

INK LINK NEWS RESEARCH

Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) background

A CFIUS filing is the process of notifying the Committee on Foreign Investment in the United States (CFIUS) about a proposed foreign investment in a U.S. business

Under the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), mandatory CFIUS filing/review is only triggered when a transaction involving a Technology, Infrastructure, or Data U.S. business (“TID business”) involves either:

- (1) foreign government interest (i.e., when a foreign government has a voting interest of 49% or more in a foreign person, and that foreign person acquires a substantial interest in a TID US business), or
- (2) involves “critical technologies” as described in 31 C.F.R. § 800.215 (e.g., nuclear equipment, agents, and toxins).

Under FIRRMA, a TID Business is defined as any U.S. Business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies; performs functions that deal with critical infrastructure; and maintains or collects sensitive personal data of U.S.

Given that there is currently no public evidence that ties Nongfu Spring (the parent company of NF North America) to the Chinese Communist Party, and the transaction does not involve critical technologies as described in 31 C.F.R. § 800.215, it is unlikely that the acquisition would have triggered a *mandatory* CFIUS review.

However, CFIUS does retain the authority to review real estate acquisitions by foreign entities if they fall within a certain distance of covered military installations under 31 C.F.R. Part 802 Appendix A Part 1 (1 mile) and Part 2 (100 miles).

The property acquired by NF North America in Nashua, NH, is located within a 100-mile radius of Joint Base Cape Cod (a covered military installation under Part 2).

Notification to CFIUS of a covered real estate transaction by a foreign person is voluntary. Thus, while CFIUS may have jurisdiction to review a real estate transaction, the involved parties are not required to proactively submit notification of the real estate transaction to CFIUS for review.

Therefore, CFIUS *may* have reviewed the acquisition, even if the transaction did not trigger a mandatory filing. It is also possible that NF North America opted to submit a voluntary filing.