

February 13, 2020

The New CFIUS After Implementation of Expanded Authorities

Final Revisions to Rules for Foreign Investment Review by the United States Government Have Become Effective

SUMMARY

The final regulations (the “Regulations”) issued by the U.S. Department of the Treasury (“Treasury”) to implement expanded authorities and other reforms to the process conducted by the Committee on Foreign Investment in the United States (“CFIUS” or the “Committee”) enacted under the Foreign Investment Risk Review Modernization Act of 2018 (“FIRRMA”) became effective today, February 13, 2020.¹ This memorandum provides an overview of the Committee’s jurisdiction and processes now that the reforms of FIRRMA and the Regulations have been implemented,² with a particular focus on notable reforms, such as the Committee’s expanded jurisdiction to review transactions that do not result in foreign control of a U.S. business and the requirement to submit declarations with respect to certain types of transactions.

I. CFIUS JURISDICTION: COVERED TRANSACTIONS

CFIUS has jurisdiction to review “covered transactions.” Historically, that meant transactions that could result in foreign control of a U.S. business, or what are now referred to as “covered control transactions.” Under the expanded authorities, CFIUS now also has jurisdiction to review (i) covered investments in an unaffiliated “TID U.S. business” (*i.e.*, a Technology, Infrastructure or Data business), (ii) covered real estate transactions, (iii) changes in a foreign person’s rights with respect to a U.S. business that could result in foreign control of a U.S. business or a covered investment in certain U.S. businesses, and (iv) transactions structured to evade or circumvent CFIUS review.

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A. COVERED CONTROL TRANSACTIONS

Since its establishment in 1988 pursuant to the Defense Production Act of 1950, as amended (the “DPA”), CFIUS has had jurisdiction over “any transaction [including any transaction carried out through a joint venture] that is proposed or pending after August 23, 1988, by or with any foreign person that could result in foreign control of any U.S. business.” Under the Regulations, “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.”³

B. COVERED INVESTMENTS

The term “covered investment,” introduced in connection with the implementation of FIRRMA, captures investments by a foreign person in a TID U.S. business that, despite being a non-controlling investment, affords the foreign person certain access to information in the possession of, rights in, or involvement in the substantive decisionmaking of, such TID U.S. business. Pursuant to the Regulations, a covered investment is a non-controlling investment, direct or indirect, by a foreign person (other than an “excepted investor,” as discussed below) in an unaffiliated⁴ TID U.S. business that affords the foreign person any of the following (collectively referred to herein as “Covered Investment Rights”):

- **Material nonpublic technical information.** Access to any material nonpublic technical information⁵ in the possession of the TID U.S. business;
- **Board membership.** Membership or observer rights on the board or equivalent governing body of the TID U.S. business or the right to nominate an individual to a position on the board of directors or equivalent governing body of the TID U.S. business; or
- **Decisionmaking.** Any involvement (other than through voting of shares) in substantive decisionmaking⁶ of the TID U.S. business regarding:
 - the use, development, acquisition, safekeeping, or release of sensitive personal data of U.S. citizens maintained or collected by the TID U.S. business;
 - the use, development, acquisition, or release of critical technologies; or
 - the management, operation, manufacture, or supply of “covered investment critical infrastructure” (as discussed below).

1. TID U.S. Business

The term “TID U.S. business” means any U.S. business that:

- produces, designs, tests, manufactures, fabricates, or develops one or more **critical technologies**;
- performs certain functions (as set forth in column 2 of Appendix A to part 800 of the Regulations (reprinted as Exhibit A hereto)) with respect to **covered investment critical infrastructure**; or
- maintains or collects, directly or indirectly, **sensitive personal data** of U.S. citizens.

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a. Critical Technology

The term “critical technology” means any of the following:

- ***International Traffic in Arms Regulations.*** Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations;
- ***Commerce Control List.*** Items included on the Commerce Department’s Commerce Control List and controlled pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation or missile technology, or for reasons relating to regional stability or surreptitious listening;
- ***Nuclear equipment.*** Specially designed and prepared nuclear equipment, parts and components, materials, software and technology covered by part 810 of title 10 of the Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- ***Nuclear facilities.*** Nuclear facilities, equipment and material covered by part 110 of title 10 of the Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- ***Agents and toxins.*** Certain select agents and toxins as defined in federal regulations regarding agriculture, animals and animal products, and public health; and
- ***Emerging and foundational technologies.*** Emerging and foundational technologies identified pursuant to section 1758 of the Export Control Reform Act of 2018. Although the Department of Commerce issued its advanced notice of proposed rulemaking (“ANPRM”) on the subject of emerging technologies in November 2018,⁷ no emerging technologies have yet been definitively identified. The Department of Commerce has not yet released an ANPRM focused on foundational technologies. The definition of “emerging and foundational technologies” for purposes of assessing critical technology investment is one of the few matters related to the FIRRMA modernization that is still to be addressed by future rulemaking.

The Regulations include examples, informed by the Committee’s experience, that are intended to illustrate that (i) “the mere verification of the fit and form of a relevant critical technology is not ‘testing’” for purposes of determining whether a U.S. business involved in critical technology is a TID U.S. business; and (ii) a U.S. business that ceases producing, designing, testing, manufacturing, fabricating or developing a critical technology, but retains the ability to do so, is nevertheless a TID U.S. business.

As discussed further below, the Regulations establish the Committee’s jurisdiction over covered investments in critical technology-related TID U.S. businesses, but a mandatory declaration in connection with a covered investment in a critical technology-related TID U.S. business is not required unless that business is engaged in one or more of 27 identified industries (see Part II(A)(2) below).

b. Covered Investment Critical Infrastructure

As required by FIRRMA, the Committee’s jurisdiction over covered investments involving critical infrastructure is limited to a “subset of critical infrastructure that is likely to be of importance to the national security of the United States.” The Regulations refer to this subset of critical infrastructure as “covered investment critical infrastructure,” and specifically identify the subset in Appendix A to part 800 of the Regulations. The list in Appendix A has two components: (1) a column for specific types of critical

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infrastructure that are covered (referred to as “systems and assets”); and (2) a column that lists certain “functions” related to critical infrastructure that must be performed by the U.S. business with respect to that critical infrastructure.⁸ The systems and assets listed in Appendix A are limited to 28 detailed categories in the telecommunications, data, defense, power and energy, financial services, transportation and water utility sectors. For almost all the enumerated categories, covered functions involve owning, operating or manufacturing such infrastructure, as opposed to supplying or servicing the infrastructure (subject to certain exceptions for supplying or servicing submarine cable and related facilities and servicing certain industrial control systems).

Infrastructure Assets Covered. The following is a non-exhaustive list of the types of systems and assets that constitute “covered investment critical infrastructure”:

- ***Electricity.*** Electricity generation, transmission, distribution or storage systems, in each case connected to the grid or providing service directly to, or located on, any military installation;
- ***Refineries.*** Refinery with a production capacity (oil or gas products) of 300,000 bpd or more or multiple refineries where aggregate production capacity is 500,000 bpd or more;
- ***Crude oil storage.*** Crude oil storage facility with capacity to hold 30 million barrels or more;
- ***LNG.*** LNG import or export terminal;
- ***Oil pipelines.*** Interstate oil pipeline (and any industrial control system utilized by such pipeline) that has the capacity to transport 500,000 bpd of crude oil or more or 90 million gallons or more per day of refined petroleum product, and oil pipelines that serve the Strategic Petroleum Reserve;
- ***Gas pipelines.*** Interstate natural gas pipeline (and any industrial control system utilized by such pipelines) with an outside diameter of 20 or more inches;
- ***Water.*** Public water system (including infrastructure related to the collection, pretreatment, treatment, storage, and distribution of water for human consumption and any industrial control system utilized by such system) that regularly serves 10,000 or more individuals or directly serves any military installation;
- ***Financial market utilities.*** Systemically important financial market utility;
- ***Securities exchanges.*** Registered securities exchanges;
- ***Financial technology service providers.*** Certain technology service providers providing core bank processing services to financial institutions;
- ***Rail.*** Rail line or associated connector line that is part of the Department of Defense’s Strategic Rail Corridor Network;
- ***Airports.*** Any “large hub airport” (i.e., any commercial service airport that has at least 1.0% of national passenger boardings), any airport with annual aggregate all-cargo landed weight greater than 1.24 billion pounds, or any joint-use airport (i.e., any airport owned by the Department of Defense, at which both military and civilian aircraft make shared use of the airfield);
- ***Ports.*** Any airport or maritime port that is a “covered port” as defined in the part 802 Regulations regarding covered real estate transactions (see Section A(3) below), and any terminal within any such port;

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- **Telecommunications.** Telecommunications service, information service, or fiber optic cable, in each case that directly serves any military installation identified in Appendix A to the part 802 Regulations regarding covered real estate transactions (see Section A(3) below);
- **Internet protocol networks.** Internet protocol network that has access to every other internet protocol network solely via settlement-free peering;
- **Internet exchange points.** Internet exchange point that supports public peering;
- **Submarine cable systems.** Any submarine cable system (including any associated submarine cables, landing facilities and facilities that perform network management, monitoring, maintenance, or other operational functions for such submarine cable system) that either directly or indirectly connects the United States with a foreign country or one part of the United States with another part (but not cables that lie entirely (including the terminals) within the continental United States);
- **Certain data centers.** Data center collocated at a submarine cable landing point, landing station, or termination station;
- **Certain satellite systems.** Satellite or satellite system providing services directly to the Department of Defense;
- **Certain industrial resources.** Any industrial resource that (i) is not off-the-shelf and is for a major defense acquisition program (\$115 million or more) and that is sole source or strategic multisource or takes more than 12 months to manufacture or has a long lead time, or (ii) is not off-the-shelf and is rated “DX,” or (3) has been at least partly funded through a specified defense-related legislation, fund or program; and
- **Specialty metals.** Any specialty metal, covered material, certain chemical weapons antidotes, and certain types of carbon, alloy, and armor steel plates.

