

**DEPARTMENT OF THE TREASURY****Office of Investment Security****31 CFR Part 800**

RIN 1505-AC64

**Provisions Pertaining to Certain Investments in the United States by Foreign Persons****AGENCY:** Office of Investment Security, Department of the Treasury**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would replace the current regulations that implement section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). While this proposed rule retains many provisions of the existing regulations, a number of substantive changes are proposed, primarily to implement FIRRMA.

**DATES:** Written comments must be received by October 24, 2019.

The Department of the Treasury is considering holding during the comment period a teleconference regarding the proposed rule for members of the public. Information about any public teleconference, including the date, time, and how to attend, will be published on the Department of the Treasury website at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

**ADDRESSES:** Written comments on this proposed rule may be submitted through one of two methods:

- *Electronic Submission:* Comments may be submitted electronically through the Federal government eRulemaking portal at <https://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department of the Treasury to make the comments available to the public. Please note that comments submitted through <https://www.regulations.gov> will be public, and can be viewed by members of the public.

- *Mail:* Send to U.S. Department of the Treasury, Attention: Thomas Feddo, Deputy Assistant Secretary for Investment Security, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

In general, the Department of the Treasury will post all comments to <https://www.regulations.gov> without change, including any business or personal information provided, such as names, addresses, email addresses, or

telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed rule, contact: Laura Black, Director of Investment Security Policy and International Relations; Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations; David Shogren, Senior Policy Advisor; or Alexander Sevald, 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](mailto:CFIUS.FIRRMA@treasury.gov).

**SUPPLEMENTARY INFORMATION:****I. Background***A. The Statute*

The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII of Public Law 115-232, 132 Stat. 2173, which amends section 721 (section 721) of the Defense Production Act of 1950, as amended (DPA), requires the issuance of regulations implementing its provisions. In Executive Order 13456, 73 FR 4677 (Jan. 23, 2008), the President directs the Secretary of the Treasury to issue regulations implementing section 721. This proposed rule is being issued pursuant to that authority.

FIRRMA was passed by Congress as H.R. 5515 and was enacted on August 13, 2018. Prior to the enactment of FIRRMA, section 721 authorized the President, acting through the Committee on Foreign Investment in the United States (CFIUS or the Committee), to review mergers, acquisitions, and takeovers by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States, to determine the effects of such transactions on the national security of the United States.

FIRRMA maintains the Committee's jurisdiction over any transaction which could result in foreign control of any U.S. business, and broadens the authorities of the President and CFIUS under section 721 to address national security concerns arising from certain investments and real estate transactions. Additionally, FIRRMA modernizes CFIUS's processes to better enable timely and effective reviews of transactions falling under its jurisdiction (which FIRRMA describes as "covered transactions"). In enacting

FIRRMA, Congress acknowledged the important role of foreign investment in the U.S. economy and reiterated its support of the United States' open investment policy, consistent with the protection of national security. A brief summary of key provisions of FIRRMA, as relevant for this rulemaking, follows.

FIRRMA expands and clarifies the jurisdiction of the Committee by explicitly adding four types of transactions as covered transactions in the DPA: (1) The purchase or lease by, or concession to, a foreign person of certain real estate in the United States; (2) non-controlling "other investments" that afford a foreign person an equity interest in and specified access to information in the possession of, rights in, or involvement in the decisionmaking of certain U.S. businesses involved in certain critical technologies, critical infrastructure, or sensitive personal data; (3) any change in a foreign person's rights if such change could result in foreign control of a U.S. business or an other investment in certain U.S. businesses; and (4) any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721. With respect to the Committee's expanded jurisdiction over certain real estate transactions and other investments, FIRRMA instructs the Committee to specify criteria to limit the application of that expansion of jurisdiction to certain categories of foreign persons. The proposed rule addresses all of these types of covered transactions except for real estate transactions, which are the subject of a separate and concurrent rulemaking.

In addition to expanding the Committee's jurisdiction, FIRRMA prescribes certain process changes. FIRRMA allows parties to submit an abbreviated filing for any covered transaction through a declaration, as an alternative to CFIUS's traditional voluntary notice, both of which are discussed below. Declarations will allow parties to submit basic information regarding a transaction in an abbreviated form that should generally not exceed five pages in length. FIRRMA also sets forth an abbreviated timeframe for the Committee to respond to submitted declarations.

FIRRMA introduces a mandatory declaration requirement in certain circumstances. Specifically, FIRRMA creates a mandatory declaration requirement for certain covered transactions where a foreign government has a substantial interest. Additionally, FIRRMA authorizes CFIUS to mandate

through regulations the submitting of a declaration for covered transactions involving certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. In both cases, parties have the option of filing a notice rather than submitting a declaration if they so choose.

FIRRMA also codifies certain processes related to the Committee's authority to identify non-notified and non-declared transactions.

FIRRMA permits a party to a transaction to stipulate that a transaction is a covered transaction and, as relevant, a foreign government-controlled transaction. A party can make a stipulation in either a notice or a declaration. If a party makes a stipulation in a notice, CFIUS must provide comments on or accept the notice no later than 10 business days after the date of the filing.

Additionally, FIRRMA extends the timing of the review period for transactions filed as notices from 30 days to 45 days and allows the Secretary of the Treasury to grant one 15-day extension of the 45-day investigation period in "extraordinary circumstances." These provisions were made effective in a rulemaking on October 11, 2018. 83 FR 51316. FIRRMA establishes a 30-day review period for transactions submitted as declarations. The notice and declarations processes are discussed in further detail below.

#### *B. Effective Date of Certain Provisions*

Congress divided FIRRMA's provisions into two categories: Those effective immediately and those that become effective no later than February 13, 2020.

Specifically, section 1727(a) of FIRRMA lists the provisions that became effective immediately upon enactment of the statute. A number of the immediately effective provisions required revisions to the CFIUS regulations existing at that time at part 800 of title 31 of the Code of Federal Regulations. On October 11, 2018, the Department of the Treasury published an interim rule implementing the immediately effective provisions of, and making updates consistent with, FIRRMA. 83 FR 51316. That interim rule was intended to provide clarity regarding the processes and procedures of the Committee pending the full implementation of FIRRMA. The interim rule provided for a public comment period of 30 days. One comment was received and is discussed below.

Section 1727(b) of FIRRMA delayed the effectiveness of any provision of

FIRRMA not specified in section 1727(a) until the earlier of: (1) The date that is 18 months after the date of enactment of FIRRMA (*i.e.*, February 13, 2020); or (2) the date that is 30 days after publication in the **Federal Register** of a determination by the chairperson of the Committee that the regulations, organizational structure, personnel, and other resources necessary to administer the new provisions are in place. The proposed regulations in this notice are intended to fully implement the provisions of FIRRMA, with the exception of (1) CFIUS's new jurisdiction over certain real estate transactions, (2) CFIUS's new authority to impose filing fees, and (3) CFIUS's authority to mandate declarations for certain transactions involving critical technologies, each of which is the subject of a separate rulemaking, as discussed below.

Notwithstanding section 1727(b), section 1727(c) of FIRRMA authorizes CFIUS to conduct one or more pilot programs to implement any authority provided pursuant to any provision of, or amendment made by, FIRRMA that did not take effect immediately upon enactment. On October 11, 2018, the Department of the Treasury published an interim rule setting forth the scope of, and procedures for, a pilot program to review certain transactions involving foreign persons and critical technologies (Pilot Program Interim Rule). 83 FR 51322. That Pilot Program Interim Rule, which went into effect on November 10, 2018, established mandatory declarations for certain transactions involving investments by foreign persons in certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. The Pilot Program Interim Rule provided for a public comment period of 30 days, and a number of comments were received. As discussed below, the Committee is still considering those comments and the scope of mandatory declarations for covered transactions involving critical technologies. The Department of the Treasury expects to address in the final rule the comments previously received on the Pilot Program Interim Rule and any new comments provided in response to this proposed rule.

#### *C. Structure of FIRRMA Rulemaking and This Proposed Rule*

Consistent with CFIUS processes generally, the proposed rule reflects extensive consultation with CFIUS member agencies, as well as other relevant agencies. The proposed rule retains many of the basic features of the existing regulations, while

implementing the changes that FIRRMA made to CFIUS's jurisdiction and process.

Given the number of revisions, the proposed rule amends and restates part 800 in its entirety. Although the new part 800 is being restated here in full, many of the provisions of the prior part 800 are not being materially modified. The Committee will consider all comments provided to the proposed rule, but is particularly interested in receiving comments relating to the new provisions and revisions being proposed here and outlined below, rather than comments relating to the text of part 800 that has not been changed.

In updating part 800 to incorporate CFIUS's new jurisdiction over non-controlling other investments (which this rule describes as "covered investments"), certain conforming edits were made to existing provisions. For example, the coverage section in subpart C of the proposed rule on "covered control transactions" is based on the "covered transactions" section in the existing part 800 regulations and provides examples of the different bases of jurisdiction over control transactions and covered investments. In that respect, there is also now a covered investment section within the coverage subpart for the new jurisdiction. Finally, the proposed rule incorporates the changes made to part 800 in the interim rule published in October 2018, and updates certain other provisions.

This proposed rule does not implement the authority FIRRMA provided to the Committee to review the purchase or lease by, or concession to, a foreign person of certain real estate in the United States. A concurrent proposed rule implements such authority under a separate part 802 within title 31 of the CFR. The Department of the Treasury determined that the technical and procedural aspects of CFIUS's review of transactions involving real estate are sufficiently distinct from those related to control transactions and covered investments to warrant separate rulemaking.

Parties should be aware that certain transactions that are not covered transactions under this proposed rule could potentially be covered real estate transactions under the proposed part 802 real estate regulations.

FIRRMA authorizes the Committee to assess and collect fees with respect to covered transactions for which a written notice is filed, and the Committee is considering how to implement this authority. The proposed rule also does not address filing fees. The Department of the Treasury will publish a separate

proposed rule regarding fees at a later date.

The proposed rule does not modify the regulations currently at 31 CFR part 801, which sets forth the Pilot Program Interim Rule. CFIUS continues to evaluate the Pilot Program Interim Rule, and the Department of the Treasury welcomes comments on the retention of the mandatory declaration aspect of the Pilot Program Interim Rule for certain transactions involving critical technologies. The Department of the Treasury received comments regarding the Pilot Program Interim Rule from a variety of commenters and expects to address these comments in the final rule associated with this proposed rule.

The proposed rule seeks to provide clarity to the business and investment communities with respect to the types of U.S. businesses that are covered under FIRRMA's other investment authority. Given the level of specificity provided in certain provisions of the proposed rule, the pace of technological development, the evolving use of data, and the evolving national security landscape more generally, the Department of the Treasury anticipates that it will periodically review, and as necessary, make changes to the regulations, consistent with applicable law.

## II. Discussion of Proposed Rule

### A. Subpart A—General

The following discussion describes several key changes to subpart A.

*Section 800.102—Risk-based analysis.* FIRRMA requires that any determination of the Committee to suspend a covered transaction, to refer a covered transaction to the President, or to negotiate, enter into or impose, or enforce any agreement or condition with respect to a covered transaction, be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered transaction, which must include an assessment of the threat, vulnerabilities, and consequences to national security related to the transaction. The proposed rule includes definitions of the terms “threat,” “vulnerabilities,” and “consequences to national security” used in risk-based analyses undertaken by the Committee.

*Section 800.104—Applicability rule.* The proposed rule clarifies the existing applicability rule. The proposed rule also removes the provision previously found at § 800.103(b)(4) that established applicability to a transaction based upon a Committee determination that a commitment had been made.

### B. Subpart B—Definitions

Several key changes to the existing part 800 definitions and several key new definitions that are broadly applicable to both control transactions and covered investments are discussed immediately below. Certain new definitions that are applicable to specific substantive areas regarding covered investments are discussed in the applicable subsections below.

*Section 800.203—Business day.* The proposed rule modifies the definition for “business day” to exclude days where there U.S. Office of Personnel Management has announced the closure of Federal offices in the Washington, DC area. The proposed rule also addresses the impact on certain timing requirements where a submission is received after 5 p.m. (Eastern Time).

*Section 800.206—Completion date.* The proposed rule includes a definition for “completion date.” The proposed rule clarifies that, in the event that a covered transaction will be effectuated through multiple or staged closings, the completion date is the earliest date on which any transfer of interest or change in rights that constitutes a covered transaction occurs.

*Section 800.207—Contingent equity interest.* FIRRMA uses the term “contingent equity interest” in the definition of investment. The proposed rule eliminates the term “convertible voting instrument” in the existing part 800 in light of the new definition of “contingent equity interest.” The proposed rule also updates the references in the timing rule at § 800.308.

*Section 800.214—Critical infrastructure.* The proposed rule revises the definition for “critical infrastructure” to conform to the language in FIRRMA. As discussed further below, however, for the purposes of an other investment, FIRRMA requires CFIUS to specify a subset of critical infrastructure.

*Section 800.252—U.S. business.* The proposed rule revises the definition for “U.S. business” to conform to the definition in FIRRMA.

### C. Covered Investments

The proposed rule implements CFIUS's authority, provided under FIRRMA, to review an investment by a foreign person in certain types of U.S. businesses that affords the foreign person certain access to information in the possession of, rights in, or involvement in the decisionmaking of certain U.S. businesses but that does not afford the foreign person control over the U.S. business. The proposed rule

uses the term “covered investments” for these investments, as defined in § 800.211.

The types of access, rights, or involvement that could give rise to a covered investment are set forth in § 800.211(b). That section implements the definitions in FIRRMA describing transactions that afford the foreign person (1) access to material non-public technical information in the possession of the U.S. business, (2) membership or observer rights on the board of directors (or equivalent body) of the U.S. business, or (3) any involvement in substantive decisionmaking of the U.S. business regarding certain actions related to critical technologies, critical infrastructure, or sensitive personal data. The proposed rule further defines “material non-public technical information” (see § 800.233) and “substantive decisionmaking” (see § 800.245).

The types of businesses in which an investment may constitute a covered investment are those that have certain involvement in critical technologies, critical infrastructure, and sensitive personal data, as further described below and in the proposed rule. These businesses are referred to as “TID U.S. businesses” in the proposed rule (see § 800.248). “TID” is an acronym for Technology, Infrastructure, and Data. FIRRMA, moreover, limits such covered investments to those made in an unaffiliated business. Thus, the proposed rule adds a definition for “unaffiliated TID U.S. business,” which excludes entities in which the foreign person already holds a majority of the voting interest or the right to appoint the majority of the entity's board or equivalent governing body.

Notably, CFIUS retains jurisdiction over any transaction through which any foreign person could acquire control of any U.S. business, regardless of whether the transaction involves critical technology, critical infrastructure, or sensitive personal data.

In connection with the new jurisdiction over covered investments, FIRRMA requires that the Committee prescribe regulations to limit its application to the investments of certain categories of foreign persons. This proposed rule implements this requirement by “excepting” certain foreign persons from the provisions relating to covered investments if the foreign persons meet specified criteria. It also includes clarifications contained in FIRRMA regarding the treatment of certain investments through investment funds and an exception specified in FIRRMA for investments involving air carriers.

### 1. Covered Investments Involving Critical Technology

FIRRMA expands CFIUS's jurisdiction to include covered investments by a foreign person in an unaffiliated U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies.

*Section 800.215—Critical technologies.* The proposed rule defines “critical technologies” consistent with the language in FIRRMA. Subpart (f) of FIRRMA's definition of critical technology, as set out in this proposed rule, captures emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (ECRA), Subtitle B of Title XVII of Public Law 115–232. Pursuant to ECRA, the Bureau of Industry and Security within the Department of Commerce identifies and places export controls on specified emerging and foundational technologies. As technologies become controlled pursuant to rulemaking under ECRA, they will automatically be covered under the definition of “critical technologies” under part 800.

As noted above, CFIUS will continue to have authority to review any transaction that could result in control by a foreign person of any U.S. business, including a U.S. business with technology, critical or otherwise, and export controlled or otherwise.

### 2. Covered Investments Involving Critical Infrastructure

FIRRMA expands CFIUS's jurisdiction to include covered investments by a foreign person in an unaffiliated U.S. business that “owns, operates, manufactures, supplies, or services critical infrastructure.” FIRRMA requires that the regulations implementing this provision limit the application of covered investment jurisdiction to a subset of critical infrastructure that must be specified in the regulations. Moreover, FIRRMA specifically provides that any definition of “critical infrastructure” established under any provision of law other than section 721 is not determinative for the purposes of section 721, including this proposed rule. Similarly, the subset of critical infrastructure identified in appendix A is not intended to alter the definition of “critical infrastructure” as used in any other regulatory regime or context.

*Section 800.212—Covered investment critical infrastructure.* The proposed rule identifies the subset of critical infrastructure that is relevant for the Committee's jurisdiction over covered

investments through a list of specific types of infrastructure in appendix A. As noted above, the Department of the Treasury anticipates periodically revising the regulations, potentially including revisions to this list. To distinguish this subset of critical infrastructure from critical infrastructure more broadly, this proposed rule creates a new term, “covered investment critical infrastructure” (see § 800.212).

As noted above, FIRRMA describes, subject to the regulations implementing this provision, a U.S. business that falls under other investment jurisdiction with respect to critical infrastructure as one that “owns, operates, manufactures, supplies, or services” the subset of critical infrastructure. This proposed rule refers to these activities as “functions.” In furtherance of FIRRMA's requirement to limit the application of other investment jurisdiction regarding critical infrastructure, the proposed rule sets forth which functions apply to each enumerated specific type of covered investment critical infrastructure. The proposed rule therefore links the relevant functions with the enumerated specific types of covered investment critical infrastructure in appendix A. Column 1 of appendix A lists the covered investment critical infrastructure and Column 2 lists the relevant functions that apply to enumerated specific types of covered investment critical infrastructure.

Appendix A is integral to the proposed rule and key to determining whether a U.S. business is a TID U.S. business for purposes of critical infrastructure covered investment jurisdiction. Only a U.S. business that performs one of the specified functions listed in Column 2 of appendix A with respect to the enumerated specific type of covered investment infrastructure listed in Column 1 is a TID U.S. business for purposes of critical infrastructure covered investments. The proposed rule also clarifies the meaning of certain of the functions listed in FIRRMA.

*Section 800.235—Own.* The proposed rule defines “own” solely for the purpose of Column 2 of appendix A, which in turn determines which owners of covered investment critical infrastructure are TID U.S. businesses for purposes of covered investment jurisdiction. The term limits owners to only those of U.S. businesses that directly possess the systems or assets constituting the applicable covered investment critical infrastructure.

*Sections 800.232—Manufacture; 800.242—Service; and 800.246—Supply.* The proposed rule also defines

“manufacture,” “service,” and “supply.” It does not define “operate” given the commonly understood meaning of that term.

Importantly, appendix A only applies to the subset of critical infrastructure subject to covered investment jurisdiction, and is not applicable in any other context. Appendix A implements FIRRMA's direction to identify a subset of critical infrastructure for purposes of covered investments and therefore does not modify the definition of critical infrastructure as it applies to CFIUS's jurisdiction more broadly over control transactions.

As noted above, CFIUS will continue to have authority to review any transaction that could result in control by a foreign person of any U.S. business, regardless of whether the U.S. business involves critical infrastructure as broadly defined by FIRRMA or the narrower subset of covered investment critical infrastructure introduced in this proposed rule.

### 3. Covered Investments Involving Sensitive Personal Data

FIRRMA expands CFIUS's jurisdiction to include covered investments by a foreign person in an unaffiliated U.S. business that maintains or collects sensitive personal data of U.S. citizens that “may be exploited in a manner that threatens to harm national security.”

*Section 800.241—Sensitive personal data.* To implement this provision, the proposed rule sets forth a detailed definition for “sensitive personal data.” The Committee anticipates periodically revising the regulations, potentially including revisions to this definition.

