

CFIUS Frequently Asked Questions

These questions and answers highlight key issues and topics related to the procedures and practices of CFIUS. They are intended only as general information to assist parties that have submitted or may in the future submit transactions to CFIUS for assessment or review. Transaction parties must comply with the full legal requirements concerning foreign investment into the United States as set forth in applicable statutes, Executive Orders, and implementing regulations, which can be found [here](#).

Table of Contents

I. General Information on CFIUS Reviews

1. What are the most common reasons for notices being determined to be incomplete?
2. What steps can be taken with respect to information required by 31 C.F.R. § 800.502 to further facilitate CFIUS review?
3. Even if not required under 31 C.F.R. § 800.404, is there additional information about items subject to the EAR that parties should consider providing?
4. What steps, though not required for a notice to be determined complete, may facilitate CFIUS's review?
5. How can parties accurately and completely report all classified contracts as required by 31 C.F.R. § 800.502(c)(3)(iii)?
6. Will Day 1 of the 45-day review period be the day after I submit the notice?
7. Are parties required to pay a filing fee?

II. Background Information on FIRRMA

1. What is FIRRMA?
2. Why was FIRRMA necessary?
3. Does CFIUS focus solely on national security? Does FIRRMA expand CFIUS's ability to address risks beyond national security to include economic issues?
4. To whom does the new legislation apply? Is it country-specific?
5. How does FIRRMA affect investment from countries that are allies and partners of the United States?
6. Is the United States still open to foreign investment?
7. Can foreign investors still invest in the United States' technology industry?
8. Did FIRRMA change CFIUS's timeline for reviews?
9. Did FIRRMA change CFIUS's timeline for investigations?
10. Are stipulations accepted? What is the effect of a stipulation?

III. Post-FIRRMA Regulations

A. General

1. Why did the Department of the Treasury issue the FIRRMA regulations?
2. When did the FIRRMA regulations become effective?

3. How do the regulations support the United States' policy of being open to foreign investment?
4. How do the final FIRRMA regulations differ from the proposed regulations issued in September 2019?
5. Does Treasury anticipate that it will make additional revisions to the regulations in the future or issue other rules?

B. Control Transactions

1. Do the FIRRMA regulations change CFIUS's jurisdiction over transactions that could result in control of a U.S. business by a foreign person?

C. Country Specification

1. Do the regulations treat investors from certain countries differently?
2. How did Treasury determine the eligible foreign states under the regulations? Will the list be revised in the future?
3. How long does an "excepted foreign state" and "excepted real estate foreign state" have to meet the factors that the Committee will consider when making a determination regarding an eligible foreign state's national security-based foreign investment review processes and bilateral cooperation?
4. What factors will CFIUS consider in making a determination regarding an eligible foreign state's national security-based foreign investment review processes and bilateral cooperation with the United States on national security-based investment review?
5. Does every foreign person based in an "excepted foreign state" or "excepted real estate foreign state" qualify as an "excepted investor" or "excepted real estate investor" as applicable?
6. Are "excepted investors" subject to CFIUS jurisdiction for control transactions?

D. Sensitive Personal Data

1. Is personally identifiable information (PII) the same as sensitive personal data under the regulations?

E. Declarations

1. For what type of transactions can parties submit a declaration?
2. How do the regulations address the pilot program on critical technologies that became effective in November 2018?

F. Real Estate

1. In what locations are real estate transactions covered by the regulations on real estate?
2. Will the Department of the Treasury publish a tool to help the public interpret the scope of the new real estate regulations?

3. Are all real estate transactions covered if they fall within the specific geographic areas described in the regulations?
4. Do the regulations cover the sale or lease of residential property?
5. Are all real estate transactions in urbanized areas excluded from the regulations?
6. Where can I find more information on urbanized areas and urban clusters?
7. Is there a mandatory notification requirement for real estate transactions?

IV. Case Management System

A. General

1. Why did CFIUS implement the CMS?

B. Using the CMS

1. How will I know that my submission of information to CFIUS through the CMS was successful?
2. What should I do if I have a question regarding the CMS?
3. Do I submit responses to CFIUS information requests through the CMS?
4. Do I need to submit draft notices through the CMS?
5. How is a filing fee submitted with a notice through the CMS?
6. Is an ID.me account needed to submit a filing fee?
7. How will I know if my submission of a filing fee is successful?
8. What should I do if the payment status says “Payment Failed”?