Infrastructure Assets Not Covered. The following is a non-exhaustive list of examples of types of systems and assets that do not constitute “covered investment critical infrastructure.” These systems and assets could still be considered critical infrastructure for the purposes of a covered control transaction, and could be taken into consideration in connection with the Committee’s review of such transactions. In addition, some of the systems and assets listed below could implicate CFIUS rules with respect to sensitive personal data of U.S. citizens (especially in the case of financial institutions), and therefore non-controlling but non-passive investments in such systems and assets could still be subject to CFIUS jurisdiction even if not because of the covered investment critical infrastructure rules (see Section A(2)(a)(iii) below). Moreover, transactions involving these systems and assets potentially could be subject to CFIUS jurisdiction under the Committee’s authority to review covered real estate transactions (see Section A(3) below). Nevertheless, the following do not constitute “covered investment critical infrastructure” and therefore a non-passive but non-controlling investment in a U.S. business involved in owning, operating or manufacturing such infrastructure is not, subject to the qualifications described above, subject to CFIUS jurisdiction:

- Local electricity distribution center;
- Electricity generation, transmission, distribution or storage system, in each case **not** connected to the grid (i.e., not part of the bulk power system) and **not** providing service directly to, or located on, any military installation;

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- Refinery with a production capacity (oil or gas products) of less than 300,000 bpd or multiple refineries where aggregate production capacity is less than 500,000 bpd;
- Crude oil storage facility with a capacity of less than 30 million barrels;
- Any purely intrastate oil pipeline;
- Any interstate oil pipeline that neither (A) has the capacity to transport 500,000 bpd or more of crude oil or 90 million gallons per day or more of refined petroleum product nor (B) serves the Strategic Petroleum Reserve;
- Any purely intrastate natural gas pipeline;
- Any interstate natural gas pipeline with outside diameter less than 20 inches;
- Mining projects not captured in the “Certain industrial resources” category described under “Infrastructure Assets Covered,” above;
- Small-scale public water system (i.e., one that regularly serves fewer than 10,000 individuals) that does not directly serve any military installation;
- Wide range of (but not all) financial services institutions;
- Rail line or associated connector line that is not part of the Department of Defense’s Strategic Rail Corridor Network;
- Subway or other intracity rail transportation;
- Bus transportation;
- Non-major hub airport that is not joint-use;
- Port outside the top 25 tonnage, container and dry bulk ports that is not part of the National Port Readiness Network, or a terminal within such a port;
- Toll road (or any other road);
- Bridges;
- Social infrastructure (healthcare, stadiums, schools, etc.);
- Internet protocol network that does not have access to every other internet protocol network solely via settlement-free peering;
- Fiber optic cable not directly servicing the military;
- Submarine cable, including any terminal, wholly within the continental U.S.;
- Satellite or satellite system not directly servicing the Department of Defense; and
- A wide range of (but not all) industrial resources.

c. Sensitive Personal Data

Sensitive personal data is defined as “identifiable data” that (i) constitutes the results of an individual’s genetic tests, or (ii) falls into one or more of 10 specified data types and is collected or maintained by a U.S. business in one of the three specific circumstances.

Identifiable data. The Regulations define identifiable data as “data that can be used to distinguish or trace an individual’s identity, including through the use of any ‘personal identifier,’” which in turn means a “name,

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physical address, email address, social security number, phone number or other information that identifies a specific individual.”⁹

Genetic test results. Regardless of the circumstances in which they are collected, identifiable results of an individual’s genetic tests (as defined in the Genetic Information Non-Discrimination Act of 2008), including any related genetic sequencing data, but excluding data derived from databases maintained by the U.S. Government and routinely provided to private parties for purposes of research, constitute sensitive personal data.

Ten categories of data. In addition to genetic test results, the Regulations enumerate 10 categories of data that, when identifiable *and* coupled with one of the three circumstances noted below, constitute sensitive personal data. The 10 categories are as follows:

1. **Financial distress.** Financial data that could be used to analyze or determine an individual’s financial distress or hardship;
2. **Credit scoring.** The set of data in a consumer report, as defined in the Fair Credit Reporting Act, including an individual’s credit score and/or summaries of debts and payment histories, unless such data is obtained from a consumer reporting agency for one or more of the legitimate purposes described in the Fair Credit Reporting Act, and such data is not substantially similar to the full contents of a consumer file, as defined in the Fair Credit Reporting Act;¹⁰
3. **Health or life insurance application data.** The set of data in an application for health insurance, long-term care insurance, professional liability insurance, mortgage insurance or life insurance;
4. **Health condition.** Data relating to the physical, mental or psychological health condition of an individual;
5. **Third-party communication.** Non-public electronic communications, including email, messaging or chat communications, between or among users of a U.S. business’s products or services, if a primary purpose is to facilitate third-party user communications;¹¹
6. **Geolocation data.** Geolocation data collected using positioning systems, cell phone towers, or WiFi access points such as via a mobile application, vehicle GPS, other onboard mapping tool or wearable electronic device;
7. **Biometric data.** Biometric enrollment data, including facial, voice, retina/iris and palm/fingerprint templates;
8. **Government identification.** Data stored and processed for generating a state or federal government identification card;
9. **Security clearance.** Data concerning U.S. Government personnel security clearance status; and
10. **Security clearance application data.** The set of data in an application for a U.S. Government personnel security clearance or an application for employment in a position of public trust.

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Three specific circumstances. There are three specific circumstances in which identifiable data in one of the above-specified 10 categories that is maintained or collected by a U.S. business constitutes sensitive personal data:

- The U.S. business “targets or tailors” products or services to any U.S. executive branch agency or military department with intelligence, national security or homeland security responsibilities, or to personnel and contractors thereof;¹²
- The U.S. business has maintained or collected identifiable data on greater than one million individuals at any point over the 12 months preceding the earliest to occur of certain transaction-specific milestones,¹³ or the date of filing of a written notice or submission of a declaration;¹⁴ and/or
- The U.S. business has a demonstrated business objective to maintain or collect identifiable data on greater than one million individuals and such data is an integrated part of the U.S. business’s primary products or services.

Examples in the Regulations illustrate that if the U.S. business collects or maintains the applicable data on over one million individuals at any time over the preceding 12 months, the 12-month requirement in the second specified circumstance above is met. One example illustrates how to apply the “demonstrated business objective” provision in the third specified circumstance. The example concerns a U.S. business that is a start-up mobile mapping venture that has collected geolocation data, but on substantially fewer than one million individual subscribers over the 12 months prior to completing a transaction with a foreign person. The geolocation data, however, is an integrated part of the U.S. business’s primary product, mobile mapping services. If, in connection with attempting to secure an additional round of financing, the U.S. business has prepared and distributed to potential investors pitch materials that include projections that, within the next two years, it will have greater than one million active individual subscribers, and where the U.S. business also has made plans to increase its workforce substantially and enhance its IT infrastructure in anticipation of obtaining the additional subscribers, it will have met the criteria required to have a demonstrated business objective to maintain or collect sensitive personal data on greater than one million individuals.

2. Exceptions to Covered Investment Jurisdiction

a. Excepted Investors from Excepted Foreign States

In order to implement FIRRMA’s requirement that CFIUS specify criteria to limit the application of FIRRMA’s expanded jurisdiction over covered investments to certain categories of foreign persons, the Regulations provide an exemption from covered investment jurisdiction for “excepted investors.”

Excepted Investor. The term “excepted investor” uses the defined terms “excepted foreign state” and “minimum excepted ownership” to exclude from the Committee’s jurisdiction covered investments by certain foreign persons who meet certain criteria establishing sufficiently close ties to certain foreign states, subject

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to certain disqualifying exceptions. Under the Regulations, the term “excepted investor” is defined to include the following:

- A **foreign national** who is a national of an “excepted foreign state” and not also a national of any foreign state that is not an excepted foreign state;
- A **foreign government** of an excepted foreign state; or
- A **foreign entity** that meets the following conditions *with respect to itself and each of its parents (if any)*:
 - **Jurisdiction of organization.** The entity must be organized under the laws of an excepted foreign state or in the United States.
 - **Principal place of business.**¹⁵ The entity must have its principal place of business in an excepted foreign state or in the United States.
 - **Board.** Seventy-five percent or more of the members and 75 percent or more of the observers of the entity’s board of directors or similar body must be U.S. nationals, or if not U.S. nationals, must be nationals of an excepted foreign state and not also nationals of any foreign state that is not an excepted foreign state.
 - **Equity ownership.** Any foreign person that individually and each foreign person that is part of a group of foreign persons¹⁶ that, in the aggregate, (A) holds 10 percent or more of the outstanding voting interest of the entity, (B) holds the right to 10 percent or more of the profits of the entity, (C) holds the right in the event of dissolution to 10 percent or more of the assets of such entity or (D) could exercise control over such entity, must be either (i) a foreign national who is a national of an excepted foreign state and not also a national of a foreign state that is not an excepted foreign state, (ii) a foreign government of an excepted foreign state or (iii) a foreign entity that is organized under the laws of an excepted foreign state and has its principal place of business in an excepted foreign state or the United States.
 - **Minimum excepted ownership.** The “minimum excepted ownership”¹⁷ of the entity must be held, individually or in the aggregate, by one or more persons each of whom is (A) not a foreign person, (B) a foreign national who is a national of an excepted foreign state and not also a national of a foreign state that is not an excepted foreign state, (C) a foreign government of an excepted foreign state or (D) a foreign entity that is organized under the laws of an excepted foreign state and has its principal place of business in an excepted foreign state or in the United States.

