual.

Data is not "identifiable" if it is aggregated, anonymized, or encrypted to government standards, but only if no party to the transaction has or will have after the transaction the ability to disaggregate, deanonymize, or decrypt the data. "Sensitive personal data" also excludes data about a company's own employees, except with respect to security clearance-related data held by U.S. government contractors (meaning as a practical matter that any entity holding classified contracts will become a TID U.S. Business subject to the expanded jurisdiction and mandatory filing rules, as it is likely to target government agencies with a national security function and hold data about its own employees' security clearances).

c. Expansion of Jurisdiction for Voluntary Filings

i. *"Control" and Covered Investments in TID Businesses*

Even where the mandatory filing regime for investors in which a foreign government has a substantial interest does not apply, CFIUS has expanded jurisdiction over transactions involving TID U.S. Businesses, reaching both "covered control transactions" and a nominally broader group of "covered investments."

Both before and after FIRRMA, CFIUS has jurisdiction involving the acquisition of "control" over a U.S. business, where "control" is defined as:

the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity.

This definition itself is unchanged, and notably, CFIUS did not revise a number of examples in its regulations indicating that the mere acquisition of a significant economic stake or governance rights (to take one example, a 13% stake and one of seven directors) does not alone create control. In our experience, however, the definition of "control" has been read extremely broadly (and somewhat unpredictably) in practice by CFIUS, and acquisitions of any significant governance rights (in one case, 15% of voting shares and proportional representation on the board of directors in a public company) may be deemed "control." Moreover, the Proposed Regulations further narrow the definition of "solely for the purposes of passive investment" (a presumptive safe harbor from a finding of control in acquisitions of 10% or less of a U.S. business) to exclude the rights below, raising a question as to how large the gap between a "covered control transaction" and a "covered investment" really will be in practice.

Nevertheless, for investments in TID U.S. Businesses, FIRRMA and the Proposed Regulations create a new category of "covered investment" reaching non-controlling governance rights, consistent with the critical technology pilot program. An investment is a covered investment if it does not confer "control" but affords the foreign investor:

- Access to any material non-public technical information (for example, in a joint venture in which each party takes a stake in the other);
- Any membership or observer rights on the board of the TID U.S. Business; or
- Any involvement, other through the voting of shares, in substantive decisionmaking regarding critical technologies, critical infrastructure, or sensitive personal data.
    - "Involvement" is defined very broadly as the right or ability, whether or not exercised, to provide input, consult or advise, exercise approval or veto rights, participate on a committee with authority over the relevant decision, or advise on appointing officers or selecting appointees to make the relevant decision.
    - "Substantive decisionmaking" is defined equally broadly to include pricing, transaction terms, supply arrangements, corporate strategy and business development, R&D

(including locations and budget), manufacturing locations, access to critical technologies, security protocols, data privacy practices, IT systems used for personal data, and strategic partnerships.

Any investment conferring any of these rights is a "covered investment," no matter how small. If the investor is an "excepted foreign investor" (see above), neither the expansion of CFIUS's jurisdiction nor mandatory filing requirements apply when a transaction is a covered investment, but not a covered control transaction. However, CFIUS's jurisdiction and the mandatory filing requirements for foreign government-linked investors apply fully to any acquisition of control over a TID U.S. Business, even by an excepted investor—which, given the uncertainty regarding the limits of CFIUS's interpretation of "control," may render the exception difficult to rely upon in practice given the substantial penalties (up to the value of the transaction) for non-compliance.

ii. *Real Estate*

The Proposed Regulations also provide guidance regarding FIRRMA's expansion of CFIUS jurisdiction over the purchase or lease by, or concession to, a foreign person (other than an "excepted investor," as defined above) of certain real estate in the United States that is not operated as a business (e.g., raw land or leasing of empty facilities, as opposed to the sale of an occupied office building with assignment of the relevant agreements). The transaction is covered if the foreign person acquires at least three of the four following rights: (1) physical access; (2) excluding others from physical access; (3) developing or improving the real estate; and (4) attaching fixtures or structures to the real estate. Mortgages and other secured lending are not themselves covered real estate transactions, but foreclosure on a mortgage may be.