C. Uploading Information Through the CMS

1. How do restricted uploads work?
2. Are there limits on file sizes?
3. Can I upload a document instead of filling out a portion of the web form?
4. What file formats can the CMS accept?
5. Will CFIUS begin to review the information saved in the form before it is submitted?

D. Party Administration

1. What is a Filing Admin?
2. What is a Payor?
3. How do I remove someone from a filing in the CMS?

E. Pre-FIRRMA Transactions

1. Certain aspects of my transaction occurred prior to February 13, 2020, according to the applicability rule at 31 C.F.R. §§ 800.104 or 802.104. Do I need to submit information to CFIUS through the CMS?

Definitions and Common Acronyms in These FAQs

CFIUS or **the Committee**: Committee on Foreign Investment in the United States

CMS: Case Management System

EAR: Export Administration Regulations

FIRRMA: Foreign Investment Risk Review Modernization Act of 2018

FINSA: Foreign Investment & National Security Act of 2007

ITAR: International Traffic in Arms Regulations

NISPOM: National Industrial Security Program Operating Manual

Section 721: Section 721 of the Defense Production Act of 1950, as amended

I. General Information on CFIUS Reviews

1. What are the most common reasons for notices being determined to be incomplete?

Notices are determined to be incomplete for multiple reasons, commonly including:

- Unclear description of business lines – the notice must provide a clear and detailed account of each company’s products and services;
- Unclear description of the transaction – the notice must clearly describe all entities involved in the transaction and the nature and structure of the transaction;
- Absence of geographic location(s) of the U.S. business – the notice must clearly describe the U.S. business with addresses and/or geographic coordinates for all U.S. properties and facilities; and
- Absence of a certification – all notices must be certified correctly (in accordance with the certification [template](#) at the Committee’s section of the Department of the Treasury website and 31 C.F.R. §§ 800.204 or 802.202) to be deemed complete.

2. What steps can be taken with respect to information required by 31 C.F.R. § 800.502 to further facilitate CFIUS review?

Suggestions include:

- Sections 800.502(c)(1)(iii) and (v) require submission of information related to the foreign person and its parents. CFIUS’s review would be aided if the notice identifies whether the actual party in interest is the party to the transaction or one of the parents of the party to the transaction. CFIUS does not consider special purpose vehicles, wholly-owned subsidiaries established for the sole purpose of the transaction, or other shell companies to be the actual parties in interest in a transaction.

- Sections 800.502(c)(3)(iii) and (iv) require information regarding certain U.S. Government contracts. Parties are advised to update and verify U.S. Government contact information for the contracting officials of such contracts. Private sector entities not party to the notice are not acceptable points-of-contact for contracts in question.

3. Even if not required under 31 C.F.R. § 800.404, is there additional information about items subject to the EAR that parties should consider providing?

Pursuant to the regulations at 31 C.F.R. part 800, a declaration must include a statement as to whether the U.S. business produces, designs, tests, manufactures, fabricates, or develops one or more “critical technologies,” a term defined at 31 C.F.R. § 800.215 to include, *inter alia*, certain items controlled under the EAR. If applicable, the declaration must also include a description of each such critical technology and the Export Control Classification Numbers (ECCN).

Note that some items may be listed on the Commerce Control List (CCL), but are not critical technologies under the CFIUS definition. While not required, parties may include information about such items as part of the declaration submission. Parties may also state whether the items that the U.S. business produces, designs, tests, manufactures, fabricates, or develops are designated as EAR99. Inclusion of this information may avoid the need for the Committee to pose follow-up questions on these items during the assessment period and may facilitate a more efficient process.

4. What steps, though not required for a notice to be determined complete, may facilitate CFIUS’s review?

CFIUS has found it very helpful in the past for transaction parties to provide the following additional information, even if the activity is not the primary focus of their commercial operations. CFIUS often requests this information after a voluntary notice has been accepted if it was not included in the initial filing.