Excepted Foreign State. The definition of an “excepted foreign state” under the Regulations is a two-factor conjunctive test involving (i) identification by the Committee as an eligible foreign state, and (ii) beginning February 13, 2022, a determination by the Committee as to whether such foreign state “has established and is effectively utilizing a robust process to assess foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.” Thus, until February 13, 2022, a foreign state need only be identified by the Committee under the first criterion in order to qualify as an excepted foreign state.¹⁸ The Committee has identified Australia, Canada, and the United Kingdom as the initial excepted foreign states.¹⁹

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Exceptions. A foreign person that meets all of the excepted investor criteria is nevertheless disqualified from excepted investor status if it, any of its parents, or any entity of which it is a parent has, in the five years prior to the completion date of the transaction:

- received written notice from CFIUS that it has (A) submitted a material misstatement or made a material omission in a notice or declaration to CFIUS, (B) made a false certification to CFIUS in connection with a transaction review or (C) violated a material provision of a mitigation agreement entered into with, or a material condition imposed or an order issued by, the Committee or a lead CFIUS agency;
- been subject to action by the President under Section 721(d) of the DPA, which provides the President with authority to take such action for such time as the President considers appropriate to suspend or prohibit any covered transaction that threatens to impair the national security of the United States; or
- been convicted of, or entered into a deferred prosecution agreement or nonprosecution agreement with the Department of Justice with respect to, any felony in any jurisdiction within the United States, or has been involved in any of a series of specified violations of U.S. laws that relate to national security matters.²⁰

The Regulations further provide that a foreign person is not an excepted investor if it, any of its parents or any entity of which it is a parent is, on the date on which the parties to the transaction first execute a binding written agreement or other binding document establishing the material terms of the transaction, listed on either the Department of Commerce's Bureau of Industry and Security (BIS) Unverified List or Entity List.²¹

Finally, the Regulations provide that if, at any time during the three-year period following the completion date of the transaction, the foreign person no longer meets all of the applicable excepted investor criteria (excluding, with respect to a foreign entity, the 10 percent test and the minimum excepted ownership test), then the foreign person is not an excepted investor with respect to the transaction from the completion date onward, unless the excepted investor no longer meets any of the relevant criteria solely because a particular foreign state ceases to be an excepted foreign state. As a result, a transaction that was not a covered transaction at the time of its completion may become a covered transaction and could be subject to CFIUS review post-completion (see Part II(B)(3) and (C) below).

b. Treatment of Investment Funds

The Regulations provide a "specific clarification" applicable to situations where a foreign person has an indirect investment in a TID U.S. business through an investment fund and the foreign person (or a designee thereof) is a member, as a limited partner or equivalent, on an advisory board or a committee of the investment fund. If the conditions of the exception are met, then the foreign person's service on the board or committee will not, by itself, result in the foreign person's indirect investment through the fund being treated as a covered investment. Foreign investors who are limited partners on an advisory board or a committee of a fund qualify for the exception only if (i) the fund is managed exclusively by a general partner, or equivalent, that is not a foreign person; (ii) the advisory board or committee on which the foreign person

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serves does not have the ability to approve, disapprove, or otherwise control investment decisions of the fund or decisions made by the general partner (or equivalent) related to entities in which the fund is invested; (iii) the foreign person does not otherwise have the ability to control the fund, including the authority to approve, disapprove, or otherwise control investment decisions of the investment fund and decisions made by the general partner (or equivalent); (iv) the foreign person does not have the power to unilaterally dismiss, prevent the dismissal of, select or determine the compensation of the general partner (or equivalent); (v) the foreign person does not have access to material nonpublic technical information as a result of its participation on the advisory board or committee; and (vi) the investment does not afford the foreign person Covered Investment Rights with respect to the relevant TID U.S. business.

C. CERTAIN TRANSACTIONS BY FOREIGN PERSONS INVOLVING REAL ESTATE IN THE UNITED STATES

CFIUS now has jurisdiction over certain types of real estate transactions that do not also involve the acquisition of an interest in a U.S. business.²² This jurisdiction is codified at part 802 of the Regulations, which define a **covered real estate transaction** as any purchase or lease by, or concession to, a foreign person of **covered real estate**, that afford the foreign person at least three of the **property rights** identified in the Regulations (discussed further below).

1. Covered Real Estate

The Committee's jurisdiction over real estate transactions centers on two general categories of real estate: (1) real estate identified by its relation to airports and maritime ports; and (2) real estate identified by its proximity to U.S. military installations and other facilities or properties of the U.S. Government that are sensitive for national security reasons. Specifically, CFIUS may review the purchase²³ or lease²⁴ by a foreign person of, or a concession²⁵ offered to a foreign person with respect to, private or public real estate located in the United States that:

- is located within, or will function as part of, a covered port; or
- is in a defined scope in or near a U.S. military installation or another facility or property of the United States Government that:
 - is sensitive for reasons relating to national security;
 - could reasonably provide the foreign person the ability to collect intelligence on activities being conducted at such an installation, facility or property; or
 - could otherwise expose national security activities at such an installation, facility or property to the risk of foreign surveillance.

a. Covered Port

The first general category of "covered real estate" includes "real estate that is, is located within, or will function as part of, a covered port." The term "covered port" means any port that is listed:²⁶

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- in the Federal Aviation Administration’s (“FAA”) annual final enplanement data as: (i) a “large hub airport,” as that term is defined in 49 U.S.C. 40102; or (ii) an airport with annual aggregate all-cargo landed weight greater than 1.24 billion pounds;
- by the FAA as a “joint use airport,” as that term is defined in 49 U.S.C. 47175;
- by the Department of Transportation, Maritime Administration as a commercial strategic seaport within the National Port Readiness Network; or
- by the Department of Transportation, Bureau of Transportation Statistics as a top 25 tonnage, container, or dry bulk port.

The Regulations provide that, in the context of a particular transaction, the “covered ports” are those appearing on the above-referenced lists as of the day immediately prior to the earlier of (i) the date on which the parties sign a written document establishing the material terms of the transaction, and (ii) the completion date. Further, any port added to the lists after the February 13, 2020 effective date of the Regulations is *not* a covered port for purposes of the Regulations until 30 days after its addition to the list.

b. Proximate Real Estate

The second category of covered real estate is identified by reference to sensitive U.S. military installations and other U.S. Government facilities or properties,²⁷ which are listed in Appendix A to part 802 (reprinted as Exhibit C hereto).²⁸ Appendix A to part 802 is subdivided into four parts, each of which is referenced in one or more of the four prongs of the definition of the proximity-related category of covered real estate. The Regulations define the proximity-related category of covered real estate as real estate that is located within:

- “close proximity” of any military installation or other facility or property of the U.S. Government identified in the list in part 1 or part 2 of Appendix A to part 802;²⁹
- the “extended range” of any military installation identified in the list in part 2 of Appendix A to part 802;³⁰
- any county or other geographic area identified in connection with any active Air Force ballistic missile field, as identified in the list in part 3 of Appendix A to part 802; or
- any part of a U.S. Navy offshore range complex or offshore operating area that is identified in the list in part 4 of Appendix A to part 802, to the extent located within the limits of the territorial sea of the United States.

Close Proximity. The Regulations define “close proximity” as the area that extends outward one mile from the boundary of the relevant military installation, facility, or property.

Extended Range. The Regulations define “extended range” as “the area that extends 99 miles outward from the outer boundary of close proximity to [the relevant] military installation, but, where applicable, not exceeding the outer limit of the territorial sea of the United States.”

Treasury has noted that it anticipates making a web-based tool available in the near term to assist the public in understanding the geographic coverage of these definitions.

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2. Property Rights

In order for a transaction to be a “covered real estate transaction,” the transaction must result in a foreign person acquiring three or more property rights in covered real estate. For purposes of the Regulations, the term “property right” means the right, whether or not exercised, whether or not shared concurrently with any other person, and whether or not the underlying real estate is subject to an easement or other encumbrance, to:

- physically access the real estate;
- exclude others from physically accessing the real estate;
- improve or develop the real estate; and/or
- attach fixed or immovable structures or objects to the real estate.

To provide further clarity to the application of this definition, the Regulations provide two examples. The first example illustrates that the right to exclude others from physically accessing the property need not be absolute with respect to all other persons or activities. The example notes that even if at least one person shares the right to access the property with a foreign lessee, if the foreign lessee retains the right to physically exclude others from access that would interfere with its rights under the lease, the foreign person has a right to exclude others from physically accessing the real estate, and therefore has a property right. The second example illustrates that a property right is afforded, even if it is not exercisable until a separate regulatory approval is received. The example notes that even if a foreign person’s right to develop real estate as part of a lease is subject to the foreign person obtaining the appropriate regulatory permits, the foreign person is a party to a lease that affords it a property right for purposes of the Regulations.

3. Excepted Real Estate Transactions

As detailed below, “excepted real estate transactions” include transactions involving (i) excepted real estate investors; (ii) real estate within urbanized areas or urban clusters outside the one-mile close proximity buffer around a covered military installation; (iii) single housing units; (iv) certain commercial and retail real estate assets; and (v) certain Native American lands.

Investments by Excepted Real Estate Investors. The Regulations contain an exception for investments by “excepted real estate investors” with sufficient ties to an “excepted real estate foreign state.” The definitions of these terms are the same as the definitions of “excepted investor” and “excepted foreign state,” respectively, in part 800, and the disqualifications from excepted real estate investor status are also the same (see Section A(2)(b)(i) above). Australia, Canada, and the United Kingdom are identified as the only initial excepted real estate foreign states for purposes of the part 802 Regulations.

Covered Transactions. Transactions involving covered real estate assets that qualify as “covered transactions” under part 800 are *not* subject to CFIUS review under part 802. A “covered transaction,” as

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defined in part 800, that also includes the purchase, lease, or concession of “covered real estate,” as that term is defined in part 802, is not a “covered real estate transaction.” If a party intends to notify CFIUS of a transaction under part 800, the transaction should not also be notified under part 802.

Certain urban areas. Transactions involving real estate in an “urbanized area”³¹ or an “urban cluster,”³² as those areas are identified by the U.S. Census Bureau in the most recent U.S. Census, will not be subject to CFIUS review unless the real estate is in “close proximity” to a military installation or another sensitive facility or property identified in part 1 or part 2 of Appendix A to part 802, or is within or will function as a part of a covered port. Notes to the definitions of “urbanized area” and “urban cluster” explain that the Census Bureau maintains an interactive map on its website that allows the user to filter by various criteria, including urban clusters and urbanized areas.

Single housing units. Transactions involving real estate that is used for a single “housing unit,” as defined by the Census Bureau, as well as any fixtures and adjacent land that are incidental to the intended use of the real estate as a housing unit, are not subject to CFIUS review.

Foreign air carriers. Certain leases or concessions to a foreign air carrier (as such term is defined in 49 U.S.C. 40102) of real estate that is within, or will function as part of, a covered port are not subject to CFIUS review.³³

Retail sales. Where covered port leases and concessions are the subject of a real estate transaction, but the terms of such leases or concessions permit only the retail sale of consumer goods or services to the public, the transactions are not subject to CFIUS review.³⁴

Commercial space. The purchase or lease by, or concession to, a foreign person of commercial space in a multi-unit building that is covered real estate is not subject to CFIUS review so long as, at the completion of the transaction, the foreign person and its affiliates will neither (i) hold, lease, or have a concession with respect to more than 10 percent of the total square footage of the commercial space of such building nor (ii) represent more than 10 percent of the total number of tenants in the building (with the foreign person and each of its affiliates counted separately) based on the number of ownership, lease and concession arrangements for commercial space.