Given that most companies collect some type of data on individuals, the proposed rule protects national security while attempting to minimize any chilling effect on beneficial foreign investment by focusing on the sensitivity of the data itself, as well as the sensitivity of the population about whom the data is maintained or collected. In particular, the proposed rule identifies specific categories of data that constitute sensitive personal data only if the U.S. business (a) targets or tailors its products or services to sensitive U.S. Government personnel or contractors, (b) maintains or collects such data on greater than one million individuals, or (c) 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. The proposed definition also includes all genetic information and generally carves

out data pertaining to a U.S. business's own employees.

The proposed rule defines "targets or tailors" (see § 800.247) and provides examples of businesses that meet the definition. By focusing on U.S. businesses that target or tailor their products or services to these potentially sensitive populations, the Committee expects to review transactions involving U.S. businesses that are more likely to have sensitive personal data concerning such individuals. Even if a U.S. business does not target or tailor its products or services to such individuals, however, if the U.S. business maintains or collects data on a large number of individuals, it is more likely to capture data on sensitive populations. The proposed threshold of one million accounts for this possibility. Similarly, if a U.S. business is a data-driven company that plans to maintain or collect sensitive personal data on a large number of individuals in the future, as demonstrated by the U.S. business's statements or actions, it may capture data on sensitive populations.

*Section 800.241(a)(1)(ii)(A)*—This section describes certain financial data that could be used to determine if an individual is experiencing financial hardship. The types of data the proposed rule seeks to capture include bank account statements or detailed financial information included in an application for a home mortgage or credit card. Information regarding ordinary consumer transactions, such as a record of a credit card purchase at a retail establishment, would not generally fall into this category.

*Section 800.241(a)(1)(ii)(B)*—This section describes information that is collected by consumer reporting agencies, such as an individual's credit score, or summaries of debts and payment histories. Many companies periodically receive information about an individual's credit from a consumer reporting agency, and § 800.241(a)(1)(ii)(B) generally excludes these companies from its scope if they receive a limited set of the information, such as a credit score, for the legitimate purposes described in the Fair Credit Reporting Act.

*Section 800.241(a)(1)(ii)(C)*—This section describes data contained in certain types of personal insurance applications, many of which contain detailed personal information related to financial status and health.

*Section 800.241(a)(1)(ii)(D)*—This section describes health-related data.

*Section 800.241(a)(1)(ii)(E)*—This section describes non-public electronic communications, including email, which may include all manner of

sensitive information, but only if the U.S. business is providing communications platforms used by third parties. For example, email communications between a U.S. business and its own customers would not be covered. Rather, this section describes the situation where a U.S. business offers email, chat, or messaging services, a primary purpose of which is to allow third parties to communicate with each other.

*Section 800.241(a)(1)(ii)(F)*—This section describes geolocation data that is often collected by mobile mapping applications, GPS services, or wireless communications providers.

*Section 800.241(a)(1)(ii)(G)*—This section describes data that is generated by companies that provide biometric identification services.

*Section 800.241(a)(1)(ii)(H)–(J)*—These sections describe certain data that is held by companies, typically government contractors, that issue official government identification cards or process personnel security clearances.

*Section 800.227—Identifiable data;* *§ 800.239—Personal identifier.* The proposed rule also includes a definition of "identifiable data." In some cases, a U.S. business may maintain or collect the data described in § 800.241(a)(1)(ii)(A)–(J), but it is not possible to attribute such data to any specific individual. For example, a U.S. business may store health records on its servers, but those records are encrypted such that only a third party in possession of the encryption key can read the data. The U.S. business in these circumstances would not be maintaining or collecting sensitive personal data. The proposed rule makes clear, however, that identifiable data is not limited to data that includes an individual's name or other obvious identifier, but rather includes any personal identifier, as defined in § 800.239.

Finally, § 800.241(a)(2) describes genetic information, as defined pursuant to the regulations implementing HIPAA. Unlike the categories described in sections 800.241(a)(1)(ii)(A)–(J), the requirement that the U.S. business target or tailor to certain U.S. Government personnel or contractors, maintain or collect data on greater than one million individuals, or have a demonstrated business objective to maintain or collect such data on greater than one million individuals if such data is an integrated part of the U.S. business's primary products or services as well as the requirement that the data be identifiable, does not apply to genetic information.

As noted above, CFIUS will continue to have authority to review any transaction that could result in control by a foreign person of any U.S. business, regardless of whether the U.S. business maintains or collects sensitive personal data.

#### 4. Country Specification for Covered Investments

FIRRMA requires CFIUS to specify criteria to limit the application of FIRRMA's expanded jurisdiction over other investments to certain categories of foreign persons. The proposed rule addresses FIRRMA's requirement through three new defined terms, "excepted investor," "excepted foreign state," and "minimum excepted ownership," which operate together to exclude from CFIUS's jurisdiction covered investments by certain foreign persons who meet certain criteria establishing sufficiently close ties to certain foreign states. Sections 800.220, 800.219, and 800.234 define excepted investor, excepted foreign state, and minimum excepted ownership, respectively.

*Section 800.220—Excepted investor.* The proposed rule sets forth a narrow definition of excepted investor in the interest of protecting national security, in light of increasingly complex ownership structures, and to prevent foreign persons from circumventing CFIUS's jurisdiction. Thus, the criteria specified in § 800.220 require that a foreign person have a substantial connection (e.g., nationality of ultimate beneficial owners and place of incorporation) to one or more particular foreign states in order to be deemed an excepted investor. Note that foreign persons who have violated, or whose parents or subsidiaries have violated, certain U.S. laws, executive orders, regulations, orders, directives, or licenses, or who have submitted a material misstatement or omission in a CFIUS notice or declaration or violated a material provision of a mitigation agreement, among other things, will not be considered excepted investors. Additionally, note that a foreign person who is an excepted investor at the time of the transaction, but, who, for up to three years after the completion date, fails to meet to certain criteria, is deemed not to be an excepted investor and the transaction is thus subject to CFIUS jurisdiction as a covered investment. Any member of the Committee may file an agency notice of the transaction for up to one year (and the Chairperson of the Committee for up to three years in extraordinary circumstances).

*Section 800.219—Excepted foreign state.* The rule proposes that the excepted foreign state definition operate as a two-factor conjunctive test. First, the foreign state must be included in a defined group of eligible foreign states, which will be separately published on the Department of the Treasury website. As this is a new concept with potentially significant implications for the national security of the United States, CFIUS initially intends to designate a limited number of eligible foreign states. CFIUS plans to review this group in the future and potentially expand the number of eligible foreign states.

Second, in furtherance of CFIUS's efforts to encourage partner countries to implement robust processes to review foreign investment in their countries and to increase cooperation with the United States, the Secretary of the Treasury, with the agreement of a super-majority of Committee member agencies, will also make a determination, as described in subpart J, for each eligible foreign state as to whether such foreign state has established and is effectively utilizing a robust process to assess foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security. In making these determinations, CFIUS will consider factors that will be made available on the Department of the Treasury website. The Committee is considering delaying the effectiveness of this requirement in order to provide the eligible foreign states time to enhance their foreign investment review processes and bilateral cooperation. Any such determinations identifying a foreign state as an excepted foreign state will be published in the **Federal Register** and incorporated into the Committee's list of excepted foreign states, which will be made available on the Department of the Treasury website.

#### D. Subpart C—Coverage

Subpart C of the proposed rule includes provisions that describe with particularity transactions that are, or are not, covered control transactions (§ 800.301–302). Similar provisions address covered investments (§ 800.303–304). The proposed rule contains numerous examples in this subpart to clarify the coverage of certain transactions.

*Section 800.305—Incremental acquisitions.* Under the existing § 800.204(e), “[a]ny transaction in which a foreign person acquires an additional interest in a U.S. business that was previously the subject of a

covered transaction for which the Committee concluded all action under section 721 shall not be deemed to be a transaction that could result in foreign control over that U.S. business (*i.e.*, it is not a covered transaction).” This provision was introduced when the scope of CFIUS's jurisdiction included only transactions that could result in foreign control of a U.S. business and when the only means to file was by filing a written notice. This proposed rule moves the provision to Subpart C and clarifies that a transaction shall not be deemed to be a covered transaction if a foreign person acquires an additional interest in a U.S. business over which the same foreign person or any of its direct or indirect wholly-owned subsidiaries previously acquired direct control in the U.S. business in a covered control transaction for which the Committee concluded all action under Section 721 on the basis of a notice. It further clarifies that this provision does not apply to incremental acquisitions in a U.S. business by a foreign person that had not previously acquired control of the U.S. business nor to a transaction for which the Committee had concluded all action under section 721 on the basis of a declaration. In other words, the incremental acquisition rule does not apply where the initial transaction was submitted only as declaration or was a covered investment.

*Section 800.307—Specific clarifications for investment funds.* The proposed rule implements provisions in FIRRMA relating to investment funds. Specifically, it clarifies that, in the context of an indirect investment by a foreign person in an unaffiliated TID U.S. business through an investment fund that affords the foreign person (or a designee of the foreign person) membership as a limited partner or equivalent on an advisory board or committee of the fund, where all of the criteria in § 800.307 are satisfied, a limited partner's membership on the investment fund's advisory board or committee does not in and of itself render the foreign person's indirect investment in an unaffiliated TID U.S. business a covered investment.

#### E. Subpart D—Declarations

FIRRMA introduces an abbreviated filing process through the submission of a declaration, which allows parties to submit basic information regarding a transaction to the Committee. A declaration may be submitted for any covered transaction and, in certain cases, is mandated. Parties may choose to file a notice in lieu of declaration to

satisfy a mandatory declaration requirement.

Declarations differ from notices in three key ways. First, declarations are shorter in length, generally not exceeding five pages. As part of the Pilot Program Interim Rule, CFIUS developed a standard fillable declaration form for parties to use when submitting a transaction for review. To facilitate the submission of declarations under the proposed rule, CFIUS intends to maintain a standard fillable form, making certain modifications to the form for use with respect to different types of transactions. Parties will be able to use the form to submit voluntary and mandatory declarations to the Committee.

Second, the timeline for the Committee to take action on declarations is shorter than for notices. FIRRMA provides CFIUS up to 30 days to respond to a declaration. This differs from the timeline for notices, which is 45 days for a review and an additional 45 days for an investigation, with a possibility of a 15-day extension in “extraordinary circumstances.”

Third, FIRRMA provides CFIUS with several potential responses to a declaration, and CFIUS need not make a final determination with respect to action under section 721 on the basis of a declaration.

#### 1. Mandatory Declarations

*Section 800.401—Mandatory declarations.* The proposed rule implements FIRRMA's requirement for mandatory declarations for certain transactions in which a foreign person obtains a “substantial interest” in a U.S. business where a foreign government in turn holds a “substantial interest” in the foreign person. The proposed rule defines the term substantial interest with respect to a person's ability to influence the actions of another person in a manner that has the potential, directly or indirectly, to impair the national security of the United States. In most cases, the foreign person best placed to influence a U.S. business—and therefore exploit any vulnerability in a U.S. business—is the foreign person with the closest relationship to the U.S. business. With respect to an investment involving multiple tiers of investing entities, this foreign person is very frequently the one that sits closest to the U.S. business on the post-closing organizational chart. This entity, when compared to other entities higher in the organizational chart, often has a greater ability to interact directly with—and therefore influence—the U.S. business, both from a corporate governance perspective as well as an operational

perspective. The proposed rule therefore establishes in § 800.244(a) the voting interest threshold for substantial interest between a foreign person and U.S. business at a 25 percent voting interest, direct or indirect, and between a foreign government and a foreign person at a 49 percent or greater voting interest, direct or indirect. For purposes of determining the percentage of voting interest held indirectly by one entity in another, the rule establishes that any voting interest of a parent entity in a subsidiary entity will be deemed to be a 100 percent voting interest. The proposed rule also clarifies in § 800.244(b) how the voting interest in a limited partnership is to be calculated. The proposed rule does not provide for a waiver of this requirement.

As discussed above, CFIUS is considering whether to continue the mandatory declaration requirement under the Pilot Program Interim Rule, which requires declarations for covered control transactions and covered investments in certain U.S. businesses with critical technologies involved in one or more of 27 specified industries.

*Section 800.401(e)(2).* FIRRMA also provides that, for mandatory declarations, the Committee can require that a declaration be submitted up to 45 days prior to the completion of the transaction. Under the proposed rule, mandatory declarations would need to be submitted to CFIUS at least 30 days in advance of the completion date.

*Section 800.401(d).* Where there is a mandatory declaration requirement, parties may choose to submit a written notice at least 30 days prior to the completion date of the transaction instead of a declaration.

## 2. Voluntary Declarations

*Section 800.402—Voluntary declarations.* The proposed rule implements FIRRMA's provision enabling parties to choose to file a declaration with CFIUS instead of a written notice.

## 3. Procedures and Contents for Declarations

*Section 800.403—Procedures for declarations.* The proposed rule outlines the process under which parties submit a declaration. The contents and procedures for submitting mandatory and voluntary declarations are identical. In order to submit a declaration, the parties need to provide the information required by § 800.404, including certifications. The rule does not permit parties to submit a declaration regarding a transaction that is also the subject of a notice without written approval from the Staff Chairperson. Conversely, parties may not file a notice regarding

a transaction that is the subject of a declaration until such time as the Committee's assessment of the declaration has been completed (see § 800.501(j)).

*Section 800.404—Contents of declarations.* The proposed rule sets forth the information that is required in a declaration, consistent with FIRRMA's requirement that CFIUS establish declarations as "abbreviated notices that would not generally exceed five pages in length." As part of a declaration, parties may voluntarily stipulate that the transaction is a covered transaction and, if so, whether the transaction is a foreign-government controlled transaction.

*Section 800.405—Beginning of 30-day assessment period.* The proposed rule requires that the Committee take action on a declaration within 30 days of the Committee's receipt of the declaration from the Staff Chairperson. One distinction from the provisions regarding declarations in the Pilot Program Interim Rule is that the proposed rule explicitly provides that the Staff Chairperson may invite parties to a declaration to attend a meeting with Committee Staff to discuss and clarify issues pertaining to the transaction that is the subject of the declaration.

*Section 800.406—Rejection, disposition, or withdrawal of declarations.* The proposed rule provides that the Committee may reject a declaration if it is incomplete, there is a material change in the transaction that has been notified, information comes to light that contradicts material information provided by the parties in the declaration, or parties to a submitted declaration fail to provide information requested by the Committee within two business days of the request (unless such timeframe is extended by the Staff Chairperson). The proposed rule also establishes procedures for parties to withdraw a declaration, and makes clear that parties may not submit more than one declaration for the same or substantially similar transaction without approval from the Staff Chairperson.

*Section 800.407—Committee actions.* The proposed rule implements FIRRMA's mandate that the Committee take one of four actions in response to a declaration: (1) Request that the parties file a notice; (2) inform the parties that CFIUS cannot complete action under section 721 on the basis of the declaration, and that they may file a notice to seek written notification from the Committee that the Committee has concluded all action under section 721 with respect to the transaction; (3) initiate a unilateral review of the transaction through an agency notice; or

(4) notify the parties that CFIUS has concluded all action under section 721.

## F. Subpart E—Notices

The proposed rule does not make significant changes to the procedures and requirements for notices.

*Section 800.502(o)—Contents of voluntary notices.* FIRRMA allows parties to "stipulate" that the transaction is a covered transaction and, as relevant, a foreign government-controlled transaction. FIRRMA directs the Committee to provide comments or accept the notice within 10 business days from the submission date of the draft or formal written notice in cases where the transaction parties have stipulated that the transaction is a covered transaction. In addition, stipulating control reduces certain information requirements, and will allow the Committee to more quickly turn to reviewing the substance of the transaction. (See § 800.502(j)(2).) In making a stipulation, parties acknowledge that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered transaction and/or a foreign government-controlled transaction, and parties making a stipulation waive the right to challenge any such determination. 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.

*Section 800.502(c)(1)(xi) and (c)(3)(ix)–(xi)—Contents of voluntary notices.* The rule proposes additions to the information requirements to require submission of information necessary to analyze covered investments. A few additional changes to the information requirements have been introduced for clarity and to include information that CFIUS determined was necessary based on experience.

*Section 800.503—Beginning of 45-day review period.* FIRRMA changes the timeframe for CFIUS's review of a transaction filed as a notice, extending it from 30 days to 45 days. This change was one of the immediately effective provisions of FIRRMA that was implemented through the interim rule published at 83 FR 51316. The proposed rule, consistent with the interim rule, incorporates that timing change.

## G. Subpart G—Finality of Action

FIRRMA maintains that a covered transaction that has been notified to CFIUS as a notice and on which CFIUS has concluded action under section 721

after determining that there are no unresolved national security concerns, qualifies for a “safe harbor,” and extends the same treatment to transactions submitted as a declaration. This means that, unless a party to a transaction submitted false or misleading material information or omitted material information, and subject to compliance with the terms of any mitigation agreement entered into with or conditions imposed by CFIUS, the transaction can proceed without the possibility of subsequent suspension or prohibition under section 721. A covered transaction on which CFIUS has not concluded action does not qualify for the safe harbor, and CFIUS has the authority to initiate review of the transaction on its own, even after the transaction has been completed, which CFIUS may choose to do if it believes the transaction presents national security considerations.

#### H. Subpart I—Penalties and Damages

The Department of the Treasury amended the penalty provisions of its regulations in the interim rule published at 83 FR 51316, which updated CFIUS’s penalties provision consistent with revisions made to section 721 by FIRRMA. The proposed rule adopts the revisions from the interim rule and makes certain other updates to subpart I.

**Section 800.901—Penalties and damages.** The proposed rule, consistent with the interim rule, removes the qualifier “intentionally or through gross negligence” with respect to a material misstatement or omission in the context of the imposition of civil penalties. These revisions did not, and do not, apply to material misstatements, omissions, or certifications made prior to the interim rule’s effective date (October 11, 2018), or to violations occurring after the implementation of the interim rule of a material provision of a mitigation agreements or material conditions of an order entered into or imposed prior to the implementation of the interim rule.

**Section 800.902—Effect of lack of compliance.** The proposed rule, consistent with the interim rule, includes a provision authorizing the Committee to negotiate a remediation plan for lack of compliance with a mitigation agreement or condition entered into or imposed under section 721(l), require filings for future covered transactions for five years, or seek injunctive relief, in addition to other available remedies.

The proposed rule includes certain other modifications to subpart I,

including with respect to how penalties are calculated, imposed, and enforced.

### III. Public Comments

The Department of the Treasury received one comment to the interim rule. The commenter sought additional information about what circumstances the Committee believes would warrant a 15-day extension of an investigation in order “to protect the national security of the United States.”

**Response:** The interim rule provides that where a Committee member requests to extend an investigation, that request must include a description, “with particularity, [of] the extraordinary circumstances that warrant the Chairperson extending the investigation.” 31 CFR 800.506. Accordingly, whether “extraordinary circumstances” exist depends on the specific facts of a particular investigation, and are difficult to generalize. While we understand the commenter’s interest in additional information from the Committee, at this time we are not considering altering or expanding on the extraordinary circumstances provisions relating to a 15-day extension of an investigation in part 800.

### IV. Rulemaking Requirements

#### Executive Order 12866

These regulations are not subject to the general requirements of Executive Order 12866, which covers review of regulations by the Office of Information and Regulatory Affairs in the Office of Management and Budget, because they relate to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order.

#### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, or via email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), with copies to Thomas Feddo, Deputy Assistant Secretary for Investment Security, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Comments on the collection of information should be received by November 25, 2019.

In accordance with 5 CFR 1320.8(d)(1), the Department of the Treasury is soliciting comments from members of the public concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology.

The burden of the information collections in this proposed rule is estimated as follows:

#### For Notices

*Estimated total annual reporting and/or recordkeeping burden:* 26,000 hours.