- a. Cyber systems, products, services: Identify whether the U.S. business that is the subject of the transaction develops or provides cyber systems, products, or services, including:
 - i. Business systems used to manage or support common business processes and operations (for example, enterprise resource planning, e-commerce, email, and database systems); control systems used to monitor, assess, and control sensitive processes and physical functions (for example, supervisory control, data acquisition, and process and distributed control systems); safety, security, support, and other specialty systems (for example, fire, intrusion detection, access control, people mover, and heating, ventilating, and air conditioning systems); or
 - ii. Telecommunications and/or Internet or similar systems, products or services.

- b. Natural resources: Identify whether the U.S. business that is the subject of the transaction processes natural resources and material or produces and transports energy, and the amount processed, produced, or transported annually.

It may also be useful to discuss the business rationale for the transaction in the notice.

Lastly, CFIUS's regulations require parties to provide information regarding any other applicable national security-related regulatory authorities, such as the ITAR, EAR, and NISPOM. Some of the regulatory review processes under these authorities may have longer deadlines than the CFIUS process, and parties to transactions affected by these other reviews may wish to start or complete these processes prior to submitting a voluntary notice to CFIUS under Section 721.

5. How can parties accurately and completely report all classified contracts as required by 31 C.F.R. § 800.502(c)(3)(iii)?

The notice should identify all classified contracts, subcontracts, purchase orders, lease agreements, service agreements, etc. ("classified contracts"), that contain a "Security Requirements Clause" (FAR 52.204-2 or similar clause) or include a Contract Security Classification Specification (DD Form 254). The clause identifies the contract as involving classified information, and the DD Form 254 provides classification guidance. Therefore, parties should report each contract that contains a Security Requirements Clause, has a DD Form 254, requires or will require access to classified information by a contractor or its personnel in the performance of the contract, or requires the contractor or its personnel to have security clearances. Note that a contract may be a classified contract (in that the nature of the subject goods or services to be performed under the contract are classified) even though the contract document itself is not classified.

6. Will Day 1 of the 45-day review period be the day after I submit the notice?

Pursuant to 31 C.F.R. §§ 800.503 and 802.503, "Day 1" is the date on which the Staff Chairperson accepts a voluntary notice, which occurs the next business day after the Staff Chairperson has: (1) determined that the notice complies with § 800.502 (or § 802.502, as applicable); confirmed that the applicable filing fee has been received, or waived; and (3) disseminated the notice to all members of the Committee. The time that it takes for the Staff Chairperson to accept a voluntary notice after it has been submitted by the parties depends upon a variety of factors, including the notice itself and whether parties have submitted a draft notice before submitting the formal notice.

7. Are parties required to pay a filing fee?

Voluntary notices filed with the Committee generally require payment of a filing fee. Declarations do not require payment of a filing fee. See the CFIUS [Filing Fees page](#) for more information.

II. Background Information on FIRREA

1. What is FIRRMA?

On August 13, 2018, the President signed into law the Foreign Investment Risk Review Modernization Act of 2018, or FIRRMA. FIRRMA strengthens and modernizes CFIUS, a multi-agency government body chaired by the Secretary of the Treasury that reviews foreign investment for national security considerations.

2. Why was FIRRMA necessary?

By modernizing CFIUS, FIRRMA strengthens the government's ability to protect national security while preserving the longstanding open investment policy of the United States. At its core, FIRRMA expands the scope of transactions reviewable by CFIUS to address more effectively current national security concerns. CFIUS was last updated more than a decade prior to FIRRMA's enactment and its jurisdiction had remained unchanged in the 30 years since Congress passed the Exon-Florio Amendment, which created Section 721 of the Defense Production Act of 1950, the statutory cornerstone of CFIUS. Both the nature of foreign investments in the United States and the national security landscape have shifted significantly since then.

3. Does CFIUS focus solely on national security? Does FIRRMA expand CFIUS's ability to address risks beyond national security to include economic issues?

CFIUS remains focused exclusively on national security. CFIUS examines the effects of a transaction and assesses the impact of those effects on the national security of the United States. Section 721, as amended by FIRRMA, helps CFIUS protect our national security from emerging risks.