American Indian and Alaska Native lands. Transactions involving real estate that is owned by certain Alaska Native entities or held in trust by the United States for American Indians, Indian tribes, Alaska Natives or Alaska Native entities are not subject to CFIUS review.

D. CERTAIN CHANGES IN A FOREIGN PERSON’S RIGHTS WITH RESPECT TO ITS INVESTMENT IN A U.S. BUSINESS

The Regulations include examples that illustrate changes in rights that would constitute covered transactions:

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- A foreign person that previously acquired a non-controlling equity interest in a U.S. business subsequently obtaining the right to appoint the Chief Executive Officer and the Chief Technical Officer of the U.S. business; and
- A foreign person (other than an excepted investor) that previously acquired a non-controlling interest in an unaffiliated TID U.S. business but no Covered Investment Rights subsequently obtaining the right to appoint a director to the board of the TID U.S. business.

The Regulations also provide examples illustrating that the acquisition of an additional equity interest to prevent the dilution of a foreign person's *pro rata* interest will generally not constitute a covered transaction, assuming the foreign person does not acquire control of a U.S. business, or additional Covered Investment Rights in a TID U.S. business, as a result of the acquisition.³⁵

E. TRANSACTIONS STRUCTURED TO EVADE OR CIRCUMVENT CFIUS REVIEW

The CFIUS regulations now expressly cover “[a]ny other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application” of the CFIUS review authorization. The regulations provide two examples by way of illustration: in both examples, a foreign corporation, wholly owned and controlled by a foreign national, transfers money to a U.S. citizen who, pursuant to informal arrangements with Corporation A and on its behalf, engages in transactional activity, all done with a view towards circumvention. The examples included in the Regulations are relatively extreme; however, CFIUS evaluates each transaction based upon the particular facts and circumstances of that transaction, and other examples potentially could be covered as evasion or circumvention.

F. SPECIAL CONSIDERATIONS RELATING TO THE FORM OF INVESTMENT

1. Treatment of Lending Transactions

Lending transactions generally are not covered transactions, even if the lender is provided with a security interest in the securities or other assets of a U.S. business or in the covered real estate, except where (i) the foreign person acquires economic or governance rights in a U.S. business “characteristic of an equity investment, but not of a typical loan,” or (ii) with respect to real estate transactions that do not also involve the acquisition of an interest in a U.S. business, the loan or similar financing arrangement would constitute a purchase, lease or concession at the time of its extension. CFIUS will accept notices or declarations concerning a loan or a similar financing arrangement that does not, by itself, constitute a covered transaction only at the time that, because of imminent or actual default or other condition, there is a significant possibility that a covered control transaction, a covered investment, or a covered real estate investment would occur as a result of the default or other condition.³⁶ An exception for syndicated loans provides that an acquisition of voting interest in, or assets of, a U.S. business by a foreign person upon default or other condition involving such syndicated loan or a similar financing arrangement does not constitute a covered transaction provided that certain criteria relating to the foreign person's participation in the syndicate are met.³⁷

2. Treatment of Contingent Equity Interests

The Regulations provide CFIUS with flexibility to assess whether a contingent equity interest constitutes a covered transaction at the time of acquisition (as opposed to only upon the conversion of the instrument) based on an analysis of a series of factors including the imminence of conversion, whether conversion is within the control of the acquiring party, and whether the amount of interest and the rights that would be acquired upon conversion can be reasonably determined at the time of acquisition.

II. CFIUS PROCESS: FILINGS AND REVIEW

Under the Regulations, parties intending to notify a transaction to CFIUS may submit either a voluntary notice or a declaration. Added pursuant to FIRRMA, a declaration is a short form of the typical voluntary notice that is also subject to a condensed timeline for Committee review. As discussed below, declarations are mandatory with respect to certain types of transactions.

A. MANDATORY FILINGS

Beginning on the February 13, 2020 effective date, there are two instances in which a declaration could be mandatory: (1) a covered transaction that results in the acquisition of a substantial interest in a TID U.S. business by a foreign person in which the national or subnational governments of a single foreign state (other than an excepted foreign state) have a substantial interest; or (2) a covered transaction that is a covered investment in, or that could result in foreign control of, a TID U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies in connection with certain specified industries. Parties subject to the mandatory declaration requirement may elect to submit a notice in lieu of the short form declaration. Any person who fails to submit a mandatory declaration (on notice in lieu thereof) may be liable for a civil penalty of up to \$250,000 per violation or the value of the transaction, whichever is greater.

For transactions with completion dates after March 14, 2020, mandatory filings must be submitted no later than 30 days before the completion date of the transaction. For transactions with completion dates between the February 13, 2020 effective date and March 14, 2020, mandatory filings must be submitted no later than February 13, 2020, “or promptly thereafter.”

1. Covered Transactions Involving Foreign Governments

A filing is mandatory for covered transactions that result in the acquisition of a “substantial interest” in a TID U.S. business by a foreign person in which a single foreign government has a substantial interest. A “substantial interest” is defined to mean a voting interest, direct or indirect, of 25 percent or more by a foreign person in a U.S. business, and a voting interest, direct or indirect, of 49 percent or more by a single foreign government (which includes both national and subnational governments, including their respective departments, agencies, and instrumentalities) in a foreign person. For limited partnerships, the Regulations

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provide that “the national or subnational governments of a single foreign state will be considered to have a substantial interest in [a limited partnership] only if they hold 49 percent or more of the interest in the general partner, managing member, or equivalent of the entity.”

Exceptions. There are two exceptions to the mandatory declaration requirement for covered transactions involving foreign governments:

- A covered transaction by an investment fund where (i) the fund is managed exclusively by a general partner, a managing member or an equivalent that in each case is not a foreign person, and (ii) the investment fund satisfies, with respect to any foreign person with membership as a limited partner on an advisory board or a committee of the fund, certain of the criteria specified in the “specific clarification” for indirect investment through investment funds discussed in Part A(2)(b)(ii) above;³⁸ or
- A covered control transaction involving an air carrier, as defined in 49 U.S.C. 40102(a)(2), that holds a certificate issued under 49 U.S.C. 41102.

2. Certain Transactions Involving Critical Technology TID U.S. Businesses

The Regulations include a modified version of the Committee’s initial pilot program codified at 31 CFR Part 801 (the “Pilot Program Regulations,” effective through February 12, 2020).³⁹ Because CFIUS retains jurisdiction over transactions that were subject to the Pilot Program Regulations during the period of the pilot program’s effectiveness, the regulations at part 801 remain in chapter VIII of title 31 of the Code of Federal Regulation for reference. However, part 801 applies only to pilot program covered transactions (as defined therein) with respect to which certain transaction milestones occurred between November 10, 2018 and February 12, 2020.⁴⁰

The Regulations, similar to the Pilot Program Regulations, mandate a declaration for covered transactions that are covered investments in, or that could result in foreign control of, a TID U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies utilized by the TID U.S. business in, or designed by the TID U.S. business for use in, one or more industries identified by North American Industry Classification System (“NAICS”) code in Appendix B to part 800 (reprinted as Exhibit B hereto). The issuing release accompanying part 800 of the Regulations noted that Treasury anticipates issuing in the future a notice of proposed rulemaking that would revise the mandatory declaration requirement regarding critical technology from one based upon NAICS codes to one based upon export control licensing requirements. Accordingly, like the definition of “emerging and foundational technologies” for purposes of assessing critical technology investment, this is another matter related to FIRRMA modernization that is expected to be addressed and modified by future rulemaking.

Exceptions. There are a number of exceptions to the mandatory declaration requirement for this subset of critical technology-related covered investments such that a declaration will not be mandatory with respect to any of the following:

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- A covered control transaction by an excepted investor;
- A covered transaction in which the foreign person's indirect investment in the TID U.S. business is held solely and directly via an entity that as of the completion date is (i) subject to mitigation to offset foreign ownership, control, or influence pursuant to the National Industrial Security Program regulations,⁴¹ and (ii) operating under a valid facility security clearance pursuant to the National Industrial Security Program regulations;
- A covered transaction by an investment fund if (i) the fund is managed exclusively by a general partner, a managing member, or an equivalent; (ii) the general partner, managing member, or equivalent is ultimately controlled exclusively by U.S. nationals or is not a foreign person; and (iii) the investment fund satisfies, with respect to any foreign person with membership as a limited partner on an advisory board or a committee of the fund, certain of the criteria specified in the "specific clarification" for indirect investment through investment funds discussed in Part A(2)(b)(ii) above;⁴²
- An investment that is a covered investment solely because a foreign person who was an excepted investor no longer meets all of the applicable excepted investor criteria at any point during the three-year period following the completion date (see Part A(2)(b)(i) above);
- A covered control transaction involving an air carrier, as defined in 49 U.S.C. 40102(a)(2), that holds a certificate issued under 49 U.S.C. 41102; or
- A covered transaction that is a covered investment in, or that could result in foreign control of, a U.S. business that is a TID U.S. business solely because such TID U.S. business produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies that is eligible for export, reexport, or transfer (in country) pursuant to License Exception ENC of the Export Administration Regulations.⁴³

B. CFIUS REVIEW

1. Voluntary Notices

The Regulations specify the information regarding the transaction and the parties thereto that must be included in any notice submitted to the Committee.⁴⁴ The Committee may reject a notice at any time (including after the notice has been accepted) if (i) the notice does not provide all of the required information, (ii) there is a material change to the transaction or information comes to light that contradicts material information provided in the notice, (iii) the parties do not provide follow-up information requested by the Committee within three business days of the request, or (iv) a party fails to provide the final certification necessary for the Committee to conclude its review.⁴⁵ Notices are subject to a 45-day initial review period, commencing on the date the CFIUS Chairperson notifies the parties in writing that the notice has been accepted and circulated to the Committee.⁴⁶ At the conclusion of the review period, the Committee will notify the parties that either (i) it has concluded all action under Section 721 of the DPA ("Section 721") with respect to the transaction, or (ii) it is commencing a 45-day investigation period. At any time during the investigation period or at the conclusion thereof, the Committee may (i) notify the parties that it has concluded all action under Section 721 with respect to the transaction, (ii) send a report to the President providing a recommendation and requesting the President's decision with regard to the transaction, or (iii) in "extraordinary circumstances," extend the investigation period for one 15-day period. Parties to a transaction that have submitted a declaration or notice may request in writing, at any time prior to the

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Committee concluding action, that the declaration or notice be withdrawn. The written request must state the reasons why the request is being made. In general, where a withdrawal is approved and the transaction is resubmitted for review, the applicable periods will restart. The withdrawal process may be utilized by the parties to correct material errors or omissions, to describe material changes to the transaction, or where more time may be needed to engage in mitigation discussions with CFIUS.