*Estimated average annual burden per respondent:* 130 hours.

*Estimated number of respondents:* 200 per year.

*Estimated annual frequency of responses:* Not applicable.

#### For Declarations

*Estimated total annual reporting and/or recordkeeping burden:* 11,000 hours.

*Estimated average annual burden per respondent:* 20 hours.

*Estimated number of respondents:* 550 per year.

*Estimated annual frequency of responses:* Not applicable.

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

#### Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to prepare a regulatory flexibility analysis unless the agency certifies that the rule will not, once implemented, have a significant economic impact on a substantial number of small entities. The RFA applies whenever an agency is required to publish a general notice of proposed rulemaking under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553) (APA), or any other law. As set forth below, because regulations issued pursuant to the DPA, such as these

regulations, are not subject to the APA, or another law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply.

The proposed rule implements section 721 of the DPA. Section 709(a) of the DPA provides that the regulations issued under it are not subject to the rulemaking requirements of the APA. Section 709(b)(1) instead provides that any regulation issued under the DPA be published in the **Federal Register** and opportunity for public comment be provided for not less than 30 days. Section 709(b)(3) of the DPA also provides that all comments received during the public comment period be considered and the publication of the final regulation contain written responses to such comments. Consistent with the plain text of the DPA, legislative history confirms that Congress intended that regulations under the DPA be exempt from the notice and comment provisions of the APA and instead provided that the agency include a statement that interested parties were consulted in the formulation of the final regulation. See H.R. Conf. Rep. No. 102–1028, at 42 (1992) and H.R. Rep. No. 102–208 pt. 1, at 28 (1991). The limited public participation procedures described in the DPA do not require a general notice of proposed rulemaking as set forth in the RFA. Further, the mechanisms for publication and public participation are sufficiently different to distinguish the DPA procedures from a rule that requires a general notice of proposed rulemaking. In providing the President with expanded authority to suspend or prohibit the acquisition, merger, or takeover of, or certain other investments in, a U.S. business by a foreign person if such a transaction would threaten to impair the national security of the United States, Congress could not have contemplated that regulations implementing such authority would be subject to RFA analysis. For these reasons, the RFA does not apply to these regulations.

Notwithstanding the inapplicability of the RFA, the Department of the Treasury has undertaken an analysis of the proposed rule's potential impact on small businesses in the United States. While the Department of the Treasury believes that the proposed rule likely would not have a "significant economic impact on a substantial number of small entities" (5 U.S.C. 605(b)), the Department of the Treasury does not have complete data at this time to make this determination, and therefore invites the public to comment on its analysis.

As discussed above, the proposed rule expands the jurisdiction of the

Committee to include additional types of transactions not previously subject to CFIUS review. Additionally, the Committee will retain its existing jurisdiction over any transaction through which any foreign person could acquire control of any U.S. business. Accordingly, the proposed rule may impact any U.S. business, including a small U.S. business that engages in a covered transaction.

There is no single source for information on the number of small U.S. businesses that receive foreign investment (direct or indirect), including those involved with critical technologies, critical infrastructure, or sensitive personal data, such that they would be directly impacted by this rule. However, the Bureau of Economic Analysis (BEA) within the Department of Commerce collects, on an annual basis, data on new foreign direct investment in the United States through its Survey of New Foreign Direct Investment in the United States (Form BE-13). While these data are self-reported, and include only direct investments in U.S. businesses in which the foreign person acquires at least 10 percent of the voting shares (and consequently, do not capture investments below 10 percent, which may nevertheless be covered transactions), they nonetheless provide relevant information on a category of U.S. businesses that receive foreign investment, some of which may be covered by the proposed rule.

According to the BEA, in 2018, the most current year for which data is available, foreign persons obtained at least a 10 percent voting share in 832 U.S. businesses. U.S. Bureau of Economic Analysis, "Number of Investments Initiated in 2018, Distribution of Planned Total Expenditures, Size by Type of Investment," <https://apps.bea.gov/international/xls/Table15-14-15-16-17-18.xls> (last visited September 11, 2019). The BEA only reports the general size of the investment transaction, not the type of the U.S. business involved, nor whether the U.S. business is considered a "small business" by the Small Business Administration (SBA), which defines small businesses based on annual revenue or number of employees. The smallest foreign investment transactions that the BEA reports are those with a dollar value below \$50 million. While not all U.S. businesses receiving a foreign investment of less than \$50 million are considered "small" for the purposes of the RFA, many might be, and the number of U.S. businesses receiving foreign investments of less than \$50

million can serve as a proxy for the number of transactions involving small U.S. businesses that might be subject to CFIUS's jurisdiction.

Of the above mentioned 832 U.S. businesses receiving foreign investment in 2018, 576 were involved in transactions valued at less than \$50 million. Although this figure is under inclusive because it does not capture all transactions that could potentially fall under the proposed rule, it also is over inclusive because it is not limited to any particular type of U.S. business. We believe the figure of 576 is the best estimate based on the available data of the number of small U.S. businesses that may be impacted by this rule.

According to the SBA, there are 30.2 million small businesses (defined as "firms employing fewer than 500 employees") in the United States. <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf>. If approximately 600 small U.S. businesses will be potentially impacted by this rule, then the rule may potentially impact less than one percent of all small U.S. businesses. Accordingly, the Department of the Treasury does not believe the rule will impact a "substantial number of small entities."

Nonetheless, the proposed rule includes provisions that would reduce the costs to all businesses, including small businesses. For example, the availability of a shorter declaration for covered transactions may result in smaller cost to entities than having to prepare a lengthier notice. Additionally, having a fillable form for declarations may reduce some of the cost for parties.

The Department of the Treasury seeks information and comment on the types and number of small entities potentially impacted by this proposed rule. If necessary, the Department of the Treasury will undertake a final regulatory flexibility analysis in the final rule.

#### List of Subjects in 31 CFR Part 800

Foreign investments in the United States, Investigations, Investments, Investment companies, National defense, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, the Department of the Treasury proposes to revise part 800 of title 31 of the Code of Federal Regulations, to read as follows:

**PART 800—REGULATIONS  
PERTAINING TO CERTAIN  
INVESTMENTS IN THE UNITED  
STATES BY FOREIGN PERSONS**

**Subpart A—General**

- Sec.  
800.101 Scope.  
800.102 Risk-based analysis.  
800.103 Effect on other law.  
800.104 Applicability rule.

**Subpart B—Definitions**

- 800.201 Aggregated data.  
800.202 Anonymized data.  
800.203 Business day.  
800.204 Certification.  
800.205 Committee; Chairperson of the Committee; Staff Chairperson.  
800.206 Completion date.  
800.207 Contingent equity interest.  
800.208 Control.  
800.209 Conversion.  
800.210 Covered control transaction.  
800.211 Covered investment.  
800.212 Covered investment critical infrastructure.  
800.213 Covered transaction.  
800.214 Critical infrastructure.  
800.215 Critical technologies.  
800.216 Effective date.  
800.217 Encrypted data.  
800.218 Entity.  
800.219 Excepted foreign state.  
800.220 Excepted investor.  
800.221 Foreign entity.  
800.222 Foreign government.  
800.223 Foreign government-controlled transaction.  
800.224 Foreign national.  
800.225 Foreign person.  
800.226 Hold.  
800.227 Identifiable data.  
800.228 Investment.  
800.229 Investment fund.  
800.230 Involvement.  
800.231 Lead agency.  
800.232 Manufacture.  
800.233 Material nonpublic technical information.  
800.234 Minimum excepted ownership.  
800.235 Own.  
800.236 Parent. 800.237 Party to a transaction.  
800.238 Person. 800.239 Personal identifier.  
800.240 Section 721.  
800.241 Sensitive personal data.  
800.242 Service.  
800.243 Solely for the purpose of passive investment.  
800.244 Substantial interest.  
800.245 Substantive decisionmaking.  
800.246 Supply.  
800.247 Targets or tailors.  
800.248 TID U.S. business.  
800.249 Transaction.  
800.250 Unaffiliated TID U.S. business.  
800.251 United States.  
800.252 U.S. business.  
800.253 U.S. national.  
800.254 Voting interest.

**Subpart C—Coverage**

- 800.301 Transactions that are covered control transactions.

- 800.302 Transactions that are not covered control transactions.  
800.303 Transactions that are covered investments.  
800.304 Transactions that are not covered investments.  
800.305 Incremental acquisitions.  
800.306 Lending transactions.  
800.307 Specific clarifications for investment funds.  
800.308 Timing rule for a contingent equity interest.

**Subpart D—Declarations**

- 800.401 Mandatory declarations.  
800.402 Voluntary declarations.  
800.403 Procedures for declarations.  
800.404 Contents of declarations.  
800.405 Beginning of 30-day assessment period.  
800.406 Rejection, disposition, or withdrawal of declarations.  
800.407 Committee actions.

**Subpart E—Notices**

- 800.501 Procedures for notices.  
800.502 Contents of voluntary notices.  
800.503 Beginning of a 45-day review period.  
800.504 Deferral, rejection, or disposition of certain voluntary notices.  
800.505 Determination of whether to undertake an investigation.  
800.506 Determination not to undertake an investigation.  
800.507 Commencement of investigation.  
800.508 Completion or termination of investigation and report to the President.  
800.509 Withdrawal of notices.

**Subpart F—Committee Procedures**

- 800.601 General.  
800.602 Role of the Secretary of Labor.  
800.603 Materiality.  
800.604 Tolling of deadlines during lapse in appropriations.

**Subpart G—Finality of Action**

- 800.701 Finality of actions under section 721.

**Subpart H—Provision and Handling of Information**

- 800.801 Obligation of parties to provide information.  
800.802 Confidentiality.

**Subpart I—Penalties and Damages**

- 800.901 Penalties and damages.  
800.902 Effect of lack of compliance.

**Subpart J—Foreign National Security Investment Review Regimes**

- 800.1001 Determinations.  
800.1002 Effect of determinations.  
Appendix A to Part 800—Covered investment critical infrastructure and functions related to covered investment critical infrastructure

**Authority:** 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677.

**Subpart A—General**

**§ 800.101 Scope.**

(a) Section 721 of title VII of the Defense Production Act of 1950 (50

U.S.C. 4565), as amended, authorizes the President to suspend or prohibit any covered transaction, when, in the President's judgment, there is credible evidence that leads the President to believe that the foreign person engaging in a covered transaction might take action that threatens to impair the national security of the United States, and when provisions of law other than section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security in the matter before the President. Section 721 also authorizes the Committee to review covered transactions and to mitigate any risk to the national security of the United States that arises as a result of such transactions.

(b) This part implements regulations pertaining to covered transactions as defined in § 800.213 of this part. Regulations pertaining to covered real estate transactions are addressed in part 802 of this title.

**§ 800.102 Risk-based analysis.**

Any determination of the Committee with respect to a covered transaction to suspend, refer to the President, or to negotiate, enter into or impose, or enforce any agreement or condition under section 721 shall be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered transaction. Any such risk-based analysis shall include credible evidence demonstrating the risk and an assessment of the threat, vulnerabilities, and consequences to national security related to the transaction. For purposes of this part, any such analysis of risk shall include and be informed by consideration of the following elements:

(a) The *threat*, which is a function of the intent and capability of a foreign person to take action to impair the national security of the United States;

(b) The *vulnerabilities*, which are the extent to which the nature of the U.S. business presents susceptibility to impairment of national security; and

(c) The *consequences to national security*, which are the potential effects on national security that could reasonably result from the exploitation of the vulnerabilities by the threat actor.

**§ 800.103 Effect on other law.**

Nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under

any other provision of federal law, including without limitation the International Emergency Economic Powers Act, or any other authority of the President or the Congress under the Constitution of the United States.

#### § 800.104 Applicability rule.

(a) Except as provided in paragraphs (b) and (c) of this section and otherwise in this part, the regulations in this part apply from [EFFECTIVE DATE OF FINAL RULE].

(b) For any transaction for which the following has occurred before [EFFECTIVE DATE OF FINAL RULE], the corresponding provisions of the regulations in this part that were in effect the day before [EFFECTIVE DATE OF FINAL RULE] will apply:

(1) The completion date;

(2) The parties to the transaction have executed a binding written agreement, or other binding document, establishing the material terms of the transaction;

(3) A party has made a public offer to shareholders to buy shares of a U.S. business; or

(4) A shareholder has solicited proxies in connection with an election of the board of directors of a U.S. business or an owner or holder of a contingent equity interest has requested the conversion of the contingent equity interest.

(c) For any transaction that, between November 10, 2018 and [EFFECTIVE DATE], fell within the scope of part 801 of this title, the regulations in part 801 will continue to apply.

**Note 1 to § 800.104:** See subpart I (Penalties and Damages) of this part for specific applicability rules pertaining to that subpart.

### Subpart B—Definitions

#### § 800.201 Aggregated data.

The term *aggregated data* means data that have been combined or collected together in summary or other form such that the data cannot be identified with any individual.

#### § 800.202 Anonymized data.

The term *anonymized data* means data from which all personal identifiers have been completely removed.

#### § 800.203 Business day.

The term *business day* means Monday through Friday, except the legal public holidays specified in 5 U.S.C. 6103, any day declared to be a holiday by federal statute or executive order, or any day with respect to which the U.S. Office of Personnel Management has announced that Federal agencies in the Washington, DC, area are closed to the public. For

purposes of calculating any deadline imposed by this part triggered by the submission of a party to a transaction under § 800.401(e)(2) or § 800.501(i), any submissions received after 5 p.m. Eastern Time are deemed to be submitted on the next business day.

**Note 1 to § 800.203:** See § 800.604 regarding the tolling of deadlines during a lapse in appropriations.

#### § 800.204 Certification.

(a) The term *certification* means a written statement signed by the chief executive officer or other duly authorized designee of a party filing a notice, declaration, or information, certifying under the penalties provided in the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001) that the notice, declaration, or information filed:

(1) Fully complies with the requirements of section 721, the regulations in this part, and any agreement or condition entered into with the Committee or any member of the Committee, and

(2) Is accurate and complete in all material respects, as it relates to:

(i) The transaction, and

(ii) The party providing the certification, including its parents, subsidiaries, and any other related entities described in the notice, declaration, or information.

(b) For purposes of this section, a *duly authorized designee* is:

(1) In the case of a partnership, any general partner thereof;

(2) In the case of a corporation, any officer or director thereof;

(3) In the case of any entity lacking partners, officers, or directors, any individual within the organization exercising executive functions similar to those of a general partner of a partnership or an officer or director of a corporation; and

(4) In the case of an individual, such individual or his or her legal representative.

(c) In each case described in paragraphs (b)(1) through (4) of this section, such designee must possess actual authority to make the certification on behalf of the party filing a notice, declaration, or information.

**Note 1 to § 800.204:** A sample certification may be found at the Committee's section of the Department of the Treasury website, currently available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

#### § 800.205 Committee; Chairperson of the Committee; Staff Chairperson.

The term *Committee* means the Committee on Foreign Investment in the United States. The *Chairperson of the Committee* is the Secretary of the Treasury. The *Staff Chairperson* of the Committee is the Department of the Treasury official so designated by the Secretary of the Treasury or by the Secretary's designee.

#### § 800.206 Completion date.

The term *completion date* means, with respect to a transaction, the earliest date upon which any ownership interest, including a contingent equity interest, is conveyed, assigned, delivered, or otherwise transferred to a person, or a change in rights that could result in a covered control transaction or covered investment occurs.

**Note 1 to § 800.206:** See § 800.308 regarding the timing rule for a contingent equity interest.

#### § 800.207 Contingent equity interest.

The term *contingent equity interest* means a financial instrument that currently does not constitute an equity interest but is convertible into, or provides the right to acquire, an equity interest upon the occurrence of a contingency or defined event.

#### § 800.208 Control.

(a) The term *control* means the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the following matters, or any other similarly important matters affecting an entity:

(1) The sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business;

(2) The reorganization, merger, or dissolution of the entity;

(3) The closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the entity;

(4) Major expenditures or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity;

(5) The selection of new business lines or ventures that the entity will pursue;

(6) The entry into, termination, or non-fulfillment by the entity of significant contracts;

(7) The policies or procedures of the entity governing the treatment of non-public technical, financial, or other proprietary information of the entity;

(8) The appointment or dismissal of officers or senior managers or in the case of a partnership, the general partner;

(9) The appointment or dismissal of employees with access to critical technology or other sensitive technology or classified U.S. Government information; or

(10) The amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of the entity with respect to the matters described in paragraphs (a)(1) through (9) of this section.

(b) In examining questions of control in situations where more than one foreign person has an ownership interest in an entity, consideration will be given to factors such as whether the foreign persons are related or have formal or informal arrangements to act in concert, whether they are agencies or instrumentalities of the national or subnational governments of a single foreign state, and whether a given foreign person and another person that has an ownership interest in the entity are both controlled by any of the national or subnational governments of a single foreign state.

(c) The following minority shareholder protections shall not in themselves be deemed to confer control over an entity:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of an entity or a voluntary filing for bankruptcy or liquidation;

(2) The power to prevent an entity from entering into contracts with majority investors or their affiliates;

(3) The power to prevent an entity from guaranteeing the obligations of majority investors or their affiliates;

(4) The power to purchase an additional interest in an entity to prevent the dilution of an investor's pro rata interest in that entity in the event that the entity issues additional instruments conveying interests in the entity;

(5) The power to prevent the change of existing legal rights or preferences of the particular class of stock held by minority investors, as provided in the relevant corporate documents governing such shares; and

(6) The power to prevent the amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of an entity with respect to the matters described in paragraphs (c)(1) through (5) of this section.

(d) The Committee will consider, on a case-by-case basis, whether minority shareholder protections other than those listed in paragraph (c) of this section do not confer control over an entity.

(e) Examples:

(1) *Example 1.* Corporation A is a U.S. business. A U.S. investor owns 50 percent of the voting interest in Corporation A, and the remaining voting interest is owned in equal shares by five unrelated foreign investors. The foreign investors jointly financed their investment in Corporation A and vote as a single block on matters affecting Corporation A. The foreign investors have an informal arrangement to act in concert with regard to Corporation A, and, as a result, the foreign investors control Corporation A.

(2) *Example 2.* Same facts as in Example 1 of this section with regard to the composition of Corporation A's shareholders. The foreign investors in Corporation A have no contractual or other commitments to act in concert, and have no informal arrangements to do so. Assuming no other relevant facts, the foreign investors do not control Corporation A.

(3) *Example 3.* Corporation A, a foreign person, is a private equity fund that routinely acquires equity interests in companies and manages them for a period of time. Corporation B is a U.S. business. In addition to its acquisition of seven percent of Corporation B's voting shares, Corporation A acquires the right to terminate significant contracts of Corporation B. Corporation A controls Corporation B.

(4) *Example 4.* Corporation A, a foreign person, acquires a nine percent interest in the shares of Corporation B, a U.S. business. As part of the transaction, Corporation A also acquires certain veto rights that determine important matters affecting Corporation B, including the right to veto the dismissal of senior executives of Corporation B. Corporation A controls Corporation B.

(5) *Example 5.* Corporation A, a foreign person, acquires a thirteen percent interest in the shares of Corporation B, a U.S. business, and the right to appoint one member of Corporation B's seven-member Board of Directors. Corporation A receives minority shareholder protections listed in § 800.208(c) but receives no other positive or negative rights with respect to Corporation B. Assuming no other relevant facts, Corporation A does not control Corporation B.

(6) *Example 6.* Corporation A, a foreign person, acquires a twenty percent interest in the shares of Corporation B, a U.S. business. Corporation A has negotiated an irrevocable passivity agreement that completely precludes it from controlling Corporation B. Corporation A does, however, receive the right to prevent Corporation B from entering into contracts with majority investors or their

affiliates and to prevent Corporation B from guaranteeing the obligations of majority investors or their affiliates. Assuming no other relevant facts, Corporation A does not control Corporation B.

