



U.S. Department of the Treasury Office of Public Affairs

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Fact Sheet: Proposed Regulations Modifying the Definitions of Excepted Foreign State and Excepted Real Estate Foreign State

Background

As required by the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), the Committee on Foreign Investment in the United States (CFIUS) regulations limit the application of its jurisdiction over non-controlling “covered investments” and certain real estate transactions by certain foreign persons. These excepted persons are defined as “excepted investors” and “excepted real estate investors.” These investors are defined in part based on their close ties to certain “excepted foreign states” and “excepted real estate foreign states,” respectively.

The CFIUS regulations define excepted foreign state by a two-criteria conjunctive test, with delayed effectiveness for the second criterion. The first criterion is that CFIUS identify a foreign state as an eligible foreign state. The second criterion is that, by the end of the two-year delayed effectiveness period (*i.e.*, by February 13, 2022), CFIUS make a determination that an eligible foreign state has established and is effectively utilizing a robust process to analyze foreign investments and to facilitate bilateral cooperation with the United States on matters relating to investment security. The CFIUS regulations define excepted real estate foreign state through an analogous test two-criteria test, except that the second criterion is a determination that the foreign state has “made significant progress” in establishing and effectively utilizing the review process and coordination.

In 2020, CFIUS identified Australia, Canada, and the United Kingdom as the initial eligible foreign states. As detailed in the CFIUS regulations, these countries were deemed excepted foreign states and excepted real estate foreign states without regard to the determination criterion, which is not applicable until February 13, 2022.

Proposed Rulemaking

Today, the Department of the Treasury issued a proposed rule that would modify the definitions of excepted foreign state and excepted real estate foreign state. The proposed rule extends the effective date of the determination criterion in each definition by one year, to February 13, 2023. Under the new rule, until the new date, a CFIUS decision to identify a foreign state as an eligible excepted foreign state or an eligible excepted real estate foreign state is all that is needed for a foreign state to meet each respective definition. The second, determination criterion will not be an effective part of either definition until February 13, 2023. This extension is desirable given ongoing changes to foreign investment review regimes.

The proposed rule would make no change to any foreign state's status as an excepted foreign state or an excepted real estate foreign state.

The full text of the proposed rulemaking—including information on how to submit comments—can be found on the Department of the Treasury's website: <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.