The Proposed Regulations define "covered real estate" to include a number of categories, keyed to Appendix A to Part 802 of the Proposed Regulations (attached as Exhibit 2):

- Property within one mile of the military and government facilities listed in Part 1 or Part 2 of Appendix A;
- Property within 100 miles of a facility listed in Part 2;
- Property in any county listed in Part 3 of Appendix A (a list of counties in which missile bases are located);
- Property within the boundaries of a military range identified in Part 4 of Appendix A (including property up to 12 miles offshore); and
- Property that is in, on, or functions as part of a specified port or airport.

The Proposed Regulations carve out from CFIUS's jurisdiction property in an "urbanized cluster" or "urbanized area" as defined by the Census Bureau, unless it is within one mile of a facility listed in Part 1 or Part 2 of Appendix A, or is close to a specified port or airport; "single housing units" as defined by the Census Bureau; and commercial office space in buildings in which the relevant foreign person occupies no more than 10% of the building and shares the building with at least nine other tenants. They also carve out real estate investments by excepted investors.

iii. *Guidance for Future Transactions*

The direct impact of the expansion of CFIUS's jurisdiction may be modest. However, the Proposed Regulations provide very valuable guidance as to the types of transactions that may be likely to raise CFIUS concerns. For example, it has long been known to CFIUS practitioners that the Committee scrutinizes acquisitions based on their physical proximity to sensitive facilities, and, even though the Proposed Regulations regarding acquisitions of real estate are technically not relevant to acquisitions of control of a U.S. business, they provide CFIUS's first articulation of criteria to help assess the sensitivity of a location. These criteria provide useful guidance when, for example, examining the location of an acquisition target's facilities. Similarly, CFIUS's interest in the issues underlying the definition of "TID U.S. Business" has long been known, but the Proposed Regulations provide a useful elaboration of those issues that can be applied to all transactions. These categories are by no means exhaustive—CFIUS retains broad jurisdiction and discretion to review transactions it believes to be of concern—but they help assess the likely level of interest in a transaction. This is especially relevant given the marked increase in post-closing review of transactions; CFIUS's public statements indicate (and our experience corroborates) that the CFIUS staff is devoting significant resources to identifying transactions that were not originally notified and seeking information from the parties.

d. Short-Form Declarations

The Proposed Regulations expand the availability of short-form declarations, first proposed for the critical technology pilot program, to all covered transactions. Short-form declarations would now be available for mandatory notifications of TID U.S. Businesses and for voluntary filings, as well as for filings required by the critical technology pilot program. Following the approach set forth in the critical technology pilot program, the Proposed Regulations provide for a short-form declaration as an alternative to the standard notice submitted to the Committee. The declaration is intended to be an abbreviated filing that allows parties to submit basic information using a standard form on the Treasury website and without exceeding five pages in length (though it bears noting that the instructions alone in the Proposed Regulations run to seven pages in word processing format). The Proposed Regulations stipulate that parties may submit a declaration instead of a full notice for any transaction subject to CFIUS jurisdiction, regardless of whether the filing is mandatory.

It remains to be seen whether the short-form declaration will be a useful tool for parties notifying CFIUS of a transaction. Anecdotal evidence from the pilot program casts some doubt on its effectiveness; CFIUS rarely clears transactions within 30 days of submission of a declaration, and parties often either get a non-response or a request to submit a full notice, effectively delaying the ordinary CFIUS review process by 30 days. Given that the difference between a declaration and a notice resolved in the first-stage review is only 15 days (30 days versus 45), many parties have felt that the additional 15 days is worth the assurance of either getting a definitive clearance or, if there are more substantial issues than can be resolved in a first-phase review, avoiding losing a month.

e. Miscellaneous Changes

The Proposed Regulations implement a number of additional procedural changes:

The **"completion date"** of a transaction is defined as "the earliest date upon which any ownership interest, including a contingent equity interest, is conveyed, assigned, delivered, or otherwise transferred, or a change in rights that could result in a covered transaction or covered investment occurs." It has been increasingly common in recent years, and especially after the adoption of FIRRMA, for parties to close an investment prior to the completion CFIUS review, with the acquisition of governance rights contingent upon CFIUS approval. Because the "completion date" is defined as the first date upon which any equity interest, including a contingent interest, is transferred, it appears that this tactic may be restricted in transactions subject to mandatory notification, in which the parties cannot close more than 30 days after the declaration or filing is submitted.