(7) *Example 7.* Limited Partnership A comprises two limited partners, each of which holds 49 percent of the interest in the partnership, and a general partner, which holds two percent of the interest. The general partner has sole authority to determine, direct, and decide all important matters affecting the partnership and a fund operated by the partnership. The general partner alone controls Limited Partnership A and the fund.

(8) *Example 8.* Same facts as in Example 7 of this section, except that each of the limited partners has the authority to veto major investments proposed by the general partner and to choose the fund's representatives on the boards of the fund's portfolio companies. The general partner and the limited partners each have control over Limited Partnership A and the fund.

**Note 1 to § 800.208:** See § 800.302(b) regarding the Committee's treatment of transactions in which a foreign person holds or acquires ten percent or less of the outstanding voting interest in a U.S. business solely for the purpose of passive investment. See § 800.303 regarding the Committee's treatment of transactions that do not result in control over a U.S. business by a foreign person, but may be covered investments. See § 800.305 regarding the Committee's treatment of a subsequent transaction involving a foreign person that previously acquired control of the U.S. business.

#### § 800.209 Conversion.

The term *conversion* means the exercise of a right inherent in the ownership or holding of a particular financial instrument to exchange any such instrument for an equity interest.

#### § 800.210 Covered control transaction.

The term *covered control transaction* means any transaction that is proposed or pending after August 23, 1988, by or with any foreign person that could result in foreign control of any U.S. business, including without limitation such a transaction carried out through a joint venture.

#### § 800.211 Covered investment.

The term *covered investment* means an investment, direct or indirect, by a foreign person other than an excepted investor in an unaffiliated TID U.S. business that is proposed or pending after [EFFECTIVE DATE OF FINAL RULE], and that:

(a) Is not a covered control transaction; and

(b) Affords the foreign person:

(1) Access to any material nonpublic technical information in the possession of the TID U.S. business;

(2) Membership or observer rights on the board of directors or equivalent

governing body of the TID U.S. business or the right to nominate an individual to a position on the board of directors or equivalent governing body of the TID U.S. business; or

(3) Any involvement, other than through voting of shares, in substantive decisionmaking of the TID U.S. business regarding:

(i) The use, development, acquisition, safekeeping, or release of sensitive personal data of U.S. citizens maintained or collected by the TID U.S. business;

(ii) The use, development, acquisition, or release of critical technologies; or

(iii) The management, operation, manufacture, or supply of covered investment critical infrastructure.

(c) Notwithstanding paragraphs (a) and (b) of this section, no investment involving an air carrier, as defined in 49 U.S.C. 40102(a)(2), that holds a certificate issued under 49 U.S.C. 41102 shall be a covered investment.

**§ 800.212 Covered investment critical infrastructure.**

The term *covered investment critical infrastructure* means, in the context of a particular covered investment, the systems and assets, whether physical or virtual, set forth in Column 1 of appendix A to part 800.

**§ 800.213 Covered transaction.**

The term *covered transaction* means any of the following:

(a) A covered control transaction;

(b) A covered investment;

(c) A change in the rights that a foreign person has with respect to a U.S. business in which the foreign person has an investment, if that change could result in a covered control transaction or a covered investment; or

(d) Any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721.

**Note 1 to § 800.213:** Any transaction described in (a) through (d) of this section that arises pursuant to a bankruptcy proceeding or other form of default on debt is a covered transaction. See also § 800.306 for the treatment of certain lending transactions.

**§ 800.214 Critical infrastructure.**

The term *critical infrastructure* means, in the context of a particular covered control transaction, systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security.

**§ 800.215 Critical technologies.**

The term *critical technologies* means the following:

(a) Defense articles or defense services included on the United States Munitions List (USML) set forth in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130);

(b) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 CFR parts 730–774), and controlled—

(1) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(2) For reasons relating to regional stability or surreptitious listening;

(c) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 CFR part 810 (relating to assistance to foreign atomic energy activities);

(d) Nuclear facilities, equipment, and material covered by 10 CFR part 110 (relating to export and import of nuclear equipment and material);

(e) Select agents and toxins covered by 7 CFR part 331, 9 CFR part 121, or 42 CFR part 73; and

(f) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

**§ 800.216 Effective date.**

The term *effective date* means [EFFECTIVE DATE OF FINAL RULE].

**§ 800.217 Encrypted data.**

The term *encrypted data* means data to which National Institute of Standards and Technology (NIST)-allowed cryptographic techniques, as identified in the most current NIST special publication 800–175B, or superseding publication, have been applied.

**§ 800.218 Entity.**

The term *entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization (whether or not organized under the laws of any State or foreign state); assets (whether or not organized as a separate legal entity) operated by any one of the foregoing as a business undertaking in a particular location or for particular products or services; and any government (including a foreign national or subnational government, the U.S. Government, a subnational government within the United States,

and any of their respective departments, agencies, or instrumentalities). (See examples in § 800.301(g)(5) through (14) and § 800.302(g)(5) through (10).)

**§ 800.219 Excepted foreign state.**

The term *excepted foreign state* means each foreign state from time to time identified by the Chairperson of the Committee, with the agreement of two-thirds of the voting members of the Committee, and, beginning on [TWO YEARS AFTER EFFECTIVE DATE OF FINAL RULE] with respect to which the Chairperson of the Committee has made a determination pursuant to § 800.1001(a).

**Note 1 to § 800.219:** The name of each foreign state identified by the Chairperson of the Committee as an excepted foreign state will be published in a notice in the **Federal Register** and incorporated into the Committee's list of excepted foreign states.

**§ 800.220 Excepted investor.**

(a) The term *excepted investor* means a foreign person who is, as of the completion date and subject to paragraphs (c) and (d) of this section:

(1) A foreign national who is a national of one or more excepted foreign states and is not also a national of any foreign state that is not an excepted foreign state;

(2) A foreign government of an excepted foreign state; or

(3) A foreign entity that meets each of the following conditions with respect to itself and each of its parents (if any):

(i) Such entity is organized under the laws of an excepted foreign state or in the United States;

(ii) Such entity has its principal place of business in an excepted foreign state or the United States;

(iii) Each member or observer of the board of directors or similar body of such entity is a U.S. national or, if a foreign national, is a national of one or more excepted foreign states and is not also a national of any foreign state that is not an excepted foreign state;

(iv) Any foreign person that individually holds, or each foreign person that is part of a group of foreign persons that, in the aggregate, holds, five percent or more of the outstanding voting interest of such entity; holds the right to five percent or more of the profits of such entity; holds the right in the event of dissolution to five percent or more of the assets of such entity; or could exercise control over such entity, is:

(A) A foreign national who is a national of one or more excepted foreign states and is not also a national of any foreign state that is not an excepted foreign state;

(B) A foreign government of an excepted foreign state; or

(C) A foreign entity that is organized under the laws of an excepted foreign state and has its principal place of business in an excepted foreign state or in the United States; and

(v) The minimum excepted ownership of such entity is held, individually or in the aggregate, by one or more persons each of whom is:

(A) Not a foreign person;

(B) A foreign national who is a national of one or more excepted foreign states and is not also a national of any foreign state that is not an excepted foreign state;

(C) A foreign government of an excepted foreign state; or

(D) A foreign entity that is organized under the laws of an excepted foreign state and has its principal place of business in an excepted foreign state or in the United States.

(b) When more than one person holds an ownership interest in an entity, in determining whether the ownership interests of such persons should be aggregated for purposes of paragraph (a)(3)(iv) of this section, consideration will be given to factors such as whether the persons holding the ownership interests are related or have formal or informal arrangements to act in concert, whether they are agencies or instrumentalities of the national or subnational governments of a single foreign state, and whether a given foreign person and another foreign person that has an ownership interest in the entity are both controlled by any of the national or subnational governments of a single foreign state.

(c) Notwithstanding paragraph (a) of this section, a foreign person is not an excepted investor with respect to a transaction if:

(1) In the five years prior to the completion date of the transaction the foreign person or any of its parents or subsidiaries:

(i) Has received written notice from the Committee that it has submitted a material misstatement or omission in a notice or declaration or made a false certification under this part or parts 801 or 802 of this title;

(ii) Has received written notice from the Committee that it has violated a material provision of a mitigation agreement entered into with, material condition imposed by, or an order issued by, the Committee or a lead agency under section 721(l);

(iii) Has been subject to action by the President under section 721(d);

(iv) Has:

(A) Received a written Finding of Violation or Penalty Notice imposing a

civil monetary penalty from the Department of the Treasury Office of Foreign Assets Control (OFAC); or

(B) Entered into a settlement agreement with OFAC with respect to apparent violations of U.S. sanctions laws administered by OFAC, including without limitation the International Emergency Economic Powers Act, the Trading With the Enemy Act, the Foreign Narcotics Kingpin Designation Act, each as amended, or of any executive order, regulation, order, directive, or license issued pursuant thereto;

(v) Has received a written notice of debarment from the Department of State Directorate of Defense Trade Controls, as described in 22 CFR parts 127 and 128;

(vi) Has been a respondent or party in a final order, including a settlement order, issued by the Department of Commerce Bureau of Industry and Security (BIS) regarding violations of U.S. export control laws administered by BIS, including without limitation the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115–232, 132 Stat. 2208, 50 U.S.C. 4801, *et seq.*), the EAR, or of any executive order, regulation, order, directive, or license issued pursuant thereto;

(vii) Has received a final decision from the Department of Energy National Nuclear Security Administration imposing a civil penalty with respect to a violation of section 57 b. of the Atomic Energy Act of 1954, as implemented under 10 CFR part 810; or

(viii) Has been convicted of a crime under, or has entered into a deferred prosecution agreement or non-prosecution agreement with the Department of Justice with respect to a violation of, any felony crime in any jurisdiction within the United States; or

(2) The foreign person or any of its parents or subsidiaries is, on the date on which the parties to the transaction first execute a binding written agreement, or other binding document, establishing the material terms of the transaction, listed on either the BIS Unverified List or Entity List in 15 CFR part 744.

(d) Irrespective of whether the foreign person satisfies the criteria in paragraphs (a)(1), (2), or (3)(i) through (iii) of this section as of the completion date, if at any time during the three-year period following the completion date, the foreign person no longer meets all the criteria set forth in paragraphs (a)(1), (2), or (3)(i) through (iii) of this section, the foreign person is not an excepted investor with respect to the transaction from the completion date onward. This paragraph does not apply when an excepted investor no longer meets any

of the criteria solely due to a rescission of a determination under § 800.1001(b) or if a particular foreign state otherwise ceases to be an excepted foreign state.

(e) A foreign person may waive its status as an excepted investor with respect to a transaction at any time by submitting a declaration pursuant to § 800.403 or filing a notice pursuant to § 800.501 regarding the transaction in which it explicitly waives such status. In such case, the foreign person will be deemed not to be an excepted investor and the provisions of Subpart D or E, as applicable, will apply.

**Note 1 to § 800.220:** See § 800.501(c)(2) regarding an agency notice where a foreign person is not an excepted investor solely due to § 800.220(d).

#### § 800.221 Foreign entity.

(a) The term *foreign entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(b) Notwithstanding paragraph (a) of this section, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity.

#### § 800.222 Foreign government.

The term *foreign government* means any government or body exercising governmental functions, other than the U.S. Government or a subnational government of the United States. The term includes, but is not limited to, national and subnational governments, including their respective departments, agencies, and instrumentalities.

#### § 800.223 Foreign government-controlled transaction.

The term *foreign government-controlled transaction* means any covered control transaction that could result in control of a U.S. business by a foreign government or a person controlled by or acting on behalf of a foreign government.

#### § 800.224 Foreign national.

The term *foreign national* means any individual other than a U.S. national.

#### § 800.225 Foreign person.

(a) The term *foreign person* means:

(1) Any foreign national, foreign government, or foreign entity; or

(2) Any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.

(b) Examples:

(1) *Example 1.* Corporation A is organized under the laws of a foreign state and is engaged in business only outside the United States. All of its shares are held by Corporation X, which solely controls Corporation A. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Assuming no other relevant facts, Corporation A, although organized and only operating outside the United States, is not a foreign person.

(2) *Example 2.* Same facts as in the first sentence of Example 1 of this section. The government of the foreign state under whose laws Corporation A is organized exercises control over Corporation A because a law establishing Corporation A gives the foreign state the right to appoint Corporation A's board members. Corporation A is a foreign person.

(3) *Example 3.* Corporation A is organized in the United States, is engaged in interstate commerce in the United States, and is controlled by Corporation X. Corporation X is organized under the laws of a foreign state, its principal place of business is located outside the United States, and 50 percent of its shares are held by foreign nationals and 50 percent of its shares are held by U.S. nationals. Both Corporation A and Corporation X are foreign persons. Corporation A is also a U.S. business.

(4) *Example 4.* Corporation A is organized under the laws of a foreign state and is owned and controlled by a foreign national. A branch of Corporation A engages in interstate commerce in the United States. Corporation A (including its branch) is a foreign person. The branch is also a U.S. business.

(5) *Example 5.* Corporation A is a corporation organized under the laws of a foreign state and its principal place of business is located outside the United States. Forty-five percent of the voting interest in Corporation A is owned in equal shares by numerous unrelated foreign investors, none of whom has control. The foreign investors have no formal or informal arrangement to act in concert with regard to Corporation A with any other holder of voting interest in Corporation A. Corporation A demonstrates that the remainder of the voting interest in Corporation A is held by U.S. nationals. Assuming no other relevant facts, Corporation A is not a foreign person.

(6) *Example 6.* Same facts as Example 5 of this section, except that one of the foreign investors controls Corporation A. Assuming no other relevant facts, Corporation A is not a foreign entity pursuant to § 800.221(b), but it is a foreign person because it is controlled by a foreign person.

#### § 800.226 Hold.

The terms *hold(s)* and *holding* mean legal or beneficial ownership, whether direct or indirect, whether through fiduciaries, agents, or other means.

#### § 800.227 Identifiable data.

The term *identifiable data* means data that can be used to distinguish or trace an individual's identity, including without limitation through the use of any personal identifier. For the avoidance of doubt, aggregated data or anonymized data is identifiable data if any party to the transaction has, or as a result of the transaction will have, the ability to disaggregate or de-anonymize the data, or if the data is otherwise capable of being used to distinguish or trace an individual's identity. Identifiable data does not include encrypted data, unless the U.S. business that maintains or collects the encrypted data has the means to de-encrypt the data so as to distinguish or trace an individual's identity.

#### § 800.228 Investment.

The term *investment* means the acquisition of equity interest, including contingent equity interest.

#### § 800.229 Investment fund.

The term *investment fund* means any entity that is an "investment company," as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), or would be an "investment company" but for one or more of the exemptions provided in section 3(b) or 3(c) thereunder.

#### § 800.230 Involvement.

The term *involvement* means the right or ability to participate, whether or not exercised, including without limitation by doing any of the following:

- (a) Providing input into a final decision;
- (b) Consulting with or providing advice to a decisionmaker;
- (c) Exercising special approval or veto rights;
- (d) Participating on a committee with decisionmaking authority; or
- (e) Advising on the appointment of officers or selecting employees who are engaged in substantive decisionmaking.

#### § 800.231 Lead agency.

The term *lead agency* means the Department of the Treasury and any other agency designated by the Chairperson of the Committee to have primary responsibility, on behalf of the Committee, for the specific activity for which the Chairperson designates it as a lead agency, including without limitation all or a portion of an assessment, a review, an investigation, or the negotiation or monitoring of a mitigation agreement or condition.

#### § 800.232 Manufacture.

Solely for the purposes of Column 2 of appendix A to part 800, the term

*manufacture* means to produce or reproduce, whether physically or virtually.

#### § 800.233 Material nonpublic technical information.

(a) The term *material nonpublic technical information* means information that:

(1) Provides knowledge, know-how, or understanding not available in the public domain, of the design, location, or operation of critical infrastructure, including without limitation vulnerability information such as that related to physical security or cybersecurity; or

(2) Is not available in the public domain and is necessary to design, fabricate, develop, test, produce, or manufacture a critical technology, including without limitation processes, techniques, or methods;

(b) The term *material nonpublic technical information* does not include financial information regarding the performance of an entity.

(c) Example: Corporation A, a foreign person that is not an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B. Corporation B is a U.S. business that services an industrial control system utilized by an interstate oil pipeline that has the capacity to transport 600,000 barrels per day of crude oil (ICS B). ICS B is covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. The source code for ICS B is not available in the public domain. Pursuant to the terms of the investment, Corporation A will have access to the source code for ICS B. The proposed investment therefore affords Corporation A access to material nonpublic technical information in the possession of Corporation B regarding the design and operation of covered investment critical infrastructure.

#### § 800.234 Minimum excepted ownership.

The term *minimum excepted ownership* means:

(a) With respect to an entity whose equity securities are primarily traded on an exchange in an excepted foreign state or the United States, a majority of its voting interest, the right to a majority of its profits, and the right in the event of dissolution to a majority of its assets; and

(b) With respect to an entity whose equity securities are not primarily traded on an exchange in an excepted foreign state or the United States, 90 percent or more of its voting interest, the right to 90 percent or more of its profits, and the right in the event of

dissolution to 90 percent or more of its assets.

**§ 800.235 Own.**

Solely for the purposes of Column 2 of appendix A to part 800, the term *own* means to directly possess the applicable covered investment critical infrastructure.

**§ 800.236 Parent.**

(a) The term *parent* means a person who or which directly or indirectly:

- (1) Holds or will hold at least 50 percent of the outstanding voting interest in an entity; or
- (2) Holds or will hold the right to at least 50 percent of the profits of an entity, or has or will have the right in the event of the dissolution to at least 50 percent of the assets of that entity.

(b) Any entity that meets the conditions of paragraph (a)(1) or (2) of this section with respect to another entity (*i.e.*, the intermediate parent) is also a parent of any other entity of which the intermediate parent is a parent.

(c) Examples:

(1) *Example 1.* Corporation P holds 50 percent of the voting interest in Corporations R and S. Corporation R holds 40 percent of the voting interest in Corporation X; Corporation S holds 50 percent of the voting interest in Corporation Y, which in turn holds 50 percent of the voting interest in Corporation Z. Corporation P is a parent of Corporations R, S, Y, and Z, but not of Corporation X. Corporation S is a parent of Corporation Y and Z, and Corporation Y is a parent of Corporation Z.

(2) *Example 2.* Corporation A holds warrants which when exercised will entitle it to vote 50 percent of the outstanding shares of Corporation B. Corporation A is a parent of Corporation B.

**§ 800.237 Party to a transaction.**

(a) The term *party to a transaction* means:

- (1) In the case of an acquisition of an ownership interest in an entity, the person acquiring the ownership interest, the person from which such ownership interest is acquired, and the entity whose ownership interest is being acquired, without regard to any person providing brokerage or underwriting services for the transaction;
- (2) In the case of a merger, the surviving entity, and the entity or entities that are merged into that entity as a result of the transaction;
- (3) In the case of a consolidation, the entities being consolidated, and the new consolidated entity;
- (4) In the case of a proxy solicitation, the person soliciting proxies, and the person who issued the voting interest;
- (5) In the case of the acquisition or conversion of contingent equity

interests, the issuer and the person holding the contingent equity interests;

(6) In the case of a change in rights that a person has with respect to an entity in which that person has an investment, the person whose rights change as a result of the transaction and the entity to which those rights apply;

(7) In the case of a transfer, agreement, arrangement, or any other type of transaction, the structure of which is designed or intended to evade or circumvent the application of section 721, any person that participates in such transfer, agreement, arrangement, or other type of transaction;

(8) In the case of any other type of transaction, any person who is in a role comparable to that of a person described in paragraphs (a)(1) through (7) of this section; and

(9) In all cases, each party that submitted a declaration or notice to the Committee regarding a transaction.