2. Declarations

The Regulations specify the information regarding the transaction and the parties thereto that must be included in any declaration submitted to the Committee, which generally consists of information similar to that required in a notice, but on an abbreviated scale.⁴⁷ The Committee may reject a declaration at any time (including after the declaration has been accepted) if (i) the declaration does not provide all of the required information, (ii) there is a material change to the transaction or information comes to light that contradicts material information provided in the declaration, (iii) the parties do not provide follow-up information requested by the Committee within two business days following the request, or (iv) a party fails to provide the final certification necessary for the Committee to conclude its review.⁴⁸ The Committee has 30 days to review a declaration, beginning on the date specified in the letter from the CFIUS Chairperson to the parties notifying the parties that the declaration has been accepted and circulated to the Committee.⁴⁹ Upon completion of its review of a declaration, the Committee must take one of four actions:

- Request that the parties file a regular notice of transaction;
- Inform the parties that CFIUS cannot complete action on the basis of the declaration and that they may file a regular notice of transaction to seek written notification from CFIUS that it has concluded all action with respect to the transaction;
- Initiate a unilateral review of the transaction; or
- Notify the parties that CFIUS has concluded all action under Section 721 with respect to the transaction.

3. Unilateral Review

In certain circumstances, members of the Committee may file an “agency notice” with the Committee through the CFIUS Chairperson to initiate a unilateral review of a transaction.

Previously reviewed transactions. Where the Committee has advised the parties to a transaction that the transaction is not a covered transaction, or where action with respect to a covered transaction under Part 721 has concluded (whether by the Committee’s conclusion of its review or by the President choosing not to exercise his or her authority to suspend or prohibit the transaction), a member of the Committee may nevertheless file an agency notice if (i) a party to the transaction submitted false or misleading material information to the Committee in connection with the Committee’s consideration of such transaction or omitted material information from information submitted to the Committee;⁵⁰ or (ii) a party to, or the entity resulting from consummation of, such transaction materially breaches a mitigation agreement or other

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condition imposed in connection with the conclusion of action under Part 721, the lead department or agency monitoring compliance certifies such breach to the Committee, and the Committee determines that there are no other adequate and appropriate remedies or enforcement tools available to address such breach.

Excepted investor transactions. Where a foreign person qualified as an excepted investor at the time of a transaction, a member of the Committee may file an agency notice with respect to that transaction up to three years after the completion date of such transaction if (i) the foreign person is no longer an excepted investor because the foreign person no longer meets all of the applicable excepted investor criteria (excluding, with respect to a foreign entity, the 10 percent test and the minimum excepted ownership test) (see Part I(A)(2)(b)(i), above), (ii) no action under Section 721 has previously been concluded with respect to such transaction, and (iii) the member has reason to believe that the transaction is a covered transaction and may raise national security considerations. If such an agency notice is filed more than one year after the completion date of the transaction, such notice will only be accepted if the CFIUS Chairperson determines, in consultation with other members of the Committee, that, because the foreign person no longer meets all the applicable excepted investor criteria, the transaction may threaten to impair the national security of the United States.

Non-notified transactions. A member of the Committee may file an agency notice with respect to a transaction if the member has reason to believe the transaction is a covered transaction and no action under Section 721 has previously been concluded with respect to such transaction.

C. FINALITY OF CFIUS ACTION

As a general matter, any transaction with respect to which (i) the Committee has advised the parties the transaction is not a covered transaction, (ii) the Committee has concluded action under Section 721, or (iii) the President has previously announced his or her decision not to exercise his or her authority under Section 721 is not subject to further Committee review of that particular transaction. Exceptions to this rule exist (and the Committee may thus re-review the transaction) where (a) a party to the transaction is determined to have made a material misstatement or omission in connection with the Committee's review of the transaction, or (b) the Committee previously advised the parties that the transaction is not a covered transaction, but a party that was an excepted investor at that time no longer meets the applicable excepted investor criteria (see Section (B)(3) above).

Transactions that were not notified to the Committee or that fit within one of the exceptions noted above remain subject indefinitely to unilateral CFIUS review, and with it, the Committee's authority to require mitigation measures and the President's authority to require divestment.

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- ¹ For additional information regarding FIRRMA and prior FIRRMA-related rulemakings, please see our Memoranda to Clients entitled *FIRRMA Significantly Expands CFIUS Jurisdiction and Makes Certain Transactions Subject to Mandatory Declarations; Significant Details to Follow in Forthcoming Regulations* (Aug. 7, 2018), available at <https://www.sullcrom.com/cfius-reformthe-foreign-investment-risk-review-modernization-act-of-2018>; *New Pilot Program Pursuant to Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) Will Require Filings With CFIUS for Controlling or Non-controlling Investments in Specified Critical Technologies Companies* (Oct. 18, 2018), available at <https://www.sullcrom.com/mandatory-cfius-filings-for-critical-technology-investments> (the “Pilot Program Memorandum”); and *Treasury Proposes CFIUS Regulations to Implement Reforms Enacted Under the Foreign Investment Risk Review Modernization Act of 2018* (Oct. 7, 2019), available at <https://www.sullcrom.com/treasury-proposes-regulations-to-implement-cfius-reforms-under-firma>.
- ² The Regulations are intended to fully implement the provisions of FIRRMA with the exception of the Committee’s authority to impose filing fees, which will be the subject of a future rulemaking. In addition, certain rules relating to transactions involving a critical technologies business are contemplated to be supplemented or revised in the near future, as discussed herein.
- ³ The definition of control includes a non-exclusive list of “important matters” affecting an entity, including:
- (1) the sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business;
 - (2) the reorganization, merger, or dissolution of the entity;
 - (3) the closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the entity;
 - (4) major expenditures or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity;
 - (5) the selection of new business lines or ventures that the entity will pursue;
 - (6) the entry into, termination, or non-fulfillment by the entity of significant contracts;
 - (7) the policies or procedures of the entity governing the treatment of non-public technical, financial, or other proprietary information of the entity;
 - (8) the appointment or dismissal of officers or senior managers or, in the case of a partnership, the general partner;
 - (9) the appointment or dismissal of employees with access to critical technology or other sensitive technology or classified U.S. Government information; or
 - (10) the amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of the entity with respect to the matters described in items (1)-(9).
- ⁴ In this context, “unaffiliated” means a TID U.S. business in which 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.
- ⁵ “Material nonpublic technical information” is defined to mean “information that is not available in the public domain, and is necessary to design, fabricate, develop, test, produce or manufacture a critical technology, including processes, techniques, or methods” as well as information that “provides knowledge, know-how, or understanding, in each case not available in the public domain, of the design, location, or operation of covered investment critical infrastructure, including vulnerability information such as that related to physical security or cybersecurity.” Treasury’s release accompanying the issuance of the part 800 Regulations (the “Part 800 Release”) clarified

ENDNOTES (CONTINUED)

that “[m]aterial nonpublic technical information may include, but is not limited to, information necessary to reverse engineer a component of a company’s product. Conversely, information that is readily accessible to people with no connections to the TID U.S. business is likely in the public domain and therefore not material nonpublic technical information.” The Regulations exclude financial information regarding the performance of an entity from this definition.

6 The Regulations define “substantive decisionmaking” as “the process through which decisions regarding significant matters affecting an entity are undertaken,” and provides a non-exclusive list of decisionmaking areas that are captured, which cover a wide range of strategic and operational decisions of the U.S. business, including decisions related to pricing and sales; licensing or other transfer of sensitive personal data; supply arrangements; corporate strategy and business development; research and development, including location and budget allocations; manufacturing locations; access by customers, vendors or joint venture partners to critical technologies, covered investment critical infrastructure, material nonpublic technical information or sensitive personal data; physical and cybersecurity protocols; practices, policies, and procedures governing the collection, use and storage of sensitive personal data; and strategic partnerships. The Regulations provide that the term “substantive decisionmaking” does not include strictly administrative decisions.

7 83 Fed. Reg. 58201 (Nov. 19, 2018).

8 The Part 800 Release noted that the subset of critical infrastructure identified in Appendix A to part 800 is not intended to alter the definition of “critical infrastructure” as used in any other regulatory regime or context. Thus, for purposes of covered control transactions, the broader definition of “critical infrastructure” (“systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security”) applies, but for “covered investments” the narrower definition (“covered investment critical infrastructure”) applies.

9 “Identifiable data” does not include “aggregated data” (data that has been combined or collected in such a way that it cannot be used to identify an individual), “anonymized data” (data from which all personal identifiers have been completely removed) or “encrypted data” (data to which National Institute of Standards and Technology-allowed cryptographic techniques have been applied). However, aggregated data or anonymized data will constitute “identifiable data” if any party to the transaction has, or as a result of the transaction will have, the ability to disaggregate or de-anonymize the data, or if the data is otherwise capable of being used to distinguish or trace an individual’s identity, and encrypted data will be deemed “identifiable data” if the U.S. business has the means to de-encrypt the data so as to distinguish or trace an individual’s identity.

10 The release provides that the intent of the provision is to capture information collected by consumer reporting agencies, such as an individual’s credit score or summaries of debts and payment histories, but to exclude from the scope of the definition a limited set of information about an individual’s credit provided by a consumer reporting agency, such as a credit score, for the legitimate purposes described in the Fair Credit Reporting Act.

11 The release explains that, for example, email communications between a U.S. business and its own customers would not be covered. Rather, the intent of the provision is to describe the situation where a U.S. business offers email, chat, or messaging services, a primary purpose of which is to allow third parties to communicate with each other.

