

Thea D. Rozman Kendler,
Assistant Secretary for Export
Administration.

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DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 800

Determination Regarding Excepted Foreign States

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Determination.

SUMMARY: The Department of the Treasury, as Chair of the Committee on Foreign Investment in the United States, is publishing the Committee's determination that two foreign states have established and are effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

DATES: Effective January 5, 2022.

FOR FURTHER INFORMATION CONTACT:

Laura Black, Director of Investment Security Policy and International Relations, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622-3425; email: CFIUS.FIRRMA@treasury.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The list of excepted foreign states and additional information with respect to the Committee on Foreign Investment in the United States (CFIUS or the Committee) are available on the Committee's section of the Department of the Treasury website.

Notice of CFIUS Action

The Committee, taking into consideration the factors identified on the Committee's section of the Department of the Treasury website, has determined, under the authority of section 721 of the Defense Production Act of 1950, as amended, and 31 CFR 800.1001(a), that: (1) Australia has established and is effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security; and (2) Canada has established and is effectively utilizing a robust process to analyze foreign investments for national security risks

and to facilitate coordination with the United States on matters relating to investment security.

This determination satisfies the second criterion in the definition of excepted foreign state under 31 CFR 800.218 with respect to Australia and Canada. Therefore, Australia and Canada are and will remain excepted foreign states absent further Committee action and notice in the **Federal Register**.

Larry McDonald,

Acting Assistant Secretary for International Markets.

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DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Parts 800 and 802

Certain Investments in the United States by Foreign Persons and Certain Transactions by Foreign Persons Involving Real Estate in the United States

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule adopts without change the proposed rule modifying the definitions of "excepted foreign state" and "excepted real estate foreign state" by extending by one year the effective date of one of two criteria set forth in the definitions in the regulations implementing certain provisions of Section 721 of the Defense Production Act of 1950, as amended.

DATES: This final rule is effective on February 4, 2022.

FOR FURTHER INFORMATION CONTACT: For questions about this rule, contact: Laura Black, Director of Investment Security Policy and International Relations, Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations, or Richard Rowe, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622-3425; email: CFIUS.FIRRMA@treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Definitions of Excepted Foreign State and Excepted Real Estate Foreign State—Sections 800.218 and 802.214

On November 15, 2021, the Department of the Treasury (Treasury Department) published a proposed rule

amending the definitions of "excepted foreign state" and "excepted real estate foreign state" in 31 CFR part 800 and 31 CFR part 802, respectively. 86 FR 62978. These terms operate together with other relevant terms to provide an exception from the jurisdiction of the Committee on Foreign Investment in the United States (CFIUS or the Committee) over covered investments by certain foreign persons who meet specific criteria establishing sufficiently close ties to certain foreign states, as well as certain other provisions of the Foreign Investment Risk Review Modernization Act of 2018.

The preamble to the proposed rule provides background on CFIUS's statutory authority and the rationale for these definitional changes. The public was provided an opportunity to comment on the proposed rule and comments were due by December 10, 2021. The Treasury Department received two comments prior to the deadline, which are described in the next section.

B. Excepted Foreign States and Excepted Real Estate Foreign States

As described in the preamble to the proposed rule, "excepted foreign state" and "excepted real estate foreign state" are each defined by a two-criteria conjunctive test, with delayed effectiveness for the second criterion. This second criterion is a Committee determination under § 800.1001(a) for each eligible foreign state that it has established and "is effectively utilizing" a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security, and a Committee determination under § 802.1001(a) for each eligible foreign state that it has "made significant progress" toward establishing and effectively utilizing the robust process that is described in § 800.1001. The final rule extends the effectiveness of the second criterion with respect to each definition. Instead of becoming effective on February 13, 2022, each such second criterion will become effective on February 13, 2023.

II. Summary of Comments

During the public comment period, the Treasury Department received two comments to the proposed rule. The Treasury Department considered each submitted comment. All comments received by the end of the comment period are available on the public rulemaking docket at <https://www.regulations.gov> and addressed herein.