(b) For purposes of section 721(l), the term *party to a transaction* includes any affiliate of any party described in paragraphs (a)(1) through (9) of this section that the Committee, or a lead agency acting on behalf of the Committee, determines is relevant to mitigating a risk to the national security of the United States.

**§ 800.238 Person.**

The term *person* means any individual or entity.

**§ 800.239 Personal identifier.**

The term *personal identifier* means name, physical address, email address, social security number, phone number, or other information that identifies a specific individual.

**§ 800.240 Section 721.**

The term *section 721* means section 721 of title VII of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended.

**§ 800.241 Sensitive personal data.**

(a) The term *sensitive personal data* means, except as provided in paragraph (b) of this section:

- (1) Identifiable data that is:
  - (i) Maintained or collected by a U.S. business that:
    - (A) Targets or tailors products or services to any U.S. executive branch agency or military department with intelligence, national security, or homeland security responsibilities, or to personnel and contractors thereof;
    - (B) Has maintained or collected such data on greater than one million individuals at any point over the preceding twelve (12) months; or
    - (C) 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; and

(ii) Within any of the following categories:

(A) Data that could be used to analyze or determine an individual's financial distress or hardship;

(B) The set of data in a consumer report, as defined pursuant to 15 U.S.C. 1681a, unless such data is obtained from a consumer reporting agency for one or more purposes identified in 15 U.S.C. 1681b(a) and such data is not substantially similar to the full contents of a consumer file as defined pursuant to 15 U.S.C. 1681a.;

(C) The set of data in an application for health insurance, long-term care insurance, professional liability insurance, mortgage insurance, or life insurance;

(D) Data relating to the physical, mental, or psychological health condition of an individual;

(E) Non-public electronic communications, including without limitation email, messaging, or chat communications, between or among users of a U.S. business's products or services if a primary purpose of such product or service is to facilitate third-party user communications;

(F) Geolocation data collected using positioning systems, cell phone towers, or WiFi access points such as via a mobile application, vehicle GPS, other onboard mapping tool, or wearable electronic device;

(G) Biometric enrollment data including without limitation facial, voice, retina/iris, and palm/fingerprint templates;

(H) Data stored and processed for generating a state or federal government identification card;

(I) Data concerning U.S. Government personnel security clearance status; or

(J) The set of data in an application for a U.S. Government personnel security clearance or an application for employment in a position of public trust; and

(2) Genetic information, as defined pursuant to 45 CFR 160.103.

(b) The term *sensitive personal data* shall not include, regardless of the applicability of the criteria described in paragraph (a) of this section:

(1) Data maintained or collected by a U.S. business concerning the employees of that U.S. business, unless the data pertains to employees of U.S. Government contractors who hold U.S. Government personnel security clearances; or

(2) Data that is a matter of public record, such as court records or other

government records that are generally available to the public.

**§ 800.242 Service.**

Solely for the purposes of Column 2 of appendix A to part 800, the term *service* means to repair, maintain, refurbish, replace, overhaul, or update.

**§ 800.243 Solely for the purpose of passive investment.**

(a) Ownership interests are held or acquired *solely for the purpose of passive investment* if the person holding or acquiring such interests does not plan or intend to exercise control and—

(1) Is not afforded any rights that if exercised would constitute control;

(2) Does not acquire any access, rights, or involvement specified § 800.211(b);

(3) Does not possess or develop any purpose other than passive investment; and

(4) Does not take any action inconsistent with holding or acquiring such interests solely for the purpose of passive investment. (See § 800.302(b).)

(b) Example: Corporation A, a foreign person, acquires a voting interest in Corporation B, a U.S. business. In addition to the voting interest, Corporation A negotiates the right to appoint a member of Corporation B's Board of Directors. The acquisition by Corporation A of a voting interest in Corporation B is not solely for the purpose of passive investment.

**§ 800.244 Substantial interest.**

(a) The term *substantial interest* means a voting interest, direct or indirect, of 25 percent or more by a foreign person in a U.S. business and a voting interest, direct or indirect, of 49 percent or more by a foreign government in a foreign person.

(b) In the case of entity organized as a limited partnership, a foreign government will be considered to have a *substantial interest* in such partnership if either:

(1) It holds 49 percent or more of the voting interest in the general partner; or

(2) It is a limited partner and holds 49 percent or more of the voting interest of the limited partners.

(c) For purposes of determining the percentage of voting interest held indirectly by one entity in another entity, any voting interest of a parent will be deemed to be a 100 percent voting interest in any entity of which it is a parent.

**§ 800.245 Substantive decisionmaking.**

(a) The term *substantive decisionmaking* means the process through which decisions regarding significant matters affecting an entity

are undertaken, including without limitation, as applicable:

(1) Pricing, sales, and specific contracts, including without limitation the license, sale, or transfer of sensitive personal data to any third party, including without limitation pursuant to a customer, vendor, or joint venture agreement;

(2) Supply arrangements;

(3) Corporate strategy and business development;

(4) Research and development, including without limitation location and budget allocation;

(5) Manufacturing locations;

(6) Access to critical technologies, covered investment critical infrastructure, material nonpublic technical information, or sensitive personal data, including without limitation pursuant to a customer, vendor, or joint venture agreement;

(7) Physical and cyber security protocols, including without limitation the storage and protection of critical technologies, covered investment critical infrastructure, or sensitive personal data;

(8) Practices, policies, and procedures governing the collection, use, or storage of sensitive personal data, including without limitation:

(i) The establishment or maintenance of, or changes to, the architecture of information technology systems and networks used in collecting or maintaining sensitive personal data; or

(ii) Privacy policies and agreements for individuals from whom sensitive personal data is collected setting forth parameters regarding whether and how sensitive personal data may be collected, maintained, accessed, or disseminated; or

(9) Strategic partnerships.

(b) The term *substantive decisionmaking* does not include strictly administrative decisions.

(c) Examples:

(1) Example 1. Corporation A, a foreign person that is not an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B. Corporation B is an unaffiliated TID U.S. business that operates a container terminal at a strategic seaport within the National Port Readiness Network (Terminal B). Pursuant to the terms of the investment, Corporation A will have approval rights over which customers may utilize Terminal B. The proposed investment therefore affords Corporation A involvement in substantive decisionmaking of Corporation B regarding the management, operation, manufacture, or supply of covered investment critical infrastructure.

(2) Example 2. Same facts as Example 1 of this section, except that instead of customer approval rights, Corporation A has the right

to decide whether to claim certain tax credits with respect to Terminal B on its own income tax filing, which prevents Corporation B from claiming such credits. Assuming no other relevant facts, the proposed investment does not afford Corporation A involvement in substantive decisionmaking of Corporation B regarding the management, operation, manufacture, or supply of covered investment critical infrastructure.

**§ 800.246 Supply.**

Solely for the purposes of Column 2 of appendix A to part 800, the term *supply* means to provide third-party physical or cyber security.

**§ 800.247 Targets or tailors.**

(a) The term *targets or tailors* means customizing products or services for use by a person or group of persons or actively marketing to or soliciting a person or group of persons.

(b) Examples:

(1) Example 1. Corporation A, a U.S. business, operates facilities throughout the United States that offer healthcare-related products and services. Some of Corporation A's facilities are located within metropolitan areas that also include U.S. military facilities. Absent additional relevant facts, Corporation A does not target or tailor its products or services for purposes of § 800.241(a)(1)(i)(A).

(2) Example 2. Same facts as Example 2 of this section, except that Corporation A operates a facility on the premises of a U.S. military facility. Corporation A targets or tailors its products or services for purposes of § 800.241(a)(1)(i)(A).

(3) Example 3. Corporation A, a U.S. business, offers a discount to all customers that are employed in the public sector broadly, including active duty U.S. military personnel. Absent additional relevant facts, Corporation A does not target or tailor its products or services for purposes of § 800.241(a)(1)(i)(A).

(4) Example 4. Same facts as Example 3 of this section, except that Corporation A offers a discount solely to uniformed U.S. military personnel or distributes marketing materials that promote the particular usefulness of Corporation A's products to military personnel. Corporation A targets or tailors its products or services for purposes of § 800.241(a)(1)(i)(A).

**§ 800.248 TID U.S. business.**

The term *TID U.S. business* means any U.S. business that:

(a) Produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies;

(b) Performs the functions as set forth in Column 2 of appendix A to part 800 with respect to covered investment critical infrastructure; or

(c) Maintains or collects, directly or indirectly, sensitive personal data of U.S. citizens.

(d) Examples:

(1) Example 1. Corporation A, a U.S. business, operates a munitions plant in the

United States that produces a variety of military grade explosives. Some of the explosives manufactured by Corporation A are subject to export controls because they are listed on the USML. Corporation A manufactures critical technologies and is therefore a TID U.S. business.

(2) *Example 2.* Facility A is a crude oil storage facility with the capacity to hold 50 million barrels of crude oil. Corporation A is a U.S. business that operates Facility A. Corporation B is a U.S. business that provides third-party physical security to Facility A by guarding the gate to Facility A and patrolling the fence surrounding Facility A. Corporation C produces the fencing used by Facility A. Corporation D produces the commercially available off-the-shelf cyber security software utilized in Facility A. Corporation E provides third-party cyber security to Facility A by running Facility A's cyber security defenses. Facility A is covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. Corporation A, Corporation B, and Corporation E each perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to Facility A and each is therefore a TID U.S. business. Assuming no other relevant facts, neither Corporation C nor Corporation D perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to Facility A and neither is therefore a TID U.S. business.

(3) *Example 3.* Pipeline A is an interstate natural gas pipeline with an outside diameter of 36 inches. Corporation A is a U.S. business that owns Pipeline A. Corporation B is a U.S. business that manufactures the pipe segments with an outside diameter of 36 inches that are used in Pipeline A. Pipeline A is covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. Corporation A performs one of the functions as set forth in Column 2 of appendix A to part 800 with respect to Pipeline A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to Pipeline A and is therefore not a TID U.S. business.

(4) *Example 4.* IXP A is an internet exchange point that supports public peering. Corporation A is a U.S. business that operates IXP A. Corporation B is a U.S. business that maintains the physical premises of IXP A. IXP A is covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. Corporation A performs one of the functions as set forth in Column 2 of appendix A to part 800 with respect to IXP A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to IXP A and is therefore not a TID U.S. business.

(5) *Example 5.* SCADA System A is a supervisory control and data acquisition system utilized by a public water system, as defined in section 1401(4) of the Safe Drinking Water Act (42 U.S.C. 300f(4)(A)), as amended, that regularly serves 15,000

individuals. Corporation A is a U.S. business that produces SCADA System A by building the hardware and integrating all the software. Corporation B is a U.S. business that produces commercially available off-the-shelf software that is sold to Corporation A and used as a component in SCADA System A. SCADA System A is covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. Corporation A, as the manufacturer of SCADA System A, performs one of the functions as set forth in Column 2 of appendix A to part 800 with respect to SCADA System A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to SCADA System A and is therefore not a TID U.S. business.

(6) *Example 6.* Same facts as Example 5 of this section. Corporation B later releases a patch that updates the commercially available off-the-shelf software that is a component of SCADA System A. As the software is only a component of SCADA System A, the software itself is not covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to SCADA System A and is therefore not a TID U.S. business.

(7) *Example 7.* Alloy A is a steel alloy containing two percent manganese. Corporation A is a U.S. business that manufactures Alloy A in Facility A by melting the constituent metals. Facility A is in the United States. Corporation B is a U.S. business that purchases Alloy A from Corporation A and resells it to a prime contractor of the Department of Defense. Facility A is covered investment critical infrastructure as set forth in Column 1 of appendix A to part 800. Corporation A performs one of the functions as set forth in Column 2 of appendix A to part 800 with respect to Alloy A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in Column 2 of appendix A to part 800 with respect to Alloy A and is therefore not a TID U.S. business.

(8) *Example 8.* Corporation A, a U.S. business, is a credit reporting agency and maintains consumer reports on greater than one million individuals. Corporation A maintains sensitive personal data and is therefore a TID U.S. business.

(9) *Example 9.* Same facts as in Example 8 of this section, except that Corporation A maintains the sensitive personal data through its subsidiary, Corporation X. Corporation A is a TID U.S. business because it indirectly maintains sensitive personal data. Corporation X is also a TID U.S. business because it directly maintains sensitive personal data.

#### **§ 800.249 Transaction.**

The term *transaction* means any of the following, whether proposed or completed:

(a) A merger, acquisition, or takeover, including without limitation:

- (1) The acquisition of an ownership interest in an entity;
- (2) The acquisition of proxies from holders of a voting interest in an entity;
- (3) A merger or consolidation;
- (4) The formation of a joint venture;

or

(5) A long-term lease or concession arrangement under which a lessee (or equivalent) makes substantially all business decisions concerning the operation of a leased entity (or equivalent), as if it were the owner;

- (b) An investment; or
- (c) The conversion of a contingent equity interest.

(d) *Example.* Corporation A, a foreign person, signs a concession agreement to operate the toll road business of Corporation B, a U.S. business, for 99 years. Corporation B, however, is required under the agreement to perform safety and security functions with respect to the business and to monitor compliance by Corporation A with the operating requirements of the agreement on an ongoing basis. Corporation B may terminate the agreement or impose other penalties for breach of these operating requirements. Assuming no other relevant facts, this is not a transaction.

**Note 1 to § 800.249:** See § 800.308 regarding factors the Committee will consider in determining whether to include the access, rights, or involvement to be acquired by a foreign person upon the conversion of contingent equity interests as part of the Committee's analysis of whether a transaction that involves such interests is a covered transaction.

#### **§ 800.250 Unaffiliated TID U.S. business.**

The term *unaffiliated TID U.S. business* means, with respect to a foreign person, a TID U.S. business in which that foreign person does not directly hold more than 50 percent of the outstanding voting interest or have the right to appoint more than half of the members of the board of directors or equivalent governing body.

#### **§ 800.251 United States.**

The term *United States* or *U.S.* means the United States of America, the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, or any subdivision of the foregoing, and includes the Outer Continental Shelf, as defined in the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331(a)). For purposes of these regulations and their examples, an entity organized under the laws of the United States of America,

one of the States, the District of Columbia, or a commonwealth, territory, dependency, or possession of the United States is an entity organized “in the United States.”

#### § 800.252 U.S. business.

(a) The term *U.S. business* means any entity, irrespective of the nationality of the persons that control it, engaged in interstate commerce in the United States.

(b) Examples:

(1) *Example 1.* Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. It engages in interstate commerce in the United States through a branch or subsidiary. Its branch or subsidiary is a U.S. business. Corporation A and its branch or subsidiary is each also a foreign person should any of them engage in a transaction involving a U.S. business.

(2) *Example 2.* Same facts as in the first sentence of Example 1 of this section. Corporation A, however, does not have a branch office, subsidiary, or fixed place of business in the United States. It exports and licenses technology to an unrelated company in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

(3) *Example 3.* Corporation A, a company organized under the laws of a foreign state, is wholly owned and controlled by Corporation X. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Corporation A does not have a branch office, subsidiary, or fixed place of business in the United States. It exports goods to Corporation X and to unrelated companies in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

#### § 800.253 U.S. national.

The term *U.S. national* means an individual who is a U.S. citizen or an individual who, although not a U.S. citizen, owes permanent allegiance to the United States.

#### § 800.254 Voting interest.

The term *voting interest* means any interest in an entity that entitles the owner or holder of that interest to vote for the election of directors of the entity (or, with respect to unincorporated entities, individuals exercising similar functions) or to vote on other matters affecting the entity.

### Subpart C—Coverage

#### § 800.301 Transactions that are covered control transactions.

Transactions that are covered control transactions include, without limitation:

(a) A transaction which, irrespective of the actual arrangements for control provided for in the terms of the transaction, results or could result in

control of a U.S. business by a foreign person. (See the examples in § 800.301(g)(1),(2), and (3).)

(b) A transaction in which a foreign person conveys its control of a U.S. business to another foreign person. (See the example in § 800.301(g)(4).)

(c) A transaction that results or could result in control by a foreign person of any part of an entity or of assets, if such part of an entity or assets constitutes a U.S. business. (See § 800.302(c) and the examples in § 800.301(g)(5) through (14).)

(d) A joint venture in which the parties enter into a contractual or other similar arrangement, including an agreement on the establishment of a new entity, but only if one or more of the parties contributes a U.S. business and a foreign person could control that U.S. business by means of the joint venture. (See the examples in § 800.301(g)(15) through (17).)

(e) A change in the rights that a foreign person has with respect to a U.S. business in which the foreign person has an investment, if that change could result in foreign control of the U.S. business. (See the example in § 800.301(g)(18).)

(f) A transaction the structure of which is designed to evade or circumvent the application of section 721. (See the example in § 800.301(g)(19).)

(g) Examples:

(1) *Example 1.* Corporation A, a foreign person, proposes to purchase all of the shares of Corporation X, which is a U.S. business. As the sole owner, Corporation A will have the right to elect directors and appoint other primary officers of Corporation X, and those directors will have the right to make decisions about the closing and relocation of particular production facilities and the termination of significant contracts. The directors also will have the right to propose to Corporation A, the sole shareholder, the dissolution of Corporation X and the sale of its principal assets. The proposed transaction is a covered control transaction.

(2) *Example 2.* Same facts as in Example 1 of this section, except that Corporation A plans to retain the existing directors of Corporation X, all of whom are U.S. nationals. Although Corporation A may choose not to exercise its power to elect new directors for Corporation X, Corporation A nevertheless will have that exercisable power. The proposed transaction is a covered control transaction.

(3) *Example 3.* Corporation A, a foreign person, proposes to purchase 50 percent of the shares in Corporation X, a U.S. business, from Corporation B, also a U.S. business. Corporation B would retain the other 50 percent of the shares in Corporation X, and Corporation A and Corporation B would contractually agree that Corporation A would not exercise its voting and other rights for ten

years. The proposed transaction is a covered control transaction.

(4) *Example 4.* Corporation X is a U.S. business, but is wholly owned and controlled by Corporation Y, a foreign person. Corporation Z, also a foreign person, but not related to Corporation Y, seeks to acquire Corporation X from Corporation Y. The proposed transaction is a covered control transaction because it could result in control of Corporation X, a U.S. business, by another foreign person, Corporation Z.

(5) *Example 5.* Corporation X, a foreign person, has a branch office located in the United States. Corporation A, a foreign person, proposes to buy that branch office. The proposed transaction is a covered control transaction.

(6) *Example 6.* Corporation A, a foreign person, buys a branch office located entirely outside the United States of Corporation Y, which is incorporated in the United States. Assuming no other relevant facts, the branch office of Corporation Y is not a U.S. business, and the transaction is not a covered control transaction.

(7) *Example 7.* Corporation A, a foreign person, makes a start-up, or “greenfield,” investment in the United States. That investment involves activities such as the foreign person separately arranging for the financing of and the construction of a plant to make a new product, buying supplies and inputs, hiring personnel, and purchasing the necessary technology. The investment involves incorporating a newly formed subsidiary of the foreign person. Assuming no other relevant facts, Corporation A will not have acquired a U.S. business, and its greenfield investment is not a covered control transaction. However, this transaction may be subject to the provisions of part 802 of this title, which addresses certain transactions concerning real estate.

(8) *Example 8.* Corporation A, a foreign person, intends to make an early-stage investment in a start-up company in the United States. Prior to the investment by the foreign person, the start-up has incorporated, established a domain name, hired personnel, developed business plans, sought financing, rented office space, and engaged in other activities that constitute interstate commerce in the United States, without the involvement of the foreign person. As a result of the investment, Corporation A could control the U.S. business. Under these facts, Corporation A is acquiring a U.S. business and the proposed transaction is a covered control transaction.