The acquisition of a **contingent equity interest** (e.g., convertible preferred shares or an option to acquire additional shares) triggers the mandatory notification requirement and, while CFIUS has the discretion not to treat the acquisition of a contingent equity interest as an immediately effective covered transaction and has provided some guidance as to the factors that will be considered, the parties cannot be certain that the completion date will not be deemed to be the date of initial acquisition of the interest (and the penalty for failure to make a mandatory notification is up to the value of the transaction). CFIUS has explicitly excluded **secured loans** from this analysis, although it remains unclear when a mandatory notification must be submitted in case of a likely default. CFIUS has also provided a safe harbor for syndicated secured loans indicating that an acquisition upon default will not be deemed a covered transaction so long as any action by the syndicate with respect to the debtor requires a majority of U.S. participants or the financing documents exclude any foreign participation in control of the debtor.

In cases involving **multiple acquisitions**, the Proposed Regulations clarify that subsequent acquisitions by a foreign company that has previously submitted a declaration or notification are subject to review (including the mandatory notification requirements) unless CFIUS has approved a transaction resulting in the acquisition of control on the basis of a full notification. To take the example in the Proposed Regulations, if Company A acquires a 40% stake and significant rights in Company B that would constitute "control" and the transaction is approved on the basis of a declaration, a subsequent acquisition of an additional stake by Company A is subject to review.

The Proposed Regulations also clarify the **timing** of filings. For full notifications, the Proposed Regulations clarify that CFIUS will return comments on a draft notification (or confirm that it is complete) within two weeks if the parties stipulate that the transaction is a "covered transaction" within CFIUS's jurisdiction (and, if relevant, a foreign government-controlled transaction) and provide a basis for the stipulation. As previously under FIRRMA, acceptance of a final filing following review begins the statutory review periods (45 days for a first-stage review, a further 45 days for a second-stage review, extendible by 15 days in extraordinary cases, and 15 days for presidential action, if any), and parties must respond to any question from CFIUS within 3 business days or risk having their filing rejected and the process restarted. For the new short-form declarations, the review period is also 30 days and starts when the declaration is accepted and circulated, not when it is filed (although the CFIUS staff chair is to do so "promptly"), and the parties have only 2 business days to respond to any question.

Finally, the **required content** of CFIUS notifications has been expanded, particularly with respect to any TID U.S. Business included in the transaction and, regardless of whether the target includes a TID

U.S. Business, detailed information on collection and use of personal data. Consistent with CFIUS's recent informal practice, expanded information on 5% or greater shareholders (by either vote or ownership) in the chain of ownership of the acquiror is now required, which can be quite difficult to calculate in the case of preferred shareholdings (where the percentage of beneficial ownership often depends upon the total enterprise value of the company).

III. Conclusion

The provisions of the Proposed Regulations dealing with critical infrastructure, real estate, and sensitive personal data provide insight into the Committee's thought processes, building upon the critical technology pilot program. While many acquirors well-advised by experienced counsel would have identified these issues previously, the combination of expanded mandatory filings and expanded review of non-notified transactions underscores the need to take these issues seriously. Furthermore, the work done to articulate areas of potential concern provides useful guidance to the investor community and perhaps even useful structure to CFIUS's own analysis.

At the same time, the Proposed Regulations are drawn so as to avoid radical change, balancing investment security and maintaining a liberal foreign investment regime. This is reinforced by recent remarks by Deputy Treasury Secretary Justin Muzinich, who stated that the Proposed Regulations "addressed issues like what types of personal data we worry about foreign entities acquiring" but also noted that twice as many cases are being cleared during the first stage of CFIUS review compared to a year ago, and emphasized that "[t]he United States remains very much open to foreign investment."[8] There is an inevitable tension between the traditional voluntary CFIUS regime, which favored flexible rules providing CFIUS with maximum discretion in reviewing transactions of concern, and the new mandatory regime, which necessarily requires clear rules if consequences are to be imposed for failure to file. Perhaps not surprisingly, the general structure of the Proposed Regulations seeks to provide additional guidance to implement the mandatory provisions while maintaining CFIUS's broader freedom of action on discretionary reviews.

CFIUS review is no longer a niche issue affecting only the defense industry and acquirors from hostile nations; it is a part of the M&A landscape for the foreseeable future. The Proposed Regulations, broadly speaking, are an aid to navigating that landscape.