12 The term “targets or tailors” is defined as “customizing products or services for use by a person or group of persons or actively marketing to or soliciting a person or group of persons.” The Regulations provide examples illustrating the meaning of the term as applied to particular facts. Pursuant to those examples, a U.S. business that operates facilities throughout the United States that offer healthcare-related products and services which has some facilities within metropolitan areas that also include U.S. military facilities will not be targeting or tailoring its products and services, absent additional relevant facts; however, if that U.S. business operates a facility on the premises of a U.S. military base, it will be deemed to be targeting or tailoring its products or

ENDNOTES (CONTINUED)

- services. Another set of examples illustrate that if a U.S. business offers a discount solely to uniformed U.S. military personnel, as opposed to public sector employees more broadly, or if the U.S. business distributes marketing materials that promote the particular usefulness of its products to military personnel, it will be deemed to be targeting or tailoring under the proposed definition.
- 13 The transaction-specific milestones are the events listed in section 104(b) of the part 800 Regulations:
- the completion date;
 - the parties' execution of a binding written agreement, or other binding document, establishing the material terms of the transaction;
 - a party's public offer to shareholders to buy shares of a U.S. business; or
 - a shareholder's solicitation of proxies in connection with an election of the board of directors of a U.S. business or an owner or holder of contingent equity interest has requested the conversion of the contingent equity interest.
- 14 This prong does not apply if the U.S. business can demonstrate that at the time of the completion date of the transaction it had or will have neither the capability to maintain nor the capability to collect any identifiable data within one or more of the specified categories on greater than one million individuals. 31 CFR § 800.241(a)(1)(i)(B).
- 15 An interim rule issued in connection with the Regulations defines "principal place of business" as "the primary location where an entity's management directs, controls, or coordinates the entity's activities, or, in the case of an investment fund, where the fund's activities and investments are primarily directed, controlled, or coordinated by or on behalf of the general partner, managing member, or equivalent." Treasury requested comment on this interim rule, in particular with respect to whether the definition of "principal place of business" provides adequate clarity concerning investment funds managed and controlled by U.S. persons. Comments on the interim rules are due on February 18, 2020.
- 16 The Regulations state that "foreign persons who are related, have formal or informal arrangements to act in concert, or are agencies or instrumentalities of, or controlled by, the national or subnational governments of a single foreign state are considered part of a group of foreign persons and their individual ownerships are aggregated."
- 17 The Regulations define "minimum excepted ownership" as (i) with respect to an entity whose equity securities are primarily traded on an exchange in an excepted foreign state or the United States, a majority of the entity's voting interest, the right to a majority of its profits, and the right in the event of dissolution to a majority of its assets, and (ii) with respect to an entity whose equity securities are not primarily traded on an exchange in an excepted foreign state or the United States, ownership of 80 percent or more of the entity's voting interest, the right to 80 percent or more of its profits, and the right in the event of dissolution to 80 percent or more of its assets.
- 18 Treasury's release accompanying the issuance of the part 802 Regulations (the "Part 802 Release") noted that this two-year delayed effectiveness period is intended to provide these initial eligible foreign states time to ensure that their national security-based foreign investment review processes and bilateral cooperation with the United States on national security-based investment reviews meet the requirement under the second criterion.
- 19 The Part 802 Release clarified that, in order for these states to remain excepted foreign states after February 13, 2022, the Committee must make a determination with respect to the second criterion for each foreign state.
- 20 The following violations are covered: (1) receiving a written finding of violation or penalty notice imposing a civil monetary penalty from the Department of the Treasury's Office of Foreign Assets Control ("OFAC"), or entering into a settlement agreement with OFAC with respect to apparent violations of U.S. sanctions laws administered by OFAC, including, without limitation, the

ENDNOTES (CONTINUED)

- International Emergency Economic Powers Act, the Trading With the Enemy Act, the Foreign Narcotics Kingpin Designation Act or of any executive order, regulation, order, directive, or license issued pursuant thereto; (2) receiving a written notice of debarment from the Department of State's Directorate of Defense Trade Controls, as described in 22 CFR parts 127 and 128; (3) being a respondent or party in a final order, including a settlement order, issued by the Department of Commerce's Bureau of Industry and Security (BIS) regarding violations of U.S. export control laws administered by BIS, including, without limitation, the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115–232, 132 Stat. 2208, 50 U.S.C. 4801 *et seq.*), the Export Administration Regulations (15 CFR parts 730–774), or of any executive order, regulation, order, directive or license issued pursuant thereto; or (4) receiving a final decision from the Department of Energy's National Nuclear Security Administration imposing a civil penalty with respect to a violation of section 57 b. of the Atomic Energy Act of 1954, as implemented under 10 CFR part 810.
- 21 See 15 CFR Part 744. The Entity List is set forth in Supplement No. 4 to part 744 of the Export Administration Regulations, and the Unverified List is set forth in Supplement No. 6 to Part 744 of the Export Administration Regulations.
- 22 The Part 802 Release emphasized that Part 802 is not the exclusive domain for transactions involving real estate. A transaction involving real estate could potentially be a covered transaction under part 800 of the Regulations. For example, a concession arrangement under which a lessee makes substantially all business decisions concerning the operation of a leased entity, as if it were the owner, could be subject to part 800 instead of part 802. Any transaction that could result in control of a U.S. business by a foreign person remains subject to the part 800 regulations, and is not a covered real estate transaction, even if real estate is a component of the transaction.
- 23 The term “purchase” means “an arrangement conveying an ownership interest of real estate to a person in exchange for consideration.”
- 24 The term “lease” means “an arrangement conveying a possessory interest in real estate, short of ownership, to a person for a specified time and in exchange for consideration” and includes subleases.
- 25 The term “concession” means “an arrangement, other than a purchase or lease, whereby a U.S. public entity grants a right to use real estate for the purpose of developing or operating infrastructure for an airport or maritime port.” The term includes assignment of a concession by a party who is not the U.S. public entity. U.S. public entity for this purpose essentially includes any level of government in the United States, whether federal, state or local.
- 26 Treasury has made information available on the CFIUS webpage to assist the public in navigating to the relevant lists maintained by the Department of Transportation. See <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-real-estate-instructions-part-802>.
- 27 The Regulations include a definition of the term “military installation,” which is a list of armed forces-related areas, sites and facilities. Appendix A to part 802 of the Regulations is provided “to assist the public in identifying the specific sites that meet the definition of ‘military installation’.”
- 28 While the structure of the Regulations provides for coverage around other facilities or properties of the U.S. Government that are sensitive for national security reasons, no such facilities or properties are identified at this time. However, Treasury has noted that the Department of Defense will continue on an ongoing basis to assess its military installations and the geographic scope set under the Regulations to ensure appropriate application in light of national security considerations, and that it anticipates updating Appendix A to part 802, as appropriate, through notices published in the Federal Register.
- 29 These include certain Air Force bases, annexes and stations; certain Army bases and other facilities; certain facilities of the Office of the Secretary of Defense and Defense Advanced Research Projects Agency; long range radar sites in certain specified U.S. locations; major range and test facility base activities as defined in 10 U.S.C. 196; Marine Corps bases and air stations;

ENDNOTES (CONTINUED)

- certain military ranges as defined in 10 U.S.C. 101(e)(1); certain naval bases and air stations; and naval surface, air, and undersea warfare centers and research laboratories.
- 30 These include U.S. Army combat training centers in the continental United States; certain major range and test facility base activities; certain U.S. Navy or Air Force military ranges; and joint forces training centers located in specified states.
- 31 An “urbanized area” consists of “a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have a minimum population of at least 50,000 individuals.”
- 32 An “urban cluster” consists of “a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have at least 2,500 individuals but fewer than 50,000 individuals.
- 33 The exception applies only to the extent that the lease or concession is in furtherance of the foreign person’s activities as a foreign air carrier, and only if the Department of Homeland Security, Transportation Security Administration has accepted a security program under 49 CFR 1546.105 with respect to such foreign air carrier.
- 34 This exception covers, for example, retail trade, accommodation, food service, and car rental and parking establishments.
- 35 See 31 CFR 800.304(f).
- 36 The Regulations provide that, where the Committee accepts such a notice or declaration, and a party to the transaction is a foreign person that makes loans in the ordinary course of business, the Committee will take into account whether the foreign person has made any arrangements to transfer management decisions or day-to-day control over the U.S. business (in the case of a transaction involving an investment in a U.S. business), or ownership and property rights over the covered real estate (in the case of a real estate transaction that does not involve an investment in a U.S. business), to U.S. nationals or excepted investors or excepted real estate investors (as applicable), for purposes of determining whether the loan or financing arrangement constitutes a covered transaction.
- 37 This exception applies where the foreign lender (or lenders) in the syndicate (i) needs the majority consent of the U.S. participants in the syndicate to take action, and cannot on its own initiate any action vis-a-vis the debtor, and (ii) does not have a lead role in the syndicate, and is subject to a provision in the loan or financing documents limiting its ability to acquire control (as defined in the Regulations) over the debtor or obtain any Covered Investment Rights with respect to the debtor.
- 38 Specifically: (i) the advisory board or committee may not have the ability to control investment decisions of the fund or decisions made by the general partner related to entities in which the fund is invested; (ii) the foreign person may not otherwise have the ability to control the fund, including the authority to approve, disapprove or otherwise control investment decisions of the investment fund and decisions made by the general partner; and (iii) the foreign person may not have the power to unilaterally dismiss, prevent the dismissal of, select or determine the compensation of the general partner.
- 39 For additional information regarding the Pilot Program Regulations, see our Pilot Program Memorandum.
- 40 The specified events are:
- The completion date (unless prior to October 11, 2018, (i) the parties to the transaction executed a binding written agreement or other document establishing the material terms of the transaction, (ii) a party made a public offer to shareholders to buy shares of the pilot program U.S. business that is the subject of the transaction, or (iii) a shareholder solicited proxies in connection with and election of the board of directors of the pilot program U.S. business that is the subject of the transaction);

ENDNOTES (CONTINUED)

- The parties to the transaction executed a binding written agreement or other document establishing the material terms of the transaction;
- A party made a public offer to shareholders to buy shares of the pilot program U.S. business that is the subject of the transaction; or
- A shareholder solicited proxies in connection with an election of the board of directors of the pilot program U.S. business that is the subject of the transaction or has requested the conversion of convertible voting securities thereof.