(9) *Example 9.* Corporation A, a foreign person, purchases substantially all of the assets of Corporation B. Corporation B, which is incorporated in the United States, was in the business of producing industrial equipment, but stopped producing and selling such equipment one week before Corporation A purchased substantially all of its assets. At the time of the transaction, Corporation B continued to have employees on its payroll, maintained know-how in producing the industrial equipment it previously produced, and maintained relationships with its prior customers, all of which were transferred to Corporation A. The acquisition of substantially all of the assets

of Corporation B by Corporation A is a covered control transaction.

(10) *Example 10.* Corporation X, a foreign person, seeks to acquire from Corporation A, a U.S. business, an empty warehouse facility located in the United States. The acquisition would be limited to the physical facility, and would not include customer lists, intellectual property, or other proprietary information, or other intangible assets or the transfer of personnel. Assuming no other relevant facts, the facility is not an entity and therefore not a U.S. business, and the proposed acquisition of the facility is not a covered control transaction. However, this transaction may be subject to the provisions of part 802 of this title, which addresses certain transactions concerning real estate.

(11) *Example 11.* Same facts as Example 6 of this section, except that, in addition to the proposed acquisition of Corporation A's warehouse facility, Corporation X would acquire the personnel, customer list, equipment, and inventory management software used to operate the facility. Under these facts, Corporation X is acquiring a U.S. business, and the proposed acquisition is a covered control transaction.

(12) *Example 12.* Corporation A, a foreign person, seeks to acquire from Corporation X, a U.S. business, certain tangible and intangible assets that Corporation X operates as a business in the United States. Corporation A intends to use the assets to establish a business undertaking in a foreign country. Under these facts, Corporation X is acquiring a U.S. business, and the proposed acquisition is a covered control transaction.

(13) *Example 13.* Corporation A, a foreign person, seeks to acquire from Corporation X, a U.S. business, proprietary software developed by Corporation X. The acquisition would be limited to the software and would not include customer lists, marketing material, or other proprietary information; any other tangible or intangible assets; or the transfer of personnel. Assuming no other relevant facts, the software does not constitute an entity and therefore not a U.S. business, and the proposed acquisition of the software is not a covered control transaction.

(14) *Example 14.* Same facts as Example 9 of this section, except that, in addition to the proposed acquisition of Corporation X's proprietary software, Corporation A would acquire Corporation X's customer lists, advertising and promotional material, branding, trademarks, domain names, and internet presence. Under these facts, Corporation A is acquiring a U.S. business, and the proposed acquisition is a covered control transaction.

(15) *Example 15.* Corporation A, a foreign person, and Corporation X, a U.S. business, form a separate corporation, JV Corporation, to which Corporation A contributes only cash and Corporation X contributes a U.S. business. Each owns 50 percent of the shares of JV Corporation and, under the Articles of Incorporation of JV Corporation, both Corporation A and Corporation X have veto power over all of the matters affecting JV Corporation identified under § 800.208, giving them both control over JV Corporation. The place of incorporation of JV Corporation is not relevant to the determination of

whether the transaction is a covered control transaction. The formation of JV Corporation is a covered control transaction.

(16) *Example 16.* Corporation A, a foreign person, and Corporation X, a U.S. business, form a separate corporation, JV Corporation, to which Corporation A contributes funding and managerial and technical personnel, while Corporation X contributes certain land and equipment that do not in this example constitute a U.S. business. Corporations A and X each have a 50 percent interest in the joint venture. Assuming no other relevant facts, the formation of JV Corporation is not a covered control transaction. However, this transaction may be subject to the provisions of part 802 of this title, which addresses certain transactions concerning real estate.

(17) *Example 17.* Same facts as Example 2 of this section, except that, in addition to contributing certain land and equipment, Corporation X also contributes intellectual property, other proprietary information, and other intangible assets, that together with the land and equipment constitute a U.S. business, to JV Corporation. Under these facts, Corporation X has contributed a U.S. business, and the formation of JV Corporation is a covered control transaction.

(18) *Example 18.* Corporation A, a foreign person, holds a 10 percent ownership interest in Corporation X, a U.S. business. Corporation X subsequently provides Corporation A the right to appoint the Chief Executive Officer and the Chief Technical Officer of Corporation X. Corporation A does not acquire any additional ownership interest in Corporation X. The change in rights is a covered control transaction.

(19) *Example 19.* Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards circumventing section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a U.S. business. The transaction is a covered control transaction.

#### **§ 800.302 Transactions that are not covered control transactions.**

Transactions that are not covered control transactions include, without limitation:

(a) A stock split or pro rata stock dividend that does not involve a change in control. (See the example in § 800.302(g)(1).)

(b) A transaction that results in a foreign person holding ten percent or less of the outstanding voting interest in a U.S. business (regardless of the dollar value of the interest so acquired), but only if the transaction is solely for the purpose of passive investment. (See § 800.243 and the examples in § 800.302(g)(2) through (4).)

(c) An acquisition of any part of an entity or of assets, if such part of an entity or assets do not constitute a U.S. business. (See § 800.301(c) and the examples in § 800.302(g)(5) through (10).)

(d) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business and in the process of underwriting.

(e) An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations if the contract was made by an insurer in the ordinary course of business.

(f) A change in the rights that a foreign person has with respect to a U.S. business in which that foreign person has an investment, if that change could not result in foreign control of the U.S. business. (See the example in § 800.302(g)(11).)

(g) Examples:

(1) *Example 1.* Corporation A, a foreign person, holds 10,000 shares of Corporation B, a U.S. business, constituting ten percent of the stock of Corporation B. Corporation B pays a 2-for-1 stock dividend. As a result of this stock split, Corporation A holds 20,000 shares of Corporation B, still constituting ten percent of the stock of Corporation B. Assuming no other relevant facts, the acquisition of additional shares is not a covered control transaction.

(2) *Example 2.* In an open market purchase solely for the purpose of passive investment, Corporation A, a foreign person, acquires seven percent of the voting securities of Corporation X, which is a U.S. business. Assuming no other relevant facts, the acquisition of the securities is not a covered control transaction.

(3) *Example 3.* Corporation A, a foreign person, acquires nine percent of the voting shares of Corporation X, a U.S. business. Corporation A also negotiates contractual rights that give it the power to control important matters of Corporation X. The acquisition by Corporation A of the voting shares of Corporation X is not solely for the purpose of passive investment and is a covered control transaction.

(4) *Example 4.* Corporation A, a foreign person, acquires five percent of the voting shares in Corporation B, a U.S. business. In addition to the securities, Corporation A obtains the right to appoint one out of eleven seats on Corporation B's Board of Directors. The acquisition by Corporation A of Corporation B's securities is not solely for the purpose of passive investment. Whether the transaction is a covered control transaction would depend on whether Corporation A obtains control of Corporation B as a result of the transaction. See § 800.303 for transactions that are covered investments.

(5) *Example 5.* Corporation A, a foreign person, acquires, from separate U.S. nationals: products held in inventory; land, and; machinery for export. Assuming no other relevant facts, Corporation A has not acquired a U.S. business, and this acquisition is not a covered control transaction.

(6) *Example 6.* Corporation X, a U.S. business, produces armored personnel carriers in the United States. Corporation A, a foreign person, seeks to acquire the annual production of those carriers from Corporation

X under a long-term contract. Assuming no other relevant facts, this transaction is not a covered control transaction.

(7) *Example 7.* Same facts as Example 2 of this section, except that Corporation X, a U.S. business, has developed important technology in connection with the production of armored personnel carriers.

Corporation A seeks to negotiate an agreement under which it would be licensed to manufacture using that technology. Assuming no other relevant facts, neither the proposed acquisition of technology pursuant to that license agreement, nor the actual acquisition, is a covered control transaction.

(8) *Example 8.* Same facts as Example 2 of this section, except that Corporation A enters into a contractual arrangement to acquire the entire armored personnel carrier business operations of Corporation X, including production facilities, customer lists, technology, and staff, which together constitute a U.S. business. This transaction is a covered control transaction.

(9) *Example 9.* Same facts as Example 2 of this section, except that Corporation X suspended all activities of its armored personnel carrier business a year ago and currently is in bankruptcy proceedings. Existing equipment provided by Corporation X is being serviced by another company, which purchased the service contracts from Corporation X. The business's production facilities are idle but still in working condition, some of its key former employees have agreed to return if the business is resuscitated, and its technology and customer and vendor lists are still current. Corporation X's personnel carrier business constitutes a U.S. business, and its purchase by Corporation A is a covered control transaction.

(10) *Example 10.* Same facts as Example 2 of this section, except that Corporation A and Corporation X establish a joint venture that will be controlled by Corporation A to manufacture armored personnel carriers outside the United States, and Corporation X contributes assets constituting a U.S. business, including intellectual property and other intangible assets required to manufacture the armored personnel carriers, to the joint venture. Corporation X has contributed a U.S. business to the joint venture, and the establishment of the joint venture is a covered control transaction.

(11) *Example 11.* Corporation A, a foreign person, holds a 10 percent ownership interest in Corporation X, a U.S. business. Corporation A and Corporation X enter into a contractual arrangement pursuant to which Corporation A gains the right to purchase an additional interest in Corporation X to prevent the dilution of Corporation A's *pro rata* interest in Corporation X in the event that Corporation X issues additional instruments conveying interests in Corporation X. Corporation A does not acquire any additional rights or ownership interest in Corporation X pursuant to the contractual arrangement. Assuming no other relevant facts, the transaction is not a covered control transaction.

### **§ 800.303 Transactions that are covered investments.**

Transactions that are covered investments include, without limitation:

(a) A transaction that meets the requirements of § 800.211 irrespective of the percentage of voting interest acquired. (See the examples in § 800.303(f)(1) through (3).)

(b) A transaction that meets the requirements of § 800.211, irrespective of the fact that the Committee concluded all action under section 721 for a previous covered investment by the same foreign person in the same TID U.S. business, where such transaction involves the acquisition of access, rights, or involvement specified in § 800.211 in addition to those notified to the Committee in the transaction for which the Committee previously concluded action. (See the example in § 800.303(f)(4).)

(c) A transaction that meets the requirements of § 800.211, irrespective of the fact that the critical technology produced, designed, tested, manufactured, fabricated, or developed by the TID U.S. business became controlled pursuant to section 1758 of the Export Control Reform Act of 2018 after the effective date, unless any of the criteria set forth in § 800.104(b) are satisfied with respect to the transaction prior to the critical technology becoming controlled. (See the example in § 800.303(f)(5).)

(d) A change in the rights that a foreign person has with respect to a U.S. business in which the foreign person has an investment, if that change could result in a covered investment. (See the example in § 800.303(f)(6).)

(e) A transaction the structure of which is designed to evade or circumvent the application of section 721. (See the example in § 800.303(f)(7).)

(f) Examples:

(1) *Example 1.* Corporation A, a foreign person who is not an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B. Corporation B is a U.S. business that manufactures a critical technology. Corporation B is therefore a TID U.S. business. Pursuant to the terms of the investment, a designee of Corporation A will have the right to observe the meetings of the board of directors of Corporation B. The proposed transaction is a covered investment.

(2) *Example 2.* Same facts as Example 1 of this section, except that, pursuant to the terms of the investment, instead of observer rights, Corporation A has consultation rights with respect to Corporation B's licensing of a critical technology to third parties. Corporation A is therefore involved in substantive decisionmaking with respect to

Corporation B and the proposed transaction is a covered investment.

(3) *Example 3.* Corporation A is a foreign person that is an excepted investor. Corporation B, a foreign person that is not an excepted investor, owns a three percent, non-controlling equity interest in Corporation A. Corporation A proposes to acquire a four percent, non-controlling equity interest in Corporation C, an unaffiliated TID U.S. business. Pursuant to the terms of the investment in Corporation C and Corporation A's governance documents, Corporation A and Corporation B will each have access to material nonpublic technical information in Corporation C's possession. The transaction is a covered investment because Corporation B is making an investment that will result in access to material nonpublic technical information pursuant to § 800.211(b).

(4) *Example 4.* The Committee concludes all action under section 721 with respect to a covered investment by Corporation A, a foreign person who is not an excepted investor, in which Corporation A acquires a four percent, non-controlling equity interest with access to material non-public information in Corporation B, an unaffiliated TID U.S. business. One year later, Corporation A proposes to acquire an additional five percent equity interest in Corporation B, resulting in Corporation A holding a nine percent, non-controlling equity interest in Corporation B. Pursuant to the terms of the additional investment, Corporation A will receive the right to appoint a member to the board of directors of Corporation B. The proposed transaction is a covered investment because the transaction involves both an acquisition of an equity interest in an unaffiliated TID U.S. business and a new right under § 800.211.

(5) *Example 5.* Corporation A, a foreign person who is not an excepted investor, has executed a binding written agreement establishing the material terms of a proposed non-controlling investment in Corporation B, an unaffiliated TID U.S. business. The proposed investment will afford Corporation A access to material nonpublic technical information in the possession of Corporation B. The only controlled technology produced, designed, tested, manufactured, fabricated, or developed by Corporation B became controlled pursuant to section 1758 of the Export Control Reform Act of 2018 after the effective date but prior to the date upon which the binding written agreement establishing the material terms of the investment was executed. The proposed transaction is a covered investment.

(6) *Example 6.* Corporation A, a foreign person who is not an excepted investor, holds a four percent non-controlling ownership interest in Corporation X, an unaffiliated TID U.S. business, but Corporation A was not afforded any of the access, rights, or involvement specified in § 800.211(b) at the time of its investment. Corporation A subsequently gains the right to appoint a member of the board of directors of Corporation X. Assuming no other relevant facts, the transaction is a covered investment.

(7) *Example 7.* Corporation A is organized under the laws of a foreign state, is wholly owned and controlled by a foreign national,

and is not an excepted investor. With a view towards circumventing section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, makes a non-controlling minority equity investment in Corporation X, an unaffiliated TID U.S. business that maintains and collects sensitive personal data on U.S. citizens. In connection with the investment, the U.S. citizen is afforded the right to be involved in substantive decisionmaking regarding the release of sensitive personal data of U.S. citizens maintained by Corporation X. The transaction is a covered investment.

#### **§ 800.304 Transactions that are not covered investments.**

Transactions that are not covered investments include, without limitation:

(a) An investment by a foreign person in an unaffiliated TID U.S. business that does not afford the foreign person any of the access, rights, or involvement specified in § 800.211(b). (See the examples in § 800.304(f)(1) and (2).)

(b) An investment by a foreign person who is an excepted investor in an unaffiliated TID U.S. business. (See the example in § 800.304(f)(3).)

(c) A transaction that results or could result in control by a foreign person of an unaffiliated TID U.S. business. (See the example in § 800.304(f)(4).)

(d) A stock split or pro rata stock dividend that does not afford the foreign person any of the access, rights, or involvement specified in § 800.211(b). (See the example in § 800.304(f)(5).)

(e) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business and in the process of underwriting.

(f) Examples:

(1) *Example 1.* In an open market purchase solely for the purpose of passive investment, Corporation A, a foreign person who is not an excepted investor, acquires seven percent of the voting securities of Corporation X, an unaffiliated TID U.S. business. Assuming no other relevant facts, the acquisition of the securities is not a covered investment.

(2) *Example 2.* The Committee concluded all action under section 721 with respect to a covered investment in which Corporation A, a foreign person who is not an excepted investor, acquired a four percent, non-controlling equity interest with board observer rights in Corporation B, an unaffiliated TID U.S. business. One year later, Corporation A proposes to acquire an additional five percent equity interest in Corporation B, which would result in Corporation A holding a nine percent, non-controlling equity interest in Corporation B. The proposed investment does not afford Corporation A any additional access, rights, or involvement with respect to Corporation B, including the access, rights, or involvement specified in § 800.211(b). Assuming no other relevant facts, the

proposed transaction is not a covered investment.

(3) *Example 3.* Corporation A, a foreign person who is an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B, an unaffiliated TID U.S. business. Pursuant to the terms of the investment, a designee of Corporation A will have the right to observe the meetings of the board of directors of Corporation B. Assuming no other relevant facts, the proposed transaction is not a covered investment.

(4) *Example 4.* Corporation A, a foreign person who is an excepted investor, proposes to purchase all of the shares of Corporation B, an unaffiliated TID U.S. business. As the sole owner, Corporation A will have the right to elect directors and appoint other primary officers of Corporation B. Assuming no other relevant facts, the proposed transaction is not a covered investment. It is, however, a covered control transaction. Whether Corporation A is an excepted investor or whether Corporation B is an unaffiliated TID U.S. business are not relevant to the determination of whether the transaction is a covered control transaction. (See § 800.301).

(5) *Example 5.* Corporation A, a foreign person who is not an excepted investor, holds 10,000 shares and board observer rights in Corporation B, an unaffiliated TID U.S. business, constituting ten percent of the stock of Corporation B. Corporation B pays a 2-for-1 stock dividend. As a result of this stock split, Corporation A holds 20,000 shares of Corporation B, still constituting ten percent of the stock of Corporation B. The proposed investment does not afford Corporation A any additional access, rights, or involvement with respect to Corporation B, including those specified in § 800.211(b). Assuming no other relevant facts, the acquisition of additional shares is not a covered investment.

#### **§ 800.305 Incremental acquisitions.**

(a) Any transaction in which a foreign person acquires an additional interest in a U.S. business over which the same foreign person, or any of its direct or indirect wholly-owned subsidiaries, previously acquired direct control in the U.S. business in a covered control transaction for which the Committee concluded all action under section 721 on the basis of a notice filed pursuant to § 800.501 shall not be deemed to be a covered transaction. If, however, a foreign person that did not acquire control of the U.S. business in the prior transaction is a party to the later transaction, the later transaction may be a covered transaction.

(b) Examples:

(1) *Example 1.* Corporation A, a foreign person, directly acquires a 40 percent interest and important rights with respect to Corporation B, a U.S. business. The documentation pertaining to the transaction gives no indication that Corporation A's interest in Corporation B may increase at a later date. Corporation A and Corporation B file a voluntary notice of the transaction with

the Committee. Following its review of the transaction, the Committee informs the parties that the notified transaction is a covered control transaction, and concludes action under section 721. Three years later, Corporation A acquires the remainder of the voting interest in Corporation B. Assuming no other relevant facts, because the Committee, on the basis of the notice submitted by the parties, concluded all action with respect to Corporation A's earlier direct investment in the same U.S. business, and because no other foreign person is a party to this subsequent transaction, this subsequent transaction is not a covered transaction.

(2) *Example 2.* Same facts as Example 1 of this section, except that Corporation A and Corporation B file a declaration of the transaction, rather than a notice, with the Committee, and the Committee concluded all action on the basis of the declaration. The subsequent transaction may be a covered transaction, depending on the specific facts and circumstances.

#### **§ 800.306 Lending transactions.**

(a) The extension of a loan or a similar financing arrangement by a foreign person to a U.S. business, regardless of whether accompanied by the creation in favor of the foreign person of a secured interest over securities or other assets of the U.S. business, shall not, by itself, constitute a covered transaction.

(1) The Committee will accept notices or declarations concerning a loan or a similar financing arrangement that does not, by itself, constitute a covered transaction only at the time that, because of imminent or actual default or other condition, there is a significant possibility that the foreign person may obtain control of a U.S. business, or acquire equity interest and access, rights, or involvement specified in § 800.211(b) over a TID U.S. business, as a result of the default or other condition.

(2) Where the Committee accepts a notice or declaration concerning a loan or a similar financing arrangement pursuant to paragraph (a)(1) of this section, and a party to the transaction is a foreign person that makes loans in the ordinary course of business, the Committee will take into account whether the foreign person has made any arrangements to transfer management decisions, or day-to-day control over the U.S. business to U.S. nationals for purposes of determining whether such loan or financing arrangement constitutes a covered transaction.