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[8] Remarks of Deputy Secretary Justin Muzinich at the 2019 U.S. Treasury Market Structure Conference (September 23, 2019).

Exhibit 1

Appendix A to part 800—Covered investment critical infrastructure and functions related to covered investment critical infrastructure

Column 1 – Covered investment critical infrastructure	Column 2 – Functions related to covered investment critical infrastructure
(i) Any: (a) internet protocol network that has access to every other internet protocol network solely via settlement-free peering; or (b) telecommunications service or information service, each as defined in section 3(a)(2) of the Communications Act of 1934 (47 U.S.C. 153), as amended, or fiber optic cable that directly serves any military installation identified in § 802.229.	(i) Own or operate any: (a) internet protocol network that has access to every other internet protocol network solely via settlement-free peering; or (b) telecommunications service or information service, each as defined in section 3(a)(2) of the Communications Act of 1934 (47 U.S.C. 153), as amended, or fiber optic cable that directly serves any military installation identified in § 802.229.
(ii) Any internet exchange point that supports public peering.	(ii) Own or operate any internet exchange point that supports public peering.
(iii) Any submarine cable system requiring a license pursuant to section 1 of the Cable Landing Licensing Act of 1921 (47 U.S.C. 34), as amended, which includes any associated submarine cable, submarine cable landing facilities, and any facility that performs network management, monitoring, maintenance, or other operational functions for such submarine cable system.	(iii) Own or operate any submarine cable system requiring a license pursuant to section 1 of the Cable Landing Licensing Act of 1921 (47 U.S.C. 34), as amended, which includes any associated submarine cable, submarine cable landing facilities, and any facility that performs network management, monitoring, maintenance, or other operational functions for such submarine cable system.
(iv) Any submarine cable, landing facility, or facility that performs network management, monitoring, maintenance, or other operational function that is part of a submarine cable system described above in item (iii) of Column 1 of appendix A to part 800.	(iv) Supply or service any submarine cable, landing facility, or facility that performs network management, monitoring, maintenance, or other operational function that is part of a submarine cable system described above in item (iii) of Column 1 of appendix A to part 800.

(v) Any data center that is collocated at a submarine cable landing point, landing station, or termination station.	(v) Own or operate any data center that is collocated at a submarine cable landing point, landing station, or termination station.
(vi) Any satellite or satellite system providing services directly to the Department of Defense or any component thereof.	(vi) Own or operate any satellite or satellite system providing services directly to the Department of Defense or any component thereof.
(vii) Any industrial resource other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996 (41 U.S.C. 104), as amended, that is manufactured or operated for a Major Defense Acquisition Program, as defined in section 7(b)(2)(A) of the Defense Technical Corrections Act of 1987 (10 U.S.C. 2430), as amended, or a Major System, as defined in 10 U.S.C. 2302d, as amended and: (a) the U.S. business is a "single source," "sole source," or "strategic multisource," to the extent the U.S. business has been notified of such status; or (b) the industrial resource: (1) requires 12 months or more to manufacture; or (2) is a "long lead" item, to the extent the U.S. business has been notified that such industrial resource is a "long lead" item.	(vii) As applicable, manufacture any industrial resource other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996 (41 U.S.C. 104), as amended, or operate any industrial resource that is a facility, in each case, for a Major Defense Acquisition Program, as defined in section 7(b)(2)(A) of the Defense Technical Corrections Act of 1987 (10 U.S.C. 2430), as amended, or a Major System, as defined in 10 U.S.C. 2302d, as amended and: (a) the U.S. business is a "single source," "sole source," or "strategic multisource," to the extent the U.S. business has been notified of such status; or (b) the industrial resource: (1) requires 12 months or more to manufacture; or (2) is a "long lead" item, to the extent the U.S. business has been notified that such industrial resource is a "long lead" item.
(viii) Any industrial resource, other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996 (41 U.S.C. 104), as amended, that is manufactured pursuant to a "DX" priority rated contract or order under the Defense	(viii) Manufacture any industrial resource, other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996 (41 U.S.C. 104), as amended, pursuant to a "DX" priority rated contract or order under the Defense Priorities