41 See 32 CFR Part 2004. Such mitigation may include a security control agreement, special security agreement, voting trust agreement, or proxy agreement approved by a cognizant security agency.

42 Specifically: (i) the advisory board or committee may not have the ability to control investment decisions of the fund or decisions made by the general partner related to entities in which the fund is invested; (ii) the foreign person may not otherwise have the ability to control the fund, including the authority to approve, disapprove or otherwise control investment decisions of the investment fund and decisions made by the general partner; and (iii) the foreign person may not have the power to unilaterally dismiss, prevent the dismissal of, select or determine the compensation of the general partner.

43 See 15 CFR 740.17. License Exception ENC authorizes export, reexport, and transfer (in-country) of systems, equipment, commodities, and components relating to certain encryption technology.

44 See 31 CFR 800.502.

45 CFIUS requests this certification when it is preparing to conclude its review or investigation of a notified transaction. The chief executive officer or other duly authorized designee of each party to the notice must certify as to the notice's compliance with Section 721 and the Regulations, and to the material accuracy and completeness of all information provided to the Committee regarding the transaction and the certifying party.

46 Pursuant to the Regulations, the Committee must accept a notice on the business day after the Staff Chairperson has (i) confirmed that the notice complies with the Regulations' information requirements and (ii) disseminated the notice to all members of the Committee. 31 CFR 800.503.

47 See 31 CFR 800.404.

48 See footnote 45, above.

49 The Regulations require that the CFIUS Chairperson "promptly" inspect the declaration and notify the parties of acceptance.

50 A party that submitted a declaration or notice with a material misstatement or omission may also be liable for a civil penalty of up to \$250,000 per violation.

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Exhibit A

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
<p>(i) Any:</p> <p>(a) internet protocol network that has access to every other internet protocol network solely via settlement-free peering; or</p> <p>(b) telecommunications service or information service, each as defined in section 3(a)(2) of the Communications Act of 1934, as amended (47 U.S.C. 153), or fiber optic cable, in each case that directly serves any military installation identified in § 802.227.</p>	<p>(i) Own or operate any:</p> <p>(a) internet protocol network that has access to every other internet protocol network solely via settlement-free peering; or</p> <p>(b) telecommunications service or information service, each as defined in section 3(a)(2) of the Communications Act of 1934, as amended (47 U.S.C. 153), or fiber optic cable, in each case that directly serves any military installation identified in § 802.227.</p>
<p>(ii) Any internet exchange point that supports public peering.</p>	<p>(ii) Own or operate any internet exchange point that supports public peering.</p>
<p>(iii) Any submarine cable system requiring a license under section 1 of the Cable Landing License Act of 1921 (47 U.S.C. 34), 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.</p>	<p>(iii) Own or operate any submarine cable system requiring a license under section 1 of the Cable Landing License Act of 1921 (47 U.S.C. 34), 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.</p>
<p>(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 this appendix A.</p>	<p>(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 this appendix A.</p>
<p>(v) Any data center that is collocated at a submarine cable landing point, landing station, or termination station.</p>	<p>(v) Own or operate any data center that is collocated at a submarine cable landing point, landing station, or termination station.</p>
<p>(vi) Any satellite or satellite system providing services directly to the Department of Defense or any component thereof.</p>	<p>(vi) Own or operate any satellite or satellite system providing services directly to the Department of Defense or any component thereof.</p>
<p>(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, as amended (41 U.S.C. 104), 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, as amended (10 U.S.C. 2430), or a Major System, as defined in 10 U.S.C. 2302d, as amended, and:</p> <p>(a) the U.S. business is a “single source,” “sole source,” or “strategic multisource,” to the extent</p>	<p>(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, as amended (41 U.S.C. 104), 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, as amended (10 U.S.C. 2430), or a Major System, as defined in 10 U.S.C. 2302d, as amended, and:</p>

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Column 1 – Covered investment critical infrastructure	Column 2 – Functions related to covered investment critical infrastructure
<p>the U.S. business has been notified of such status; or</p> <p>(b) the industrial resource:</p> <p>(1) requires 12 months or more to manufacture; or</p> <p>(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.</p>	<p>(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</p> <p>(b) the industrial resource:</p> <p>(1) requires 12 months or more to manufacture; or</p> <p>(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.</p>
<p>(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, as amended (41 U.S.C. 104), that is manufactured under a “DX” priority rated contract or order under the Defense Priorities and Allocations System regulation (15 CFR part 700, as amended) in the preceding 24 months.</p>	<p>(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, as amended (41 U.S.C. 104), under a “DX” priority rated contract or order under the Defense Priorities and Allocations System regulation (15 CFR part 700, as amended) within 24 months of the transaction in question.</p>
<p>(ix) Any facility in the United States that manufactures:</p> <p>(a) specialty metal, as defined in section 842(a)(1)(i) of the John Warner National Defense Authorization Act for Fiscal Year 2007, as amended (10 U.S.C. 2533b);</p> <p>(b) covered material, as defined in 10 U.S.C. 2533c, as amended;</p> <p>(c) chemical weapons antidote contained in automatic injectors, as described in 10 U.S.C. 2534, as amended; or</p> <p>(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.</p>	<p>(ix) Manufacture any of the following in the United States:</p> <p>(a) specialty metal, as defined in section 842(a)(1)(i) of the John Warner National Defense Authorization Act for Fiscal Year 2007, as amended (10 U.S.C. 2533b);</p> <p>(b) covered material, as defined in 10 U.S.C. 2533c, as amended;</p> <p>(c) chemical weapons antidote contained in automatic injectors, as described in 10 U.S.C. 2534, as amended; or</p> <p>(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.</p>
<p>(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:</p> <p>(a) Defense Production Act of 1950 Title III program, as amended (50 U.S.C 4501 <i>et seq.</i>);</p> <p>(b) Industrial Base Fund under section 896(b)(1) of the Ike Skelton National Defense Authorization</p>	<p>(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:</p> <p>(a) Defense Production Act of 1950 Title III program, as amended (50 U.S.C. 4501 <i>et seq.</i>);</p> <p>(b) Industrial Base Fund under section 896(b)(1) of the Ike Skelton National Defense Authorization</p>

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Column 1 – Covered investment critical infrastructure	Column 2 – Functions related to covered investment critical infrastructure
<p>Act for Fiscal Year 2011, as amended (10 U.S.C. 2508);</p> <p>(c) Rapid Innovation Fund under section 1073 of Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as amended (10 U.S.C. 2359a);</p> <p>(d) Manufacturing Technology Program under 10 U.S.C. 2521, as amended;</p> <p>(e) Defense Logistics Agency Warstopper Program, as described in DLA Instruction 1212, Industrial Capabilities Program – Manage the WarStopper Program; or</p> <p>(f) Defense Logistics Agency Surge and Sustainment contract, as described in Subpart 17.93 of the Defense Logistics Acquisition Directive.</p>	<p>Act for Fiscal Year 2011, as amended (10 U.S.C. 2508);</p> <p>(c) Rapid Innovation Fund under section 1073 of Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as amended (10 U.S.C. 2359a);</p> <p>(d) Manufacturing Technology Program under 10 U.S.C. 2521, as amended;</p> <p>(e) Defense Logistics Agency Warstopper Program, as described in DLA Instruction 1212, Industrial Capabilities Program – Manage the WarStopper Program; or</p> <p>(f) Defense Logistics Agency Surge and Sustainment contract, as described in Subpart 17.93 of the Defense Logistics Acquisition Directive.</p>
<p>(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, as amended (16 U.S.C. 824o(a)(1)).</p>	<p>(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, as amended (16 U.S.C. 824o(a)(1)).</p>
<p>(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.</p>	<p>(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.</p>
<p>(xiii) Any facility that provides electric power generation, transmission, distribution, or storage directly to or located on any military installation identified in § 802.227.</p>	<p>(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 § 802.227.</p>
<p>(xiv) Any industrial control system utilized by:</p> <p>(a) system comprising the bulk-power system as described above in item (xi) of column 1 of this appendix A; or</p> <p>(b) a facility directly serving any military installation as described above in item (xiii) of column 1 of this appendix A.</p>	<p>(xiv) Manufacture or service any industrial control system utilized by:</p> <p>(a) system comprising the bulk-power system as described above in item (xi) of column 1 of this appendix A; or</p> <p>(b) a facility directly serving any military installation as described above in item (xiii) of column 1 of this appendix A.</p>
<p>(xv) Any:</p> <p>(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</p>	<p>(xv) Own or operate:</p> <p>(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</p>

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Column 1 – Covered investment critical infrastructure	Column 2 – Functions related to covered investment critical infrastructure
(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.	(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.
<p>(xvii) Any:</p> <p>(a) liquefied natural gas (LNG) import or export terminal requiring:</p> <p>(1) approval under section 3(e) of the Natural Gas Act, as amended (15 U.S.C. 717b(e)), or</p> <p>(2) a license under section 4 of the Deepwater Port Act of 1974, as amended (33 U.S.C. 1503); or</p> <p>(b) natural gas underground storage facility or LNG peak-shaving facility requiring a certificate of public convenience and necessity under section 7 of the Natural Gas Act, as amended (15 U.S.C. 717f).</p>	<p>(xvii) Own or operate any:</p> <p>(a) liquefied natural gas (LNG) import or export terminal requiring:</p> <p>(1) approval under section 3(e) of the Natural Gas Act, as amended (15 U.S.C. 717b(e)), or</p> <p>(2) a license under section 4 of the Deepwater Port Act of 1974, as amended (33 U.S.C. 1503); or</p> <p>(b) natural gas underground storage facility or LNG peak-shaving facility requiring a certificate of public convenience and necessity under section 7 of the Natural Gas Act, as amended (15 U.S.C. 717f).</p>
(xviii) Any financial market utility that the Financial Stability Oversight Council has designated as systemically important under section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (12 U.S.C. 5463).	(xviii) Own or operate any financial market utility that the Financial Stability Oversight Council has designated as systemically important under section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (12 U.S.C. 5463).
<p>(xix) Any exchange registered under section 6 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78f), 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:</p> <p>(a) with respect to all national market system securities that are not options, 10 percent or more of the average daily dollar volume reported by applicable transaction reporting plans; or</p> <p>(b) with respect to all listed options, 15 percent or more of the average daily dollar volume reported by applicable national market system plans for reporting transactions in listed options.</p>	<p>(xix) Own or operate any exchange registered under section 6 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78f), 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:</p> <p>(a) with respect to all national market system securities that are not options, 10 percent or more of the average daily dollar volume reported by applicable transaction reporting plans; or</p> <p>(b) with respect to all listed options, 15 percent or more of the average daily dollar volume reported by applicable national market system plans for reporting transactions in listed options.</p>
(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.

