

**§ 800.901**

the Committee, or of the Chairperson's designee.

(e) The provisions of the Defense Production Act Reauthorization of 2003, as amended (50 U.S.C. 4555(d)) relating to fines and imprisonment shall apply with respect to the disclosure of information or documentary material filed with the Committee under these regulations.

**Subpart I—Penalties and Damages****§ 800.901 Penalties and damages.**

(a) Any person who submits a declaration or notice with a material misstatement or omission or makes a false certification under § 800.404, § 800.405, or § 800.502 may be liable to the United States for a civil penalty not to exceed \$250,000 per violation. The amount of the penalty imposed for a violation shall be based on the nature of the violation.

(b) Any person who fails to comply with the requirements of § 800.401 may be liable to the United States for a civil penalty not to exceed \$250,000 or the value of the transaction, whichever is greater. The amount of the penalty imposed for a violation shall be based on the nature of the violation.

(c) Any person who, after December 22, 2008, violates, intentionally or through gross negligence, a material provision of a mitigation agreement entered into before October 11, 2018, with, a material condition imposed before October 11, 2018, by, or an order issued before October 11, 2018, by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed \$250,000 per violation or the value of the transaction, whichever is greater. Any person who violates a material provision of a mitigation agreement entered into on or after October 11, 2018, with, a material condition imposed on or after October 11, 2018, by, or an order issued on or after October 11, 2018, by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed \$250,000 per violation or the value of the transaction, whichever is greater. For clarification, under the previous two sentences, whichever penalty amount is greater may be im-

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posed per violation, and the amount of the penalty imposed for a violation shall be based on the nature of the violation.

(d) A mitigation agreement entered into or amended under section 721(l) after December 22, 2008, may include a provision providing for liquidated or actual damages for breaches of the agreement. The mitigation agreement shall specify the amount of any liquidated damages that are a reasonable assessment of the harm to the national security that could result from a breach of the agreement. Any mitigation agreement containing a liquidated damages provision shall include a provision specifying that the Committee may consider the severity of the breach in deciding whether to seek a lesser amount than that stipulated in the agreement.

(e) A determination to impose penalties under paragraphs (a) through (c) of this section must be made by the Committee. Notice of the penalty, including a written explanation of the conduct to be penalized and the amount of the penalty, shall be sent to the subject person electronically and by U.S. mail or courier service. Notice shall be deemed to have been effected by the earlier of the date of electronic transmission and the date of receipt of U.S. mail or courier service. For the purposes of this section, the term *subject person* means the person or persons who may be liable to the United States for a civil penalty.

(f) Upon receiving notice of a penalty to be imposed under paragraphs (a) through (c) of this section, the subject person may, within 15 business days of receipt of such notice, submit a petition for reconsideration to the Staff Chairperson, including a defense, justification, or explanation for the conduct to be penalized. The Committee will review the petition and issue any final penalty determination within 15 business days of receipt of the petition. The Staff Chairperson and the subject person may extend either such period through written agreement. The Committee and the subject person may reach an agreement on an appropriate remedy at any time before the Committee issues any final penalty determination.

**Office of Investment Security, Treasury****§ 800.1002**

(g) The penalties and damages authorized in paragraphs (a) through (d) of this section may be recovered in a civil action brought by the United States in federal district court.

(h) Section 2 of the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001), shall apply to all information provided to the Committee under section 721, including by any party to a covered transaction.

(i) The penalties and damages available under this section are without prejudice to other penalties, civil or criminal, available under law.

(j) The imposition of a civil monetary penalty or damages under these regulations creates a debt due to the U.S. Government. The Department of the Treasury may take action to collect the penalty or damages assessed if not paid within the time prescribed by the Committee and notified to the applicable party or parties. In addition or instead, the matter may be referred to the Department of Justice for appropriate action to recover the penalty or damages.

**§ 800.902 Effect of lack of compliance.**

If, at any time after a mitigation agreement or condition is entered into or imposed under section 721(l), the Committee or a lead agency in coordination with the Staff Chairperson, as the case may be, determines that a party or parties to the agreement or condition are not in compliance with the terms of the agreement or condition, the Committee or a lead agency in coordination with the Staff Chairperson may, in addition to the authority of the Committee to impose penalties under section 721(h) and to unilaterally initiate a review of any covered transaction under section 721(b)(1)(D)(iii):

(a) Negotiate a plan of action for the party or parties to remediate the lack of compliance, with failure to abide by the plan or otherwise remediate the lack of compliance serving as the basis for the Committee to find a material breach of the agreement or condition;

(b) Require that the party or parties submit a written notice or declaration under clause (i) of section 721(b)(1)(C) with respect to a covered transaction initiated after the date of the deter-

mination of noncompliance and before the date that is five years after the date of the determination to the Committee to initiate a review of the transaction under section 721(b); or

(c) Seek injunctive relief.

**Subpart J—Foreign National Security Investment Review Regimes****§ 800.1001 Determinations.**

(a) The Committee may determine at any time that a foreign state 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.

(b) The Committee may rescind a determination under paragraph (a) of this section if the Committee determines that such a rescission is appropriate.

(c) The Chairperson of the Committee shall publish a notice of any determination or rescission of a determination under paragraph (a) or (b) of this section, respectively, in the *FEDERAL REGISTER*.

**§ 800.1002 Effect of determinations.**

(a) A determination under § 800.1001(a) shall take effect immediately upon publication of a notice of such determination under § 800.1001(c) and remain in effect unless rescinded under § 800.1001(b).

(b) A rescission of a determination under § 800.1001(b) shall take effect on the date specified in the notice published under § 800.1001(c).

(c) A determination under § 800.1001(a) does not apply to any transaction for which a declaration or notice has been accepted by the Staff Chairperson under § 800.405(a)(1) or § 800.503(a), respectively.

(d) A rescission of a determination under § 800.1001(b) does not apply to any transaction for which:

(1) The completion date is prior to the date upon which the rescission of a determination under paragraph (b) of this section becomes effective; or

(2) The following has occurred before publication of the rescission of determination under § 800.1001(c):