Priorities and Allocations System regulation (15 CFR part 700, as amended) in the preceding 24 months.	and Allocations System regulation (15 CFR part 700, as amended) within 24 months of the transaction in question.
(ix) Any facility in the United States that manufactures: (a) specialty metal, as defined in section 842(a)(1)(i) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (10 U.S.C. 2533b), as amended; (b) covered material, as defined in 10 U.S.C. 2533c, as amended; (c) chemical weapons antidote contained in automatic injectors, as described in 10 U.S.C. 2534, as amended; or (d) carbon, alloy, and armor steel plate that is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.	(ix) Manufacture any of the following in the United States: (a) specialty metal, as defined in section 842(a)(1)(i) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (10 U.S.C. 2533b), as amended; (b) covered material, as defined in 10 U.S.C. 2533c, as amended; (c) chemical weapons antidote contained in automatic injectors, as described in 10 U.S.C. 2534, as amended; or (d) carbon, alloy, and armor steel plate that is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.
(x) Any industrial resource other than commercially available off-the-shelf items, as defined in 41 U.S.C. 104, as amended, that has been funded, in whole or in part, by any of the following sources in the last 60 months: (a) Defense Production Act of 1950 Title III program (50 U.S.C 4501, et seq.), as amended; (b) Industrial Base Fund pursuant to section 896(b)(1) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2508), as amended; (c) Rapid Innovation Fund pursuant to section 1073 of Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2359a), as amended;	(x) As applicable, manufacture any industrial resource other than commercially available off-the-shelf items, as defined in 41 U.S.C. 104, as amended, or operate any industrial resource that is a facility, in each case, that has been funded, in whole or in part, by any of the following sources within 60 months of the transaction in question: (a) Defense Production Act of 1950 Title III program (50 U.S.C. 4501, et seq.), as amended; (b) Industrial Base Fund pursuant to section 896(b)(1) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2508), as amended;

(d) Manufacturing Technology Program pursuant to 10 U.S.C. 2521, as amended; (e) Defense Logistics Agency Warstopper Program, as described in DLA Instruction 1212, Industrial Capabilities Program – Manage the WarStopper Program; or (f) Defense Logistics Agency Surge and Sustainment contract, as described in Subpart 17.93 of the Defense Logistics Acquisition Directive.	(c) Rapid Innovation Fund pursuant to section 1073 of Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2359a), as amended; (d) Manufacturing Technology Program pursuant to 10 U.S.C. 2521, as amended; (e) Defense Logistics Agency Warstopper Program, as described in DLA Instruction 1212, Industrial Capabilities Program – Manage the WarStopper Program; or (f) Defense Logistics Agency Surge and Sustainment contract, as described in Subpart 17.93 of the Defense Logistics Acquisition Directive.
(xi) Any system, including facilities, for the generation, transmission, distribution, or storage of electric energy comprising the bulk-power system, as defined in section 215(a)(1) of the Federal Power Act (16 U.S.C. 824o(a)(1)), as amended.	(xi) Own or operate any system, including facilities, for the generation, transmission, distribution, or storage of electric energy comprising the bulk-power system, as defined in section 215(a)(1) of the Federal Power Act (16 U.S.C. 824o(a)(1)), as amended.
(xii) Any electric storage resource, as defined in 18 CFR § 35.28(b)(9), as amended, that is physically connected to the bulk-power system.	(xii) Own or operate any electric storage resource, as defined in 18 CFR § 35.28(b)(9), as amended, that is physically connected to the bulk-power system.
(xiii) Any facility that provides electric power generation, transmission, distribution, or storage directly to or located on any military installation identified in § 802.229.	(xiii) Own or operate any facility that provides electric power generation, transmission, distribution, or storage directly to or located on any military installation identified in § 802.229.
(xiv) Any industrial control system utilized by: (a) system comprising the bulk-power system as described above in item (xi) of Column 1 of appendix A to part 800; or	(xiv) Manufacture or service any industrial control system utilized by: (a) system comprising the bulk-power system as described above in item (xi) of Column 1 of appendix A to part 800; or