(b) Notwithstanding paragraph (a) of this section, a loan or a similar financing arrangement through which a foreign person acquires an interest in profits of a U.S. business, the right to appoint members of the board of directors of the U.S. business, or other

comparable financial or governance rights characteristic of an equity investment but not of a typical loan may constitute a covered transaction.

(c) An acquisition of voting interest in or assets of a U.S. business by a foreign person upon default or other condition involving a loan or a similar financing arrangement does not constitute a covered transaction, provided that the loan was made by a syndicate of banks in a loan participation where the foreign lender (or lenders) in the syndicate:

(1) Needs the majority consent of the U.S. participants in the syndicate to take action, and cannot on its own initiate any action vis-à-vis the debtor; or

(2) Does not have a lead role in the syndicate, and is subject to a provision in the loan or financing documents limiting its ability to control the debtor such that control for purposes of § 800.208 could not be acquired.

(d) Examples:

(1) *Example 1.* Corporation A, which is a U.S. business, borrows funds from Corporation B, a bank organized under the laws of a foreign state and controlled by foreign persons. As a condition of the loan, Corporation A agrees not to sell or pledge its principal assets to any person. Assuming no other relevant facts, this lending arrangement does not alone constitute a covered transaction.

(2) *Example 2.* Same facts as in Example 1 of this section, except that Corporation A defaults on its loan from Corporation B and seeks bankruptcy protection. Corporation A has no funds with which to satisfy Corporation B's claim, which is greater than the value of Corporation A's principal assets. Corporation B's secured claim constitutes the only secured claim against Corporation A's principal assets, creating a high probability that Corporation B will receive title to Corporation A's principal assets, which constitute a U.S. business. Assuming no other relevant facts, the Committee would accept a notice of the impending bankruptcy court adjudication transferring control of Corporation A's principal assets to Corporation B, which would constitute a covered control transaction.

(3) *Example 3.* Corporation A, a foreign bank, makes a loan to Corporation B, a U.S. business. The loan documentation extends to Corporation A rights in Corporation B that are characteristic of an equity investment but not of a typical loan, including dominant minority representation on the board of directors of Corporation B and the right to be paid dividends by Corporation B. This loan is a covered control transaction.

(4) *Example 4.* Same facts as in Example 3 of this section, except that Corporation B is an unaffiliated TID U.S. business and the loan documentation extends to Corporation A's involvement in substantive decisionmaking with respect to Corporation B. Whether the loan is a covered control transaction would depend on whether Corporation A obtains control of Corporation B as a result of the loan, but, if it could not

result in Corporation A's control of Corporation B, this loan is a covered investment.

#### § 800.307 Specific clarifications for investment funds.

(a) Notwithstanding § 800.303, an indirect investment by a foreign person in a TID U.S. business through an investment fund that affords the foreign person (or a designee of the foreign person) membership as a limited partner or equivalent on an advisory board or a committee of the fund shall not be considered a covered investment with respect to the foreign person if:

(1) The fund is managed exclusively by a general partner, a managing member, or an equivalent;

(2) The foreign person is not the general partner, managing member, or equivalent;

(3) The advisory board or committee does not have the ability to approve, disapprove, or otherwise control:

(i) Investment decisions of the investment fund; or

(ii) Decisions made by the general partner, managing member, or equivalent related to entities in which the investment fund is invested;

(4) The foreign person does not otherwise have the ability to control the investment fund, including without limitation the authority:

(i) To approve, disapprove, or otherwise control investment decisions of the investment fund;

(ii) To approve, disapprove, or otherwise control decisions made by the general partner, managing member, or equivalent related to entities in which the investment fund is invested; or

(iii) To unilaterally dismiss, prevent the dismissal of, select, or determine the compensation of the general partner, managing member, or equivalent;

(5) The foreign person does not have access to material nonpublic technical information as a result of its participation on the advisory board or committee; and

(6) The investment does not afford the foreign person any of the access, rights, or involvement specified in § 800.211(b).

(b) For the purposes of paragraphs (a)(3) and (4) of this section, and except as provided in paragraph (c) of this section, a waiver of a potential conflict of interest, a waiver of an allocation limitation, or a similar activity, applicable to a transaction pursuant to the terms of an agreement governing an investment fund shall not be considered to constitute control of investment decisions of the investment fund or decisions relating to entities in which the investment fund is invested.

(c) In extraordinary circumstances, the Committee may consider the waiver of a potential conflict of interest, the waiver of an allocation limitation, or a similar activity, applicable to a transaction pursuant to the terms of an agreement governing an investment fund, to constitute control of investment decisions of the investment fund or decisions relating to entities in which the investment fund is invested.

(d) *Example:* Limited Partner A, a foreign person, is a limited partner in an investment fund that invests in Corporation B, an unaffiliated TID U.S. business. The investment fund is managed exclusively by a general partner, who is not a foreign person. The investment affords Limited Partner A membership on an advisory board of the investment fund. The advisory board provides industry expertise, assists with the sourcing of transactions, and votes on the compensation of the general partner, but it does not control investment decisions of the fund or decisions made by the general partner related to entities in which the fund is invested. Limited Partner A does not otherwise have the ability to control the fund. Limited Partner A's investment in Corporation B does not afford it access to any material nonpublic technical information in the possession of Corporation B, the right to be a member or observer, or to nominate a member or observer, to the board of Corporation B, nor any involvement in the substantive decisionmaking of Corporation B. Assuming no other facts, the investment by Limited Partner A is not a covered investment.

#### § 800.308 Timing rule for a contingent equity interest.

(a) For purposes of determining whether to include the rights that a holder of contingent equity interest will acquire upon conversion of, or exercise of a right provided by, those interests in the Committee's analysis of whether a notified transaction is a covered transaction, the Committee will consider factors that include:

(1) The imminence of conversion or satisfaction of contingent conditions;

(2) Whether conversion or satisfaction of contingent conditions depends on factors within the control of the acquiring party; and

(3) Whether the amount of interest and the rights that would be acquired upon conversion or satisfaction of contingent conditions can be reasonably determined at the time of acquisition.

(b) When the Committee, applying paragraph (a) of this section, determines that the rights that the holder will acquire upon conversion or satisfaction

of contingent condition will not be included in the Committee's analysis of whether a notified transaction is a covered transaction, the Committee will disregard the contingent equity interest for purposes of that transaction except to the extent that they convey immediate rights to the holder with respect to the entity that issued the interest.

(c) Examples:

(1) *Example 1.* Corporation A, a foreign person, notifies the Committee that it intends to buy common stock and debentures of Corporation X, a U.S. business. By their terms, the debentures are convertible into common stock only upon the occurrence of an event the timing of which is not in the control of Corporation A, and the number of common shares that would be acquired upon conversion cannot now be determined. Assuming no other relevant facts, the Committee will disregard the debentures in the course of its covered transaction analysis at the time that Corporation A acquires the debentures. In the event that it determines that the acquisition of the common stock is not a covered transaction, the Committee will so inform the parties. Once the conversion of the instruments becomes imminent, it may be appropriate for the Committee to consider the rights that would result from the conversion and whether the conversion is a covered transaction. The conversion of those debentures into common stock could be a covered transaction, depending on what percentage of Corporation X's voting securities Corporation A would receive and what powers those securities would confer on Corporation A.

(2) *Example 2.* Same facts as Example 1 of this section, except that the debentures at issue are convertible at the sole discretion of Corporation A after six months, and if converted, would represent a 50 percent interest in Corporation X. The Committee may consider the rights that would result from the conversion as part of its analysis.

#### Subpart D—Declarations

##### § 800.401 Mandatory declarations.

(a) Except as provided in paragraph (c) or (d) of this section, the parties to a transaction described in paragraph (b) of this section shall submit to the Committee a declaration with information regarding the transaction in accordance with § 800.403.

(b) A covered transaction that results in the acquisition of a substantial interest in a TID U.S. business by a foreign person in which a foreign government has a substantial interest.

(c) The submission of a declaration shall not be required pursuant to paragraph (b) of this section with respect to an investment by an investment fund if:

(1) The fund is managed exclusively by a general partner, a managing member, or an equivalent;

(2) The general partner, managing member, or equivalent that exclusively manages the fund is not a foreign person; and

(3) The investment fund satisfies, with respect to any foreign person with membership as a limited partner on an advisory board or a committee of the fund, the criteria specified in § 800.307(a)(3) and (4);

(d) Notwithstanding paragraph (a) of this section, parties to a covered transaction may elect to submit a written notice pursuant to subpart E of this part regarding the transaction instead of a declaration.

(e) Parties shall submit to the Committee the declaration required pursuant to paragraph (a) of this section, or a written notice pursuant to paragraph (d) of this section, no later than:

(1) [EFFECTIVE DATE OF FINAL RULE], or promptly thereafter, if the completion date of the transaction is between [EFFECTIVE DATE OF FINAL RULE] and [DATE WHICH IS 30 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE]; or

(2) Thirty days before the completion date of the transaction, if the completion date of the transaction is after [DATE THAT IS 30 DAYS AFTER THE EFFECTIVE DATE OF FINAL RULE].

(f) Notwithstanding paragraph (e)(2) of this section, the parties to a covered transaction may complete a transaction subject to a mandatory declaration or notice under this section at any time after having been informed in writing by the Committee that the Committee has concluded all action under section 721 or that the Committee is not able to complete action pursuant to § 800.807(a)(2).

(g) In the event that the Committee rejects or permits a withdrawal of a declaration or notice required under section, the parties shall not complete the transaction earlier than 30 days after the date of the resubmission, except with the written approval of the Staff Chairperson.

##### § 800.402 Voluntary declarations.

Except as otherwise prohibited under § 800.403(e), a party to any proposed or completed transaction may submit to the Committee a declaration regarding the transaction in accordance with the procedures and requirements set forth in § 800.403 and § 800.404 instead of a written notice.

##### § 800.403 Procedures for declarations.

(a) A party or parties shall submit a declaration of a covered transaction pursuant to § 800.401 or § 800.402 by submitting electronically the

information set out in § 800.404, including the certifications required thereunder, to the Staff Chairperson in accordance with the submission instructions on the Committee's section of the Department of the Treasury website at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

(b) No communications other than those described in paragraph (a) of this section shall constitute the submission of a declaration for purposes of section 721.

(c) Information and other documentary material submitted to the Committee pursuant to this section shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 800.802.

(d) Persons filing a declaration shall, during the time that the matter is pending before the Committee, promptly advise the Staff Chairperson of any material changes in plans, facts, or circumstances addressed in the declaration, and any material change in information provided or required to be provided to the Committee under § 800.404. Unless the Committee rejects the declaration on the basis of such material changes in accordance with § 800.406(a)(2)(i), such changes shall become part of the declaration filed by such persons under § 800.403, and the certification required under § 800.405(d) shall apply to such changes.

(e) Parties to a covered transaction that have filed with the Committee a written notice regarding a transaction pursuant to § 800.501 may not submit to the Committee a declaration regarding the same transaction or a substantially similar transaction without the written approval of the Staff Chairperson.

##### § 800.404 Contents of declarations.

(a) The party or parties submitting a declaration of a covered transaction pursuant to § 800.403 shall provide the information set out in this section, which must be accurate and complete with respect to all parties and to the transaction. (See also paragraphs (d) and (e) of this section.)

(b) If fewer than all the parties to a transaction submit a declaration, the Committee may, at its discretion, request that the parties to the transaction file a written notice of the transaction under § 800.501, if the Staff Chairperson determines that the information provided by the submitting party or parties in the declaration is insufficient for the Committee to assess the transaction.

(c) Subject to paragraph (e) of this section, a declaration submitted pursuant to § 800.403 shall describe or provide, as applicable:

(1) The name of the foreign person(s) and U.S. business(es) that are parties to, or, in applicable cases, the subject of the transaction, as well as the name, telephone number, and email address of the primary point of contact for each party.

(2) The following information regarding the transaction in question, including:

(i) A brief description of the rationale and nature of the transaction, including its structure (e.g., share purchase, merger, asset purchase);

(ii) The percentage of voting interest acquired and the resulting aggregate voting interest held by the foreign person and its affiliates;

(iii) The percentage of economic interest acquired and the resulting aggregate economic interest held by the foreign person and its affiliates;

(iv) Whether the U.S. business has multiple classes of ownership;

(v) The total transaction value in U.S. dollars;

(vi) The actual or expected completion date of the transaction;

(vii) All sources of financing for the transaction; and

(viii) A copy of the definitive documentation of the transaction, or if none exists, the document establishing the material terms of the transaction.

(3) The following:

(i) A statement as to whether a party to the transaction is stipulating that the transaction is a covered transaction and a description of the basis for the stipulation; and

(ii) A statement as to whether a party to the transaction is stipulating that the transaction is a foreign government-controlled transaction and a description of the basis for the stipulation.

(4) A statement as to whether the foreign person will acquire any of the following with respect to the U.S. business:

(i) Access to any material nonpublic technical information in the possession of the U.S. business, and if so, a brief explanation of the type of access and type of information;

(ii) Membership, observer rights, or nomination rights as set forth in § 800.211(b)(2), and if so, a statement as to the composition of the board or other body both before and after the completion date of the transaction;

(iii) Any involvement, other than through voting shares, in substantive decisionmaking of the U.S. business regarding critical infrastructure, critical technologies, or sensitive personal data

as set forth in § 800.211(b)(3), and if so, a statement as to the involvement in such substantive decisionmaking; or

(iv) Any rights that could result in the foreign person acquiring control of the U.S. business and, if any, a brief explanation of these rights.

(5) The following information regarding the covered transaction U.S. business:

(i) Website address;

(ii) Principal place of business;

(iii) Place of incorporation or organization; and

(iv) A list of the addresses or geographic coordinates (to at least the fourth decimal) of all locations of the U.S. business, including the U.S. business' headquarters, facilities, and operating locations.

(6) With respect to the U.S. business that is the subject of the transaction and any entity of which that U.S. business is a parent, a brief summary of their respective business activities, as, for example, set forth in annual reports, and the product or service categories of each, including the applicable six-digit North American Industry Classification System (NAICS) Codes, Commercial and Government Entity Code (CAGE Code) assigned by the Department of Defense, and any applicable Dun and Bradstreet identification (DUNS) numbers assigned to the U.S. business.

(7) A statement as to whether the U.S. business produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies.

(8) A statement as to whether the U.S. business performs any of the functions with respect to covered investment critical infrastructure as set forth in Column 2 of appendix A to part 800.

(9) A statement as to whether the U.S. business maintains or collects sensitive personal data on U.S. citizens.

(10) A statement as to whether the U.S. business has any contracts (including any subcontracts, if known) that are currently in effect or were in effect within the past three years with any U.S. Government agency or component, or in the past 10 years if the contract included access to personally identifiable information of U.S. Government personnel. If so, provide an annex listing such contracts, including the name of the U.S. Government agency or component, the delivery order number or contract number, the primary contractor (if the U.S. business is a subcontractor), the start date, and the estimated completion date.

(11) A statement as to whether the U.S. business has any contracts (including any subcontracts, if known) that are currently in effect or were in effect within the past five years

involving information, technology, or data that is classified under Executive Order 12958, as amended.

(12) A statement as to whether the U.S. business has received any grant or other funding from the Department of Defense or the Department of Energy, or participated in or collaborated on any defense or energy program or product involving one or more critical technologies or critical infrastructure within the past five years.

(13) A statement as to whether the U.S. business participated in a Defense Production Act Title III Program (50 U.S.C. 4501, *et seq.*) within the past seven years.

(14) A statement as to whether the U.S. business has received or placed priority rated contracts or orders under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700), and the level(s) of priority of such contracts or orders (DX or DO) within the past three years.

(15) The name of the ultimate parent of the foreign person.

(16) The principal place of business and address of the foreign person, ultimate parent and ultimate owner of such parent.

(17) Complete organizational charts, both pre- and post-transaction, including information that identifies the name, principal place of business and place of incorporation or other legal organization (for entities), nationality (for individuals), and ownership percentage (expressed in terms of both voting and economic interest, if different) for each of the following:

(i) The immediate parent, the ultimate parent, and each intermediate parent, if any, of each foreign person that is a party to the transaction;

(ii) Where the ultimate parent is a private company, the ultimate owner(s) of such parent;

(iii) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent; and

(iv) The U.S. business that is the subject of the transaction, both before and after completion of the transaction.

(18) Information regarding all foreign government ownership in the foreign person's ownership structure, including nationality and percentage of ownership, as well as any rights that a foreign government holds, directly or indirectly, with respect to the foreign person.

(19) With respect to the foreign person that is party to the transaction and any of its parents, as applicable, a brief summary of their respective business activities, as, for example, set forth in annual reports.

(20) A statement as to whether any party to the transaction has been party to another transaction previously notified or submitted to the Committee, and the case number assigned by the Committee regarding such transaction(s).

(21) A statement (including relevant jurisdiction and criminal case law number or legal citation) as to whether the U.S. business, the foreign person, or any parent or subsidiary of the foreign person has been convicted in the last ten years of a crime in any jurisdiction.

(22) If applicable, a description (which may group similar items into general product categories) of the items, their uses, and a list of any relevant classifications for the critical technologies that the U.S. business produces, designs, tests, manufactures, fabricates, or develops.

(23) If applicable, a statement as to which functions set forth in Column 2 of appendix A to part 800 that the U.S. business performs with respect to covered investment critical infrastructure, including a description of such functions and the applicable covered investment critical infrastructure.

(24) If applicable:

(i) The category or categories of sensitive personal data, as specified at § 800.241, that the U.S. business maintains or collects, or intends to maintain or collect;

(ii) The approximate number of total unique individuals from whom sensitive personal data is currently maintained, and has been collected over the last 12 months;

(iii) Whether the U.S. business targets or tailors its products or services to U.S. Government personnel or contractors from whom it maintains or collects sensitive personal data.

(d) Each party submitting a declaration shall provide a certification of the information contained in the declaration consistent with § 800.204 of this chapter. A sample certification may be found on the Committee's section of the Department of the Treasury website at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

(e) A party that offers a stipulation pursuant to paragraph (c)(3) of this section acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered investment, a covered control transaction, or a foreign government-controlled transaction for the purposes of section 721 and all authorities thereunder, and waives the right to

challenge any such determination. 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.

**§ 800.405 Beginning of 30-day assessment period.**

(a) Upon receipt of a declaration submitted pursuant to § 800.403, the Staff Chairperson shall promptly inspect the declaration and shall promptly notify in writing all parties to a transaction that have submitted a declaration that:

(1) The Staff Chairperson has accepted the declaration and circulated the declaration to the Committee, and the date on which the assessment described in paragraph (b) of this section begins; or

(2) The Staff Chairperson has determined not to accept the declaration and circulate the declaration to the Committee because the declaration is incomplete, and an explanation of the material respects in which the declaration is incomplete.

(b) A 30-day period for assessment of a covered transaction that is the subject of a declaration shall commence on the date on which the declaration is received by the Committee from the Staff Chairperson. Such period shall end no later than the thirtieth day after it has commenced, or if the thirtieth day is not a business day, no later than the next business day after the thirtieth day.

(c) During the 30-day assessment period, the Staff Chairperson may invite the parties to a covered transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction.

(d) If the Committee notifies the parties to a transaction that have submitted a declaration pursuant to § 800.403 that the Committee intends to conclude all action under section 721 with respect to that transaction, each party that has submitted additional information subsequent to the original declaration shall file a certification as described in § 800.204. A sample certification may be found on the Committee's section of the Department of the Treasury website at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

(e) If a party fails to provide the certification required under paragraph (d) of this section, the Committee may, at its discretion, take any of the actions under § 800.407.