4. To whom does the new legislation apply? Is it country-specific?

Like prior CFIUS legislation, FIRRMA does not single out investors from any specific country. CFIUS's authorities may be applied to address the national security risks posed by foreign investment in the United States, regardless of where the investment originates. Investors from certain countries may qualify as "excepted investors" based on whether they meet specified criteria in the CFIUS regulations. Meeting these criteria may exempt certain investors from CFIUS jurisdiction over certain transactions, or from mandatory filing requirements. For further information, refer to the [Excepted Foreign States](#) page.

5. How does FIRRMA affect investment from countries that are allies and partners of the United States?

The United States has a longstanding open investment policy, and we maintain strong relationships with our allies and partners on investment. FIRRMA strengthens these relationships by enabling the United States to work more closely with allies and partners on national security issues related to foreign investment. This enhances confidence in investments made by those allies and partners in the United States now and in the future.

6. Is the United States still open to foreign investment?

The United States welcomes foreign investment and is the best place to invest worldwide due to its strong economic growth policies, innovation ecosystem, and highly developed market. The CFIUS process, as modernized and strengthened by FIRRMA, enhances confidence in the nation's longstanding open investment policy by continuing to restrict only those foreign investments that pose national security concerns.

7. Can foreign investors still invest in the United States' technology industry?

The United States welcomes foreign investment in the technology industry and maintains a strong commitment to the rule of law and the protection of intellectual property. The United States provides unique opportunities to tap into advanced research and innovation and a skilled workforce. Pursuant to Section 721, as amended by FIRRMA, CFIUS will continue to assess on a case-by-case basis whether a particular transaction (regardless of industry) poses a risk to U.S. national security.

8. Did FIRRMA change CFIUS's timeline for reviews?

Yes. The timeline for CFIUS reviews changed upon enactment of FIRRMA. The review period for any notice accepted after FIRRMA became effective is a maximum of 45 days, rather than 30 days. If an investigation is required, it will commence no later than the end of the 45-day review period prescribed by FIRRMA.

9. Did FIRRMA change CFIUS's timeline for investigations?

Yes. The timeline for investigations has been updated to allow the Secretary of the Treasury to grant one 15-day extension (*i.e.*, extending investigations from 45 to 60 days) in "extraordinary circumstances."

10. Are stipulations accepted? What is the effect of a stipulation?

Yes. In general, a stipulation could expedite review and action by CFIUS because it may streamline certain aspects of CFIUS's review. It may also result in fewer follow-up questions from the Committee. Parties submitting a stipulation should be aware that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is covered under the relevant regulations and/or a foreign government-controlled transaction; parties making a stipulation waive the right to challenge any such determination. Additionally, neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under Section 721 with respect to any covered transaction.

III. Post-FIRRMA Regulations

A. General

1. Why did the Department of the Treasury issue the FIRRMA regulations?

The rules published in the Federal Register in 2020 finalize the regulations relating to FIRRMA. The Department of the Treasury previously published proposed versions of the regulations, on which it received comments from the public. The regulations implement changes that FIRRMA made to CFIUS's jurisdiction and review process. For more information on the implementing regulations, refer to the [CFIUS Laws and Guidance](#) page.

2. When did the FIRRMA regulations become effective?

Final regulations implementing FIRRMA took effect on February 13, 2020. Regulations implementing a CFIUS filing fee took effect on May 1, 2020. A revision to the regulations concerning mandatory declarations was made effective October 15, 2020. Additional information on CFIUS's legal authorities and regulations can be found on the [CFIUS Laws and Guidance](#) page.

3. How do the regulations support the United States' policy of being open to foreign investment?

The specificity provided in the regulations gives clarity to the business and investment communities with respect to the types of transactions that are covered by the Committee's new authority under FIRRMA. The CFIUS process, as modernized and strengthened by FIRRMA and these regulations, should enhance confidence in the nation's longstanding open investment policy.

4. How do the final FIRRMA regulations differ from the proposed regulations issued in September 2019?

The Department of the Treasury published proposed versions of the regulations in September 2019 and received comments from the public. Treasury made a number of revisions in response to the comments submitted during the comment period. The preambles to the final rules summarize these changes.

In response to written comments, the final rules update a number of provisions including by:

- adding a definition for "principal place of business;"
- modifying certain criteria to qualify as an "excepted investor;"
- clarifying the application of the "incremental acquisition rule;"
- adjusting the treatment of genetic data within the definition of "sensitive personal data;"
- refining the application to investment funds, including by amending the definition of "substantial interest;"
- modifying the exceptions for certain real estate transactions in airports and maritime ports; and
- refining the geographic coverage relating to certain military installations on appendix A to the real estate regulations.