(b) a facility directly serving any military installation as described above in item (xiii) of Column 1 of appendix A to part 800.	(b) a facility directly serving any military installation as described above in item (xiii) of Column 1 of appendix A to part 800.
(xv) Any: (a) any individual refinery with the capacity to produce 300,000 or more barrels per day (or equivalent) of refined oil or gas products; or (b) collection of one or more refineries owned or operated by a single U.S. business with the capacity to produce, in the aggregate, 500,000 or more barrels per day (or equivalent) of refined oil or gas products.	(xv) Own or operate: (a) any individual refinery with the capacity to produce 300,000 or more barrels per day (or equivalent) of refined oil or gas products; or (b) one or more refineries with the capacity to produce, in the aggregate, 500,000 or more barrels per day (or equivalent) of refined oil or gas products.
(xvi) Any crude oil storage facility with the capacity to hold 30 million barrels or more of crude oil.	(xvi) Own or operate any crude oil storage facility with the capacity to hold 30 million barrels or more of crude oil.
(xvii) Any: (a) liquefied natural gas (LNG) import or export terminal requiring: (1) approval pursuant to section 3(e) of the Natural Gas Act (15 U.S.C. 717b(e)), as amended, or (2) a license pursuant to section 4 of the Deepwater Port Act of 1974 (33 U.S.C. 1503), as amended; or (b) natural gas underground storage facility or LNG peak-shaving facility requiring a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717f), as amended.	(xvii) Own or operate any: (a) liquefied natural gas (LNG) import or export terminal requiring: (1) approval pursuant to section 3(e) of the Natural Gas Act (15 U.S.C. 717b(e)), as amended, or (2) a license pursuant to section 4 of the Deepwater Port Act of 1974 (33 U.S.C. 1503), as amended; or (b) natural gas underground storage facility or LNG peak-shaving facility requiring a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717f), as amended.
(xviii) Any financial market utility that the Financial Stability Oversight Council has designated as systemically important pursuant to section 804 of the Dodd-Frank Wall Street	(xviii) Own or operate any financial market utility that the Financial Stability Oversight Council has designated as systemically important pursuant to section 804 of the

Reform and Consumer Protection Act (12 U.S.C. 5463), as amended.	Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5463), as amended.
(xix) Any exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f), as amended, that facilitates trading in any national market system security, as defined in 17 CFR § 242.600, as amended, and which exchange during at least four of the preceding six calendar months had: (a) with respect to all national market system securities that are not options, ten percent or more of the average daily dollar volume reported by applicable transaction reporting plans; or (b) with respect to all listed options, fifteen percent or more of the average daily dollar volume reported by applicable national market system plans for reporting transactions in listed options.	(xix) Own or operate any exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f), as amended, that facilitates trading in any national market system security, as defined in 17 CFR § 242.600, as amended, and which exchange during at least four of the preceding six calendar months had: (a) with respect to all national market system securities that are not options, ten percent or more of the average daily dollar volume reported by applicable transaction reporting plans; or (b) with respect to all listed options, fifteen percent or more of the average daily dollar volume reported by applicable national market system plans for reporting transactions in listed options.
(xx) Any technology service provider in the Significant Service Provider Program of the Federal Financial Institutions Examination Council that provides core processing services.	(xx) Own or operate any technology service provider in the Significant Service Provider Program of the Federal Financial Institutions Examination Council that provides core processing services.
(xxi) Any rail line and associated connector line designated as part of the Department of Defense's Strategic Rail Corridor Network.	(xxi) Own or operate any rail line and associated connector line designated as part of the Department of Defense's Strategic Rail Corridor Network.
(xxii) Any interstate oil pipeline that: (a) has the capacity to transport: (1) 500,000 barrels per day or more of crude oil, or (2) 90 million gallons per day or more of refined petroleum product; or	(xxii) Own or operate any interstate oil pipeline that: (a) has the capacity to transport: (1) 500,000 barrels per day or more of crude oil, or