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Column 1 – Covered investment critical infrastructure	Column 2 – Functions related to covered investment critical infrastructure
(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 (b) directly serves the strategic petroleum reserve, as defined in section 152 of the Energy Policy and Conservation Act, as amended (42 U.S.C. 6232).	(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 (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, as amended (42 U.S.C. 6232).
(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 this appendix A; or (b) an interstate natural gas pipeline as described above in item (xxiii) of column 1 of this appendix A.	(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 this appendix A; or (b) an interstate natural gas pipeline as described above in item (xxiii) of column 1 of this appendix A.
(xxv) Any airport identified in § 802.210(a)(1) through (3).	(xxv) Own or operate any airport identified in § 802.210(a)(1) through (3).
(xxvi) Any: (a) maritime port identified in § 802.210(a)(4) or (5); or (b) any individual terminal at such maritime ports.	(xxvi) Own or operate any: (a) maritime port identified in § 802.210(a)(4) or (5); 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, as amended (42 U.S.C. 300f(4)(A)), or treatment works, as defined in section 212(2)(A) of the Clean Water Act, as amended (33 U.S.C. 1292(2)), which: (a) regularly serves 10,000 individuals or more, or (b) directly serves any military installation identified in § 802.227.	(xxvii) Own or operate any public water system, as defined in section 1401(4) of the Safe Drinking Water Act, as amended (42 U.S.C. 300f(4)(A)), or treatment works, as defined in section 212(2)(A) of the Clean Water Act, as amended (33 U.S.C. 1292(2)), which: (a) regularly serves 10,000 individuals or more, or (b) directly serves any military installation identified in § 802.227.

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Column 1 – Covered investment critical infrastructure	Column 2 – Functions related to covered investment critical infrastructure
(xxviii) Any industrial control system utilized by a public water system or treatment works as described above in item (xxvii) of column 1 of this appendix A.	(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 this appendix A.

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Exhibit B

Appendix B to part 800—Industries

Industry	NAICS Code
Aircraft Manufacturing	<i>NAICS Code: 336411</i>
Aircraft Engine and Engine Parts Manufacturing	<i>NAICS Code: 336412</i>
Alumina Refining and Primary Aluminum Production	<i>NAICS Code: 331313</i>
Ball and Roller Bearing Manufacturing	<i>NAICS Code: 332991</i>
Computer Storage Device Manufacturing	<i>NAICS Code: 334112</i>
Electronic Computer Manufacturing	<i>NAICS Code: 334111</i>
Guided Missile and Space Vehicle Manufacturing	<i>NAICS Code: 336414</i>
Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing	<i>NAICS Code: 336415</i>
Military Armored Vehicle, Tank, and Tank Component Manufacturing	<i>NAICS Code: 336992</i>
Nuclear Electric Power Generation	<i>NAICS Code: 221113</i>
Optical Instrument and Lens Manufacturing	<i>NAICS Code: 333314</i>
Other Basic Inorganic Chemical Manufacturing	<i>NAICS Code: 325180</i>
Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing	<i>NAICS Code: 336419</i>
Petrochemical Manufacturing	<i>NAICS Code: 325110</i>
Petrochemical Manufacturing Powder Metallurgy Part Manufacturing	<i>NAICS Code: 332117</i>
Power, Distribution, and Specialty Transformer Manufacturing	<i>NAICS Code: 335311</i>
Primary Battery Manufacturing	<i>NAICS Code: 335912</i>
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	<i>NAICS Code: 334220</i>
Research and Development in Nanotechnology	<i>NAICS Code: 541713</i>
Research and Development in Biotechnology (except Nanobiotechnology)	<i>NAICS Code: 541714</i>
Secondary Smelting and Alloying of Aluminum	<i>NAICS Code: 331314</i>
Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing	<i>NAICS Code: 334511</i>
Semiconductor and Related Device Manufacturing	<i>NAICS Code: 334413</i>
Semiconductor Machinery Manufacturing	<i>NAICS Code: 333242</i>
Storage Battery Manufacturing	<i>NAICS Code: 335911</i>
Telephone Apparatus Manufacturing	<i>NAICS Code: 334210</i>
Turbine and Turbine Generator Set Units Manufacturing	<i>NAICS Code: 333611</i>

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Exhibit C

Appendix A to Part 802—List of Military Installations and Other U.S. Government Sites

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

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Site Name	Location
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

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Site Name	Location
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
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

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Site Name	Location
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 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

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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

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Part 3

Site Name	County	Township/Range
90 th Missile Wing Francis E. Warren Air Force Base Missile Field (Colorado, Nebraska, and Wyoming)	Logan, CO	All lands except those located south of Township 8 North and east of Range 51 West using the Bureau of Land Management's Public Lands Survey System
	Morgan, CO	All lands located north of Township 3 North using the Bureau of Land Management's Public Lands Survey System
	Sedgwick, CO	All lands except those located east of Range 46 West using the Bureau of Land Management's Public Lands Survey System
	Washington, CO	All lands located north of Township 4 North, and west of Range 52 West using the Bureau of Land Management's Public Lands Survey System
	Weld, CO	All lands located north of Township 4 North, and east of Range 64 West using the Bureau of Land Management's Public Lands Survey System
	Banner, NE	All
	Cheyenne, NE	All
	Deuel, NE	All lands located south of Township 15 North, and west of Range 43 West using the Bureau of Land Management's Public Lands Survey System
	Garden, NE	All lands located south of Township 19 North, and west Range 43 West using the Bureau of Land Management's Public Lands Survey System
	Kimball, NE	All
	Morrill, NE	All lands except those located north of Township 21 North using the Bureau of Land Management's Public Lands Survey System
	Scotts Bluff, NE	All
	Sioux, NE	All lands except those located north of Township 26 North, and east of Range 57 West using the Bureau of Land Management's Public Lands Survey System
	Goshen, WY	All lands except those located

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Site Name	County	Township/Range
		north of Township 27 North using the Bureau of Land Management's Public Lands Survey System
	Laramie, WY	All lands except those located south of Township 14 North, and west of Range 64 West using the Bureau of Land Management's Public Lands Survey System
	Platte, WY	All lands except those located north of Township 27 North using the Bureau of Land Management's Public Lands Survey System
341 st Missile Wing Malmstrom Air Force Base Missile Field (Montana)	Blaine, MT	All lands except those located north of Township 24 North using the Bureau of Land Management's Public Lands Survey System
	Cascade, MT	All
	Chouteau, MT	All lands except those located north of Township 24 North, and east of Range 8 East using the Bureau of Land Management's Public Lands Survey System
	Fergus, MT	All lands except those located east of Range 26 East using the Bureau of Land Management's Public Lands Survey System
	Glacier, MT	All lands located south of Township 35 North, and east of Range 7 West, using the Bureau of Land Management's Public Lands Survey System
	Golden Valley, MT	All lands except those located south of Township 11 North, and east of Range 20 East using the Bureau of Land Management's Public Lands Survey System
	Judith Basin, MT	All
	Lewis and Clark, MT	All lands except those located south of Township 14 North using the Bureau of Land Management's Public Lands Survey System
	Liberty, MT	All lands except those located north of Township 31 North, and east of Range 5 East using the Bureau of Land Management's Public Lands Survey System
	Meagher, MT	All lands except those located south of Township 12 North,

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Site Name	County	Township/Range
		and west of Range 9 East using the Bureau of Land Management's Public Lands Survey System
	Musselshell, MT	All lands located north of Township 10 North, and west of Range 23 East using the Bureau of Land Management's Public Lands Survey System
	Petroleum, MT	All lands located west of Range 27 East using the Bureau of Land Management's Public Lands Survey System
	Phillips, MT	All lands located south of Township 23 North, and west of Range 25 East using the Bureau of Land Management's Public Lands Survey System
	Pondera, MT	All lands except those located west of Range 9 West, using the Bureau of Land Management's Public Lands Survey System
	Stillwater, MT	All lands located north of Township 3 North, and west of Range 20 East using the Bureau of Land Management's Public Lands Survey System
	Sweet Grass, MT	All lands located north of Township 3 North, and east of Range 12 East using the Bureau of Land Management's Public Lands Survey System
	Teton, MT	All lands except those located west of Range 10 West using the Bureau of Land Management's Public Lands Survey System
	Toole, MT	All lands except those located north of Township 34 North using the Bureau of Land Management's Public Lands Survey System
	Wheatland, MT	All
91 st Missile Wing Minot Air Force Base Missile Field (North Dakota)	Bottineau, ND	All lands except those located east of Range 77 West using the Bureau of Land Management's Public Lands Survey System
	Burke, ND	All lands except those located west of Range 93 West using the Bureau of Land Management's Public Lands Survey System
	Dunn, ND	All lands located north of

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Site Name	County	Township/Range
		Township 148 North, using the Bureau of Land Management's Public Lands Survey System
	McHenry, ND	All lands except those located north of Township 156 North, and east of Range 80 West using the Bureau of Land Management's Public Lands Survey System
	McKenzie, ND	All lands located east of Range 95 West, using the Bureau of Land Management's Public Lands Survey System
	McLean, ND	All lands except those located south of Township 145 North using the Bureau of Land Management's Public Lands Survey System
	Mercer, ND	All lands located north of Township 145 North, east of Range 90 West, using the Bureau of Land Management's Public Lands Survey System
	Mountrail, ND	All
	Pierce, ND	All lands located south of Township 155 North, west of Range 72 West using the Bureau of Land Management's Public Lands Survey System
	Renville, ND	All
	Sheridan, ND	All lands except those located south of Township 148 North, and east of Range 78 West using the Bureau of Land Management's Public Lands Survey System
	Ward, ND	All lands except those located north of Township 155 North, and east of Range 83 West using the Bureau of Land Management's Public Lands Survey System
	Williams, ND	All lands located south of Township 158 North, and east of Range 96 West using the Bureau of Land Management's Public Lands Survey System

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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