The rules also include a number of additional illustrative examples and provide clarifying edits in the text of the provisions. Finally, the rule amending the part 800 regulations incorporates many of the provisions of the pilot program regarding critical technologies (published in October 2018), including the mandatory declaration requirement for certain covered transactions involving certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. The mandatory declaration requirement for certain critical technology related transactions was further revised by regulations effective October 15, 2020.

5. Does Treasury anticipate that it will make additional revisions to the regulations in the future or issue other rules?

Given the specificity of certain provisions of the rule, Treasury anticipates that it will periodically review, and when necessary amend, the regulations to address changes in technology and data use, as well as the evolving national security landscape more generally.

B. Control Transactions

1. Do the FIRRMA regulations change CFIUS’s jurisdiction over transactions that could result in control of a U.S. business by a foreign person?

No. CFIUS maintains its authority to review the potential national security effects of any transaction that could result in foreign control of any U.S. business. The regulations expand CFIUS’s jurisdiction over certain “non-controlling” transactions and certain real estate transactions.

C. Country Specification

1. Do the regulations treat investors from certain countries differently?

FIRRMA does not prohibit investments from any country, and investments from all foreign persons remain subject to CFIUS jurisdiction over transactions that could result in foreign control of a U.S. business. As required by FIRRMA, however, the regulations limit the application of CFIUS’s jurisdiction over non-controlling “covered investments” and certain real estate transactions by certain foreign persons, defined as “excepted investors,” from certain “excepted foreign states.” Any such eligible investor and foreign state must meet specific criteria to qualify for this status.

2. How did Treasury determine the eligible foreign states under the regulations? Will the list be revised in the future?

CFIUS has identified Australia, Canada, and the United Kingdom as the initial excepted foreign states and excepted real estate foreign states. CFIUS identified these countries due to certain aspects of their robust intelligence-sharing and defense industrial base integration mechanisms with the United States. Because this is a new concept with potentially

significant implications for U.S. national security, CFIUS initially identified a limited number of foreign states and may expand the list in the future.

3. How long does an “excepted foreign state” and “excepted real estate foreign state” have to meet the factors that the Committee will consider when making a determination regarding an eligible foreign state’s national security-based foreign investment review processes and bilateral cooperation?

As detailed in the regulations, from February 13, 2020 to February 13, 2022, the countries identified as eligible foreign states are considered “excepted foreign states” and “excepted real estate foreign states.” In order for each of these countries to remain excepted after the end of the two-year delayed effectiveness period (*i.e.*, February 13, 2022), the Committee must make a determination under 31 C.F.R. §§ 800.1001 or 802.1001, as applicable. This two-year 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 review meet the requirements under 31 C.F.R. §§ 800.1001 and 802.1001. The Committee takes no position on whether the foreign states currently meet the determination factors discussed above.

4. What factors will CFIUS consider in making a determination regarding an eligible foreign state’s national security-based foreign investment review processes and bilateral cooperation with the United States on national security-based investment review?

A list of factors [posted here](#) outlines what the Committee will consider when making a determination regarding an eligible foreign state’s national security-based foreign investment review processes and bilateral cooperation with the United States on national security-based investment reviews.

5. Does every foreign person based in an “excepted foreign state” or “excepted real estate foreign state” qualify as an “excepted investor” or “excepted real estate investor” as applicable?

Not necessarily. The regulations identify criteria that a foreign person must meet in order to qualify as an “excepted investor” or “excepted real estate investor” regarding, for example, its principal place of business, place of incorporation, and ownership. The regulations also identify criteria that would preclude a foreign person from qualifying as an excepted investor, such as non-compliance with the law.

6. Are “excepted investors” subject to CFIUS jurisdiction for control transactions?

Yes. CFIUS retains the authority to review a transaction that could result in foreign control of any U.S. business, regardless of whether the foreign person is an “excepted investor.” However, transactions involving excepted investors may be exempt from mandatory filing requirements under 31 C.F.R. § 800.401.