(b) directly serves the strategic petroleum reserve, as defined in section 152 of the Energy Policy and Conservation Act (42 U.S.C. 6232), as amended.	(2) 90 million gallons per day or more of refined petroleum product; or (b) directly serves the strategic petroleum reserve, as defined in section 152 of the Energy Policy and Conservation Act (42 U.S.C. 6232), as amended.
(xxiii) Any interstate natural gas pipeline with an outside diameter of 20 or more inches.	(xxiii) Own or operate any interstate natural gas pipeline with an outside diameter of 20 or more inches.
(xxiv) Any industrial control system utilized by: (a) an interstate oil pipeline as described above in item (xxii) of Column 1 of appendix A to part 800; or (b) an interstate natural gas pipeline as described above in item (xxiii) of Column 1 of appendix A to part 800.	(xxiv) Manufacture or service any industrial control system utilized by: (a) an interstate oil pipeline as described above in item (xxii) of Column 1 of appendix A to part 800; or (b) an interstate natural gas pipeline as described above in item (xxiii) of Column 1 of appendix A to part 800.
(xxv) Any airport identified in § 802.201.	(xxv) Own or operate any airport identified in § 802.201.
(xxvi) Any: (a) maritime port identified in § 802.228; or (b) any individual terminal at such maritime ports.	(xxvi) Own or operate any: (a) maritime port identified in § 802.228; or (b) any individual terminal at such maritime ports.
(xxvii) Any public water system, as defined in section 1401(4) of the Safe Drinking Water Act (42 U.S.C. 300f(4)(A)), as amended, or treatment works, as defined in section 212(2)(A) of the Clean Water Act (33 U.S.C. 1292(2)), as amended, which: (a) regularly serves 10,000 individuals or more, or (b) directly serves any military installation identified in § 802.229.	(xxvii) Own or operate any public water system, as defined in section 1401(4) of the Safe Drinking Water Act (42 U.S.C. 300f(4)(A)), as amended, or treatment works, as defined in section 212(2)(A) of the Clean Water Act (33 U.S.C. 1292(2)), as amended, which: (a) regularly serves 10,000 individuals or more, or

	(b) directly serves any military installation identified in § 802.229.
(xxviii) Any industrial control system utilized by a public water system or treatment works as described above in item (xxvii) of Column 1 of appendix A to part 800.	(xxviii) Manufacture or service any industrial control system utilized by a public water system or treatment works as described above in item (xxvii) of Column 1 of appendix A to part 800.

Dated: September 11, 2019

Thomas Feddo,
Deputy Assistant Secretary for Investment Security.

Exhibit 2

Appendix A to part 802- List of Military Installations

Part 1

Site Name	Location
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, Guam
Army Futures Command	Austin, TX
Army Research Lab – Orlando Simulations and Training Technology Center	Orlando, FL
Army Research Lab – Raleigh Durham	Raleigh Durham, NC
Arnold Air Force Base	Coffee County and Franklin County, TN
Beale Air Force Base	Yuba City, CA
Biometric Technology Center (Biometrics Identity Management Activity)	Clarksburg, WV
Buckley Air Force Base	Aurora, CO
Camp MacKall	Pinebluff, NC
Cape Cod Air Force Station	Sandwich, MA
Cape Newenham Long Range Radar Site	Cape Newenham, AK
Cavalier Air Force Station	Cavalier, ND
Cheyenne Mountain Air 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 Force Station	Shemya, AK
Eielson Air Force Base	Fairbanks, AK
Ellington Field Joint Reserve Base	Houston, TX
Fairchild Air Force Base	Spokane, WA
Fort Benning	Columbus, GA
Fort Belvoir	Fairfax County, VA
Fort Bliss	El Paso, TX
Fort Campbell	Hopkinsville, KY
Fort Carson	Colorado Springs, CO
Fort Detrick	Frederick, MD
Fort Drum	Watertown, NY
Fort Gordon	Augusta, GA
Fort Hood	Killeen, TX

Fort Knox	Fort Knox, KY
Fort Leavenworth	Leavenworth, KS
Fort Lee	Petersburg, VA
Fort Leonard Wood	Pulaski County, MO
Fort Meade	Anne Arundel County, MD
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, Guam
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 Base San Antonio	San Antonio, TX
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 Stations	Kodiak Island, AK
Los Angeles Air Force Base	El Segundo, CA
MacDill Air Force Base	Tampa, FL
Malmstrom Air Force Base	Great Falls, MT
Marine Corps Air Ground Combat Center Twentynine Palms	Twentynine Palms, CA
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
Moody Air Force Base	Valdosta, GA
National Capital Region Coordination Center	Herndon, VA
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, Guam
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
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

Pease Ridge Training Area	Leesville, LA
Pentagon	Arlington, VA
Peterson Air 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
Redstone Arsenal	Huntsville, AL
Rock Island Arsenal	Rock Island, IL
Rome Research Laboratory	Rome, NY
Schriever Air Force Base	Colorado Springs, CO
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
Tinker Air Force Base	Midwest City, OK
Travis Air Force Base	Fairfield, CA
Tyndall Air Force Base	Bay County, FL
U.S. Army Natick Soldier Systems Center	Natick, MA
Watervliet Arsenal	Watervliet, NY
Wright-Patterson Air Force Base	Dayton, OH