D. Sensitive Personal Data

1. Is personally identifiable information (PII) the same as sensitive personal data under the regulations?

“Sensitive personal data” is defined to include ten specified categories of data that may be maintained or collected by U.S. businesses. The categories of data include types of financial, geolocation, and health data, among others. Moreover, a U.S. business that maintains or collects these categories of data on U.S. citizens will only be considered to have sensitive personal data to the extent it (i) targets or tailors products or services to certain populations, including U.S. military members and employees of federal agencies with national security responsibilities, (ii) collects or maintains such data on at least one million individuals, or (iii) has a demonstrated business objective to maintain or collect such data on greater than one million individuals and such data is an integrated part of the U.S. business’s primary products or services. Genetic test information is also included in the definition regardless of whether it meets (i), (ii), or (iii).

E. Declarations

1. For what type of transactions can parties submit a declaration?

The regulations provide a short-form declaration as an alternative to CFIUS’s traditional voluntary notice. Declarations allow parties to submit basic information regarding a transaction that should generally not exceed five pages in length. Parties use the CMS to file declarations with the Department of the Treasury. In certain circumstances filing a declaration for a transaction is mandatory.

In particular, the regulations implement FIRRMA’s requirement that certain covered transactions where a foreign government is acquiring a “substantial interest” in specified types of U.S. businesses are subject to a mandatory declaration. Additionally, the regulations require the filing of a declaration for covered transactions involving certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. Parties may choose to file a notice instead of a declaration.

2. How do the regulations address the pilot program on critical technologies that became effective in November 2018?

The pilot program on critical technologies was in effect through February 12, 2020. It will continue to apply only to transactions for which specified actions were taken on or after the effective date of the pilot program and prior to February 13, 2020. Generally speaking, transactions involving critical technologies that occurred on or after February 13, 2020 should be analyzed under the regulations for part 800.

The rule published for part 800 incorporates many of the provisions of the pilot program on critical technologies, including the mandatory filing requirement for certain covered transactions involving critical technologies. The regulations concerning mandatory

declarations for certain critical technology transactions were revised effective October 15, 2020. Transaction parties should review the CFIUS regulations (including the applicability rule at 31 C.F.R. § 800.104) carefully to determine whether a transaction is subject to the mandatory declaration provisions.

F. Real Estate

1. In what locations are real estate transactions covered by the regulations on real estate?

The regulations on real estate are generally structured around specific sites—certain airports, maritime ports, and military installations—and specific geographic areas in and around those sites. Other facilities or properties of the U.S. Government may in the future be included in the list of sites identified in the rule.

2. Will the Department of the Treasury publish a tool to help the public interpret the scope of the new real estate regulations?

[The CFIUS Part 802 Geographic Reference Tool](#) was developed as a resource to help the public locate specific real estate in relation to the military installations associated with the regulations at 31 C.F.R. part 802 and listed in appendix A (parts 1 to 3) of the rule. This mapping tool allows users to input an address and determine the distance to certain military installations. This tool was developed to assist the public and is provided for reference only; it should not be interpreted as guidance or an advisory opinion by CFIUS with respect to any particular transaction.

Note that the mapping tool does not display the offshore areas identified in part 4 of appendix A to 31 C.F.R. part 802. Further, the tool does not display the covered ports (air and maritime ports) relevant to 31 C.F.R. part 802. Relevant information on the offshore areas and covered ports are available through other U.S. Government websites. Additional resources are available on the [CFIUS Real Estate webpage](#).

3. Are all real estate transactions covered if they fall within the specific geographic areas described in the regulations?

No. The regulations on real estate transactions exclude from CFIUS’s jurisdiction under 31 C.F.R. part 802 certain transactions based on characteristics of the foreign person, the transaction, and the real estate. The regulations include a section on “excepted real estate transactions” and exclude the following, subject to certain conditions:

- real estate transactions involving an excepted real estate investor;
- real estate transactions that are part of a “covered transaction” under the part 800 regulations (though such transaction may separately be subject to CFIUS’ jurisdiction under 31 C.F.R. part 800);
- real estate transactions in an “urbanized area” or “urban cluster,” as defined by the Census Bureau, except those relating to “covered ports” and those in “close proximity” to certain military installations;

- the purchase, lease, or concession of a single “housing unit,” as defined by the Census Bureau;
- the lease or concession of real estate in airports and maritime ports for the purpose of retail sales;
- the lease or concession of real estate in airports and maritime ports involving a foreign air carrier with a security program accepted by the Transportation Security Administration;
- the purchase, lease, or concession of certain commercial space in a multi-unit commercial building; and
- transactions involving real estate owned by Alaska Natives or held in trust by the United States for certain native populations.

4. Do the regulations cover the sale or lease of residential property?

FIRRMA excludes from CFIUS’s jurisdiction the purchase or lease by, or concession to, a foreign person of a single “housing unit,” as defined by the Census Bureau. Given that many single housing units are conveyed with adjoining land, the regulations on real estate also exclude any fixtures and adjacent land but only to the extent they are incidental to the intended use of the real estate as a housing unit. Fixtures and land may be considered incidental if their size and nature is common for similar single housing units in the locality in which the unit is located. If the incidental fixtures or land is not common for other similar housing units in the locality, the exception would apply only to the housing unit itself.

5. Are all real estate transactions in urbanized areas excluded from the regulations?

No, in certain locations, real estate transactions in urbanized areas are within the scope of the regulations. Specifically, transactions involving real estate that is in “close proximity” (one mile) to a military installation listed in part 1 or part 2 of appendix A to part 802 is covered, as is real estate that is, is located within, or will function as part of a “covered port.”

6. Where can I find more information on urbanized areas and urban clusters?

In addition to the [CFIUS Part 802 Geographic Reference Tool](#) referenced above, information on urbanized areas and urban clusters can be found on the Census Bureau Website, including through a Web-based system, TIGERweb, which allows users to select features such as urbanized areas and urban clusters, and view such attributes on a map.

7. Is there a mandatory notification requirement for real estate transactions?

No. The transactions described in the regulations on real estate are not subject to a mandatory declaration requirement. As a general matter, parties to a covered real estate transaction will decide whether to file a notice or submit a declaration to CFIUS.

IV. Case Management System

A. General

1. Why did CFIUS implement the CMS?

CFIUS implemented the CMS to allow parties to submit all transaction-related information through a single portal in a standard and secure manner. As of June 1, 2020, the CMS must be used to file any written notice or any declaration pursuant to 31 C.F.R. part 800 or 31 C.F.R. part 802.

B. Using the CMS

1. How will I know that my submission of information to CFIUS through the CMS was successful?

After submitting information through the CMS, you will receive a confirmation email. Active cases will also display on the dashboard module for easier management and additional submission confirmation.

2. What should I do if I have a question regarding the CMS?

Please first read the User Guide located [here](#). If the User Guide does not address your issue, or if you are encountering technical issues, contact CFIUS.itsupport@treasury.gov. For technical issues related to ID.me, click [here](#). For questions about the CFIUS process as it relates to the CMS or to provide feedback regarding the CMS, contact CFIUS.cms@treasury.gov.

3. Do I submit responses to CFIUS information requests through the CMS?

Parties will receive an information request from CFIUS via an email from Treasury staff, sent via the CMS. To make requested edits to a filing please return to the CMS portal and edit your submission there. To submit responses to other requests for information, simply reply to the email from the CMS. If you wish to reply confidentially, remove the individuals from the cc line that you do not wish to share your response with.

4. Do I need to submit draft notices through the CMS?

Yes. Parties should submit draft notices through the CMS portal. Submission of a draft notice aids the Committee's understanding of the transaction and provides an opportunity for the Committee to request additional information to be included in the notice, if necessary.

5. How is a filing fee submitted with a notice through the CMS?

Beginning on August 9, 2020, filing fees must be submitted through Pay.gov via the CMS portal. The [CFIUS Filing Fees](#) page contains information on filing fees and submission instructions. In addition, the CMS User Guide on the [CMS page](#) and the Payment Instructions document contain detailed information on how to submit a filing fee through the CMS portal. Because filing fees are submitted directly through the CMS portal, users do not

need to include a receipt with their formal filing; however, CFIUS recommends that users retain a copy of the receipt for recordkeeping purposes. CFIUS cannot accept a formal written notice until it has received the filing fee payment.