Part 2

Site Name	Location
Aberdeen Proving Ground	Aberdeen, MD
Camp Shelby	Hattiesburg, MS
Cape Canaveral Air Force Station	Cape Canaveral, FL
Dare County Range	Manns Harbor, NC
Edwards Air Force Base	Edwards, CA
Eglin Air Force Base	Valparaiso, FL
Fallon Range Complex	Fallon, NV
Fort Bragg	Fayetteville, NC
Fort Greely	Delta Junction, AK
Fort Huachuca	Sierra Vista, AZ
Fort Irwin	San Bernardino County, CA
Fort Polk	Leesville, LA

Fort Wainwright	Fairbanks, AK
Hardwood Range	Necehuenemedah, WI
Hill Air Force Base	Ogden, UT
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 Air Force Base	Cocoa Beach, FL
Tropic Regions Test Center	Wahiawa, HI
Utah Test and Training Range	Barro, UT
Vandenberg Air Force Base	Lompoc, CA
West Desert Test Center	Dugway, UT
White Sands Missile Range	White Sands Missile Range, NM
Yuma Proving Ground	Yuma, AZ

Part 3

Site Name	County	Township/Range
90th Missile Wing Francis E. Warren Air Force Base Missile Field (Colorado, Nebraska, and Wyoming)	Chase County, NE	All
	Dundy County, NE	All
	Goshen County, WY	All
	Hitchcock County, NE	All
	Laramie County, WY	All
	Logan County, CO	All
	Platte County, WY	All
	Weld County, CO	All
341st Missile Wing Malmstrom Air Force Base Missile Field (Montana)	Cascade County, MT	All
	Chouteau County, MT	All, except lands located north of Township 22 North and east of Range 7 East based on the Bureau of Land Management's Public Lands Survey System

	Fergus County, MT	All
	Judith Basin County, MT	All
	Lewis and Clark County, MT	All, except lands located south of Township 14 North and west of Range 9 West based on the Bureau of Land Management's Public Lands Survey System
	Pondera County, MT	All, except lands located west of Range 9 West based on the Bureau of Land Management's Public Lands Survey System
	Teton County, MT	All, except lands located west of Range 9 West based on the Bureau of Land Management's Public Lands Survey System
	Toole County, MT	All
	Wheatland County, MT	All
91st Missile Wing Minot Air Force Base Missile Field (North Dakota)	Bottineau County, ND	All
	Burke County, ND	All
	McHenry County, ND	All
	McLean County, ND	All
	Mountrail County, ND	All
	Renville County, ND	All
	Ward County, ND	All

Part 4

Site Name	Location
Boston Range Complex	Offshore Massachusetts, New Hampshire, Maine
Boston Operating Area	Offshore Massachusetts, New Hampshire, Maine
Charleston Operating Area	Offshore North Carolina, South Carolina
Cherry Point Operating Area	Offshore North Carolina, South Carolina
Corpus Christi Operating Area	Offshore Texas
Eglin Gulf Test and Training Range	Offshore Florida
Gulf of Mexico Range Complex	Offshore Mississippi, Alabama, Florida
Hawaii Range Complex	Offshore Hawaii

Jacksonville Operating Area	Offshore Florida, Georgia
Jacksonville Range Complex	Offshore Florida
Key West Operating Area	Offshore Florida
Key West Range Complex	Offshore Florida
Narragansett Bay Range Complex	Offshore Connecticut, Massachusetts, New York, Rhode Island
Narragansett Bay Operating Area	Offshore Connecticut, Massachusetts, New York, Rhode Island
New Orleans Operating Area	Offshore Louisiana
Northern California Range Complex	Offshore California
Northwest Training Range Complex	Offshore Oregon, Washington
Panama City Operating Area	Offshore Florida
Pensacola Operating Area	Offshore Alabama, Florida
Point Mugu Sea Range	Offshore California
Southern California Range Complex	Offshore California
Virginia Capes Operating Area	Offshore Delaware, Maryland, North Carolina, Virginia
Virginia Capes Range Complex	Offshore Delaware, Maryland, North Carolina, Virginia

Dated: September 11, 2019

Thomas Feddo,
Deputy Assistant Secretary for Investment Security.