6. Is an ID.me account needed to submit a filing fee?

Yes. An ID.me account is necessary to access the CMS portal and pay the filing fee. Instructions to create an ID.me account are found on the [CMS page on the CFIUS website](#).

7. How will I know if my submission of a filing fee is successful?

Once a user submits a filing fee through the CMS portal, they will be taken to a “CFIUS – Payment Success” page. If a payment is successfully submitted to Pay.gov, the payment status will say “Payment Submitted – Pending Receipt.” Once the payment has cleared, the payment status will say “Payment Received,” indicating that the Pay.gov system has received the filing fee payment. If a payment is not successful, the payment status will say “Payment Failed.”

8. What should I do if the payment status says “Payment Failed”?

Users should contact Pay.gov at <https://www.pay.gov/public/home/contact>.

C. Uploading Information Through the CMS

1. How do restricted uploads work?

Documents, such as personal identifier information, that are not to be accessed by other individuals on a filing must be uploaded as a “Restricted Document.” If you upload a Restricted Document, then the uploader and CFIUS will be the only ones with access to the Restricted Document; no other individuals will be able to see the title of the Restricted Document.

2. Are there limits on file sizes?

Yes. The CMS accepts individual files up to 20 megabytes in size.

3. Can I upload a document instead of filling out a portion of the web form?

While certain fields of the web form require data for saving, processing, and submission, in order to streamline the efficiency of the CMS, parties are encouraged to upload Excel files for large spreadsheets. In addition, parties may upload confidential responses as a separate document and enter “see Exhibit #” in the web form. However, parties may not simply defer all responses to attachments when submitting a declaration or filing a notice. Treasury may reject declarations and request the refiling of notices that only reference attachments.

4. What file formats can the CMS accept?

The CMS accepts Excel, Word, and PDF files.

5. Will CFIUS begin to review the information saved in the form before it is submitted?

Information saved prior to submission is stored in the CMS web platform hosted by the Department of the Treasury. However, a CFIUS case officer will not begin review of the information until the draft or formal written notice has been submitted through the CMS.

D. Party Administration

1. What is a Filing Admin?

A filing admin is a user on a filing with permission to add or remove other users on the filing. A filing admin may add new users either as additional filing admins or as a non-admin user. Non-admin users can view all non-restricted uploads and submit the filing but cannot add or remove other users. The initial creator of a submission will always be a filing admin.

2. What is a Payor?

“Payor” is the designation given to a CMS user that only has permission to pay a filing fee. CMS users that are listed as contacts in a filing may designate a payor in instances when a person does not have a need to access the rest of the information contained in the CMS portal in connection with the filing of a notice. Contacts listed in a notice filing who are not designated as “Payors” may also submit the filing fee.

3. How do I remove someone from a filing in the CMS?

Individuals added to a filing through the CMS are given broad permissions, including the ability to view or edit most documents and submit the filing to CFIUS. If they are added as filing admins, they can also remove other users from a filing or add new users as filing admins. For this reason, please use discretion when determining which individuals to add and at what level of permission. You can remove yourself by going to the Participant Administration tab, finding your email address, clicking on the dropdown arrow, and selecting ‘Delete.’ A filing admin may also remove other users on the Participant Admin tab. If neither of these methods are available to you, email the designated case officer and CFIUS@treasury.gov to request assistance.

E. Pre-FIRMA Transactions

1. Certain aspects of my transaction occurred prior to February 13, 2020, according to the applicability rule at 31 C.F.R. §§ 800.104 or 802.104. Do I need to submit information to CFIUS through the CMS?

Yes. Parties who believe their transaction should be submitted to CFIUS under the pre-FIRRMA regulations according to the applicability rule should still submit their transaction through the CMS. This includes transactions submitted under the critical technology pilot program regulations at 31 C.F.R. part 801. There is no need to fill out the fields in the CMS for pre-FIRRMA transactions. Instead, parties should upload the declaration or notice and any other files using the “Upload Documents” function in the CMS. To submit a draft filing, no further action is needed, simply click “Submit Draft.” To submit a formal filing under the pre-FIRRMA regulations, please ask your case officer to waive the system’s field validation for you. Once your case officer confirms this has been done you can click the “Submit Formal” button to submit your formal filing.

Last updated on May 13, 2021.