**§ 800.406 Rejection, disposition, or withdrawal of declarations.**

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any declaration that does not comply with § 800.404 and so inform the parties promptly in writing;

(2) Reject any declaration at any time, and so inform the parties promptly in writing, if, after the declaration has been submitted and before the Committee has taken one of the actions specified in § 800.407:

(i) There is a material change in the covered transaction as to which a declaration has been submitted; or

(ii) Information comes to light that contradicts material information provided in the declaration by the party (or parties); or

(3) Reject any declaration at any time after the declaration has been submitted, and so inform the parties promptly in writing, if the party (or parties) that submitted the declaration does not provide follow-up information requested by the Staff Chairperson within two business days of the request, or within a longer time frame if the party (or parties) so request in writing and the Staff Chairperson grants that request in writing.

(b) The Staff Chairperson shall notify the parties that submitted a declaration when the Committee has found that the transaction that is the subject of a declaration is not a covered transaction.

(c) Parties to a transaction that have submitted a declaration pursuant to § 800.403 may request in writing, at any time prior to the Committee taking action under § 800.407, that such declaration be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made and state whether the transaction that is the subject of the declaration is being fully and permanently abandoned. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(d) The Committee may not request or recommend that a declaration be withdrawn and refiled, except to permit parties to a covered transaction to correct material errors or omissions, or describe material changes to the transaction, in the declaration submitted with respect to that covered transaction.

(e) A party (or parties) may not submit more than one declaration for the same or a substantially similar transaction without approval from the Staff Chairperson.

**Note 1 to § 800.406:** See § 800.403(e) regarding the prohibition on submitting a

declaration regarding the same transaction or a substantially similar transaction for which a written notice has been filed without the approval of the Staff Chairperson.

#### **§ 800.407 Committee actions.**

(a) Upon receiving a declaration submitted pursuant to § 800.403 with respect to a covered transaction, the Committee may, at the discretion of the Committee:

(1) Request that the parties to the transaction file a written notice pursuant to subpart E;

(2) Inform the parties to the transaction that the Committee is not able to conclude action under section 721 with respect to the transaction on the basis of the declaration and that the parties may file a written notice pursuant to subpart E to seek written notification from the Committee that the Committee has concluded all action under section 721 with respect to the transaction;

(3) Initiate a unilateral review of the transaction under § 800.501(c); or

(4) Notify the parties in writing that the Committee has concluded all action under section 721 with respect to the transaction.

(b) The Committee shall take action under paragraph (a) of this section within the time period set forth in § 800.405(b).

#### **Subpart E—Notices**

##### **§ 800.501 Procedures for notices.**

(a) A party or parties to a proposed or completed transaction may file a voluntary notice of the transaction with the Committee. Voluntary notice to the Committee is filed by sending an electronic copy of the notice that includes, in English, the information set out in § 800.502, including the certification required under paragraph (l) of that section. For electronic submission instructions, see the Committee's section of the Department of the Treasury website, currently available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

(b) If the Committee determines that a transaction for which no voluntary notice has been filed under paragraph (a) of this section may be a covered transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction to provide to the Committee the information necessary to determine whether the transaction is a covered transaction, and if the Committee

determines that the transaction is a covered transaction, to file a notice under paragraph (a) of such covered transaction.

(c) With respect to any transaction:

(1) Subject to paragraph (c)(2) of this section, any member of the Committee, or his designee at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding a transaction if:

(i) That member has reason to believe that the transaction is a covered transaction and may raise national security considerations and:

(A) The Committee has not informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction; and

(B) The President has not announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction; or

(ii) The transaction is a covered transaction and:

(A) The Committee has informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction, or the President has announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction; and

(B) Either:

(1) A party to such transaction submitted false or misleading material information to the Committee in connection with the Committee's consideration of such transaction or omitted material information, including material documents, from information submitted to the Committee; or

(2) A party to such transaction or the entity resulting from consummation of such transaction materially breaches a mitigation agreement or condition described in section 721(l)(3)(A), such breach is certified to the Committee by the lead department or agency monitoring and enforcing such agreement or condition as a material breach, and the Committee determines that there are no other adequate and appropriate remedies or enforcement tools available to address such breach.

(2)(i) That is an investment where a foreign person is not an excepted investor due to the application of § 800.220(d), any member of the Committee, or his designee at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding such investment if:

(A) That member has reason to believe that the transaction is a covered transaction and may raise national security considerations;

(B) The Committee has not informed the parties to such transaction in writing that the Committee has concluded all action under section 721 with respect to such transaction; and

(C) The President has not announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction.

(ii) No notice filed pursuant to this paragraph (c)(2) shall be made with respect to a transaction more than one year after the completion date of the transaction, unless the Chairperson of the Committee determines, in consultation with other members of the Committee, that because the foreign person no longer meets all the criteria set forth in § 800.220(a)(1), (2), or (3)(i) through (iii) the transaction may threaten to impair the national security of the United States, and in no event shall an agency notice under this paragraph be made with respect to such a transaction more than three years after the completion date of the transaction.

(d) Notices filed under paragraph (c) of this section are deemed accepted upon their receipt by the Staff Chairperson. No agency notice under paragraph (c)(1) of this section shall be made with respect to a transaction more than three years after the completion date of the transaction, unless the Chairperson of the Committee, in consultation with other members of the Committee, files such an agency notice.

(e) No communications other than those described in paragraphs (a) and (c) of this section shall constitute the filing or submitting of a notice for purposes of section 721.

(f) Upon receipt of the electronic copy of a notice filed under paragraph (a) of this section, including the certification required by § 800.502(l), the Staff Chairperson shall promptly inspect such notice for completeness.

(g) Parties to a transaction are encouraged to consult with the Committee in advance of filing a notice and, in appropriate cases, to file with the Committee a draft notice or other appropriate documents to aid the Committee's understanding of the transaction and to provide an opportunity for the Committee to request additional information to be included in the notice. Any such pre-notice consultation should take place, or any draft notice should be provided, at least five business days before the filing of a voluntary notice. All information and documentary material made available to the Committee pursuant to

this paragraph shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 800.802.

(h) Information and other documentary material provided by the parties to the Committee after the filing of a voluntary notice under this section shall be part of the notice, and shall be subject to the certification requirements of § 800.502(m).

(i) For any voluntarily submitted draft or formal written notice that includes a stipulation pursuant to section § 800.502(o) that a transaction is a covered transaction, the Committee shall provide comments on a draft or formal written notice or accept a formal written notice of a covered transaction not later than the date that is 10 business days after the date of submission of the draft or formal written notice.

(j) No party to a transaction may file a notice pursuant to paragraph (a) of this section if the transaction has been subject to a declaration submitted pursuant to subpart D and the Committee has not yet taken action with respect to the transaction pursuant to § 800.407.

#### § 800.502 Contents of voluntary notices.

(a) If the parties to a transaction file a voluntary notice, they shall provide in detail the information set out in this section, which must be accurate and complete with respect to all parties and to the transaction. (See also paragraph (l) of this section and § 800.204 regarding certification requirements.)

(b) If fewer than all the parties to a transaction file a voluntary notice, for example in the case of a hostile takeover, each notifying party shall provide the information set out in this section with respect to itself and, to the extent known or reasonably available to it, with respect to each non-notifying party.

(c) A voluntary notice filed pursuant to § 800.501 shall describe or provide, as applicable:

(1) The transaction in question, including:

(i) A summary setting forth the essentials of the transaction, including a statement of the purpose of the transaction, and its scope, both within and outside of the United States;

(ii) The nature of the transaction, for example, whether the acquisition is by merger, consolidation, the purchase of voting interest, or otherwise;

(iii) The name, United States address (if any), website address (if any), nationality (for individuals) or place of incorporation or other legal organization (for entities), and address of the

principal place of business of each foreign person that is a party to the transaction;

(iv) The name, address, website address (if any), principal place of business, and place of incorporation or other legal organization of the U.S. business that is the subject of the transaction;

(v) The name, address, and nationality (for individuals) or place of incorporation or other legal organization (for entities) of:

(A) The immediate parent, the ultimate parent, and each intermediate parent, if any, of the foreign person that is a party to the transaction;

(B) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; and

(C) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent;

(vi) The name, address, website address (if any), and nationality (for individuals) or place of incorporation or other legal organization (for entities) of each person that will control the U.S. business being acquired;

(vii) The expected date for completion of the transaction, or the date it was completed;

(viii) A good faith approximation of the net value of the interest acquired in the U.S. business in U.S. dollars, as of the date of the notice;

(ix) The name of any and all financial institutions involved in the transaction, including as advisors, underwriters, or a source of financing for the transaction;

(x) A copy of any partnership agreements, integration agreements, or other side agreements relating to the transaction;

(xi) A statement as to whether the foreign person will acquire any of the following in the U.S. business:

(A) Access to any material nonpublic technical information in the possession of the U.S. business, and if so, a brief explanation of the type of access and type of information;

(B) Membership, observer rights, or nomination rights as set forth in § 800.211(b)(2), and if so, a statement as to the composition of the board or other body both before and after the completion date of the transaction;

(C) Any involvement, other than through voting shares, in substantive decisionmaking of the U.S. business regarding critical infrastructure, critical technologies, or sensitive personal data as set forth in § 800.211(b)(3);

(2) With respect to a transaction structured as an acquisition of assets of a U.S. business, a detailed description of the assets of the U.S. business being

acquired, including the approximate value of those assets in U.S. dollars;

(3) With respect to the U.S. business that is the subject of the transaction and any entity of which that U.S. business is a parent (unless that entity is excluded from the scope of the transaction):

(i) Their respective business activities, as, for example, set forth in annual reports, and the product or service categories of each, including an estimate of U.S. market share for such product or service categories and the methodology used to determine market share, a list of direct competitors for those primary product or service categories, and their NAICS Code, if any;

(ii) The street address (and mailing address, if different) within the United States and website address (if any) of each facility that is manufacturing classified or unclassified products or producing services described in paragraph (c)(3)(v) of this section, and their respective CAGE Codes, their DUNS number;

(iii) Each contract (identified by agency and number) that is currently in effect or was in effect within the past five years with any agency of the U.S. Government involving any information, technology, or data that is classified under Executive Order 12958, as amended, its estimated final completion date, and the name, office, and telephone number of the contracting official;

(iv) Any other contract (identified by agency and number) that is currently in effect or was in effect within the past three years with any U.S. Government agency or component with national defense, homeland security, or other national security responsibilities, including law enforcement responsibility as it relates to defense, homeland security, or national security, its estimated final completion date, and the name, office, and telephone number of the contracting official;

(v) Any products or services (including research and development):

(A) That it supplies, directly or indirectly, to any agency of the U.S. Government, including as a prime contractor or first tier subcontractor, a supplier to any such prime contractor or subcontractor, or, if known by the parties filing the notice, a subcontractor at any tier; and

(B) If known by the parties filing the notice, for which it is a single qualified source (*i.e.*, other acceptable suppliers are readily available to be so qualified) or a sole source (*i.e.*, no other supplier has needed technology, equipment, and manufacturing process capabilities) for any such agencies and whether there are

other suppliers in the market that are available to be so qualified;

(vi) Any products or services (including research and development) that:

(A) It supplies to third parties and it knows are rebranded by the purchaser or incorporated into the products of another entity, and the names or brands under which such rebranded products or services are sold; and

(B) In the case of services, it provides on behalf of, or under the name of, another entity, and the name of any such entities;

(vii) For the prior three years—

(A) A list of priority rated contracts or orders under DPAS regulation that the U.S. business that is the subject of the transaction has received and the level of priority of such contracts or orders (“DX” or “DO”); and

(B) A list of such priority rated contracts or orders that the U.S. business has placed with other entities and the level of priority of such contracts or orders, and the acquiring party’s plan to ensure that any new entity formed at the completion of the notified transaction (or the U.S. business, if no new entity is formed) complies with the DPAS regulations;

(viii) A description and copy of the cyber security plan, if any, that will be used to protect against cyber attacks on the operation, design, and development of the U.S. business’s services, networks, systems, data storage (including the collection or maintenance of sensitive personal data), and facilities;

(ix) A description of whether the U.S. business performs any of the functions, if any, as set forth in Column 2 of appendix A to part 800. This statement shall include a description of such functions, including the applicable covered investment critical infrastructure;

(x) A description of whether it produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies;

(xi) A description of whether it maintains or collects sensitive personal data, including:

(A) The category or categories of sensitive personal data specified in § 800.241 that the U.S. business maintains or collects or intends to maintain or collect;

(B) For each category of sensitive personal data, the approximate number of total unique persons from whom the sensitive personal data is currently maintained or has been collected during the previous three years, if known;

(C) A description of how the U.S. business targets or tailors its products or

services to U.S. Government personnel or contractors (as described in § 800.247) about whom it collects sensitive personal data, if applicable;

(D) The commercial rationale of the U.S. business for maintaining or collecting such sensitive personal data and a description of how the U.S. business uses and protects such sensitive personal data, including a description of how decisions regarding the use of sensitive personal data are made, and by whom;

(E) A description of the U.S. business’s policies and practices regarding the sale, license, or transfer of, or grant of access to, sensitive personal data to third parties, including a copy of any notice provided to customers regarding the use and transfer of sensitive personal data;

(F) A description of the U.S. business’s policies and practices regarding retention of sensitive personal data; and

(G) Any plans by the foreign party to the transaction to alter any of the foregoing;

(4) Whether the U.S. business that is being acquired produces or trades in:

(i) Items that are subject to the EAR and, if so, a description (which may group similar items into general product categories) of the items and a list of the relevant commodity classifications set forth on the CCL (*i.e.*, Export Control Classification Numbers (ECCNs) or EAR99 designation);

(ii) Defense articles and defense services, and related technical data covered by the USML in the ITAR, and, if so, the category of the USML; articles and services for which commodity jurisdiction requests (22 CFR 120.4) are pending; and articles and services (including those under development) that may be designated or determined in the future to be defense articles or defense services pursuant to 22 CFR 120.3;

(iii) Products and technology that are subject to export authorization administered by the Department of Energy (10 CFR part 810), or export licensing requirements administered by the Nuclear Regulatory Commission (10 CFR part 110);

(iv) Select Agents and Toxins (7 CFR part 331, 9 CFR part 121, and 42 CFR part 73); or

(v) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (codified at 50 U.S.C. 4817);

(5) Whether the U.S. business that is the subject of the transaction:

(i) Possesses any licenses, permits, or other authorizations other than those

under the regulatory authorities listed in paragraph (c)(4) of this section that have been granted by an agency of the U.S. Government (if applicable, identification of the relevant licenses shall be provided); or

(ii) Has technology that has military applications (if so, an identification of such technology and a description of such military applications shall be included);

(6) With respect to the foreign person engaged in the transaction and its parents:

(i) The business or businesses of the foreign person and its ultimate parent, as such businesses are described, for example, in annual reports, and the CAGE codes, NAICS codes, and DUNS numbers, if any, for such businesses;

(ii) The plans of the foreign person for the U.S. business with respect to:

(A) Reducing, eliminating, or selling research and development facilities;

(B) Changing product quality;

(C) Shutting down or moving outside of the United States facilities that are within the United States;

(D) Consolidating or selling product lines or technology;

(E) Modifying or terminating contracts referred to in paragraphs (c)(3)(iii) and (iv) of this section; or

(F) Eliminating domestic supply by selling products solely to non-domestic markets;

(iii) Whether the foreign person is controlled by or acting on behalf of a foreign government, including without limitation as an agent or representative, or in some similar capacity, and if so, the identity of the foreign government;

(iv) Whether a foreign government or a person controlled by or acting on behalf of a foreign government:

(A) Has or controls ownership interests, including contingent equity interest, of the acquiring foreign person or any parent of the acquiring foreign person, and if so, the nature and amount of any such interests, and with regard to contingent equity interest, the terms and timing of conversion;

(B) Has the right or power to appoint any of the principal officers or the members of the board of directors (including other persons who perform the duties usually associated with such titles) of the foreign person that is a party to the transaction or any parent of that foreign person;

(C) Holds any other contingent interest (for example, such as might arise from a lending transaction) in the foreign acquiring party and, if so, the rights that are covered by this contingent interest, and the manner in which they would be enforced; or

(D) Has any other affirmative or negative rights or powers that could be

relevant to the Committee's determination of whether the notified transaction is a foreign government-controlled transaction, and if there are any such rights or powers, their source (for example, a "golden share," shareholders agreement, contract, statute, or regulation) and the mechanics of their operation;

(v) Any formal or informal arrangements among foreign persons that hold an ownership interest in the foreign person that is a party to the transaction or between such foreign person and other foreign persons to act in concert on particular matters affecting the U.S. business that is the subject of the transaction, and provide a copy of any documents that establish those rights or describe those arrangements;

(vi) For each member of the board of directors or similar body (including external directors and other persons who perform the duties usually associated with such titles) and officers (including president, senior vice president, executive vice president, and other persons who perform duties normally associated with such titles) of the acquiring foreign person engaged in the transaction and its immediate, intermediate, and ultimate parents, and for any individual having an ownership interest of five percent or more in the acquiring foreign person engaged in the transaction and in the foreign person's ultimate parent, the following information:

(A) A curriculum vitae or similar professional synopsis, provided as part of the main notice, and

(B) The following "personal identifier information," which, for privacy reasons, and to ensure limited distribution, shall be set forth in a separate document, not in the main notice:

(1) Full name (last, first, middle name);

(2) All other names and aliases used;

(3) Business address;

(4) Country and city of residence;

(5) Date of birth, in the format MM/DD/YYYY;

(6) Place of birth;

(7) U.S. Social Security number (where applicable);

(8) National identity number, including nationality, date and place of issuance, and expiration date (where applicable);

(9) U.S. or foreign passport number (if more than one, all must be fully disclosed), nationality, date and place of issuance, and expiration date and, if a U.S. visa holder, the visa type and number, date and place of issuance, and expiration date; and

(10) Dates and nature of foreign government and foreign military service (where applicable), other than military service at a rank below the top two non-commissioned ranks of the relevant foreign country; and

(vii) The following "business identifier information" for the immediate, intermediate, and ultimate parents of the foreign person engaged in the transaction, including their main offices and branches:

(A) Business name, including all names under which the business is known to be or has been doing business;

(B) Business address;

(C) Business phone number, website address, and email address; and

(D) Employer identification number or other domestic tax or corporate identification number.

(d) The voluntary notice shall list any filings with, or reports to, agencies of the U.S. Government that have been or will be made with respect to the transaction prior to its completion, indicating the agencies concerned, the nature of the filing or report, the date on which it was filed or the estimated date by which it will be filed, and a relevant contact point and/or telephone number within the agency, if known.

(1) *Example:* Corporation A, a foreign person, intends to acquire Corporation X, which is wholly owned and controlled by a U.S. national and which has a Facility Security Clearance under the Department of Defense Industrial Security Program. See Department of Defense, "Industrial Security Regulation," DOD 5220.22-R, and "Industrial Security Manual for Safeguarding Classified Information," DOD 5220.22-M. Corporation X accordingly files a revised Form DD SF-328, and enters into discussions with the Defense Security Service about effectively insulating its facilities from the foreign person. Corporation X may also have made filings with the U.S. Securities and Exchange Commission, the Department of Commerce, the Department of State, or other federal departments and agencies. Paragraph (d) of this section requires that certain specific information about these filings be reported to the Committee in a voluntary notice.

(e) In the case of the establishment of a joint venture in which one or more of the parties is contributing a U.S. business, information for the voluntary notice shall be prepared on the assumption that the foreign person that is party to the joint venture has made an acquisition of the existing U.S. business that the other party to the joint venture is contributing or transferring to the joint venture. The voluntary notice shall

describe the name and address of the joint venture and the entities that established, or are establishing, the joint venture.

(f) In the case of the acquisition of some but not all of the assets of an entity, paragraph (c) of this section requires submission of the specified information only with respect to the assets of the entity that have been or are proposed to be acquired.

(g) Persons filing a voluntary notice shall, with respect to the foreign person that is a party to the transaction, its immediate parent, the U.S. business that is the subject of the transaction, and each entity of which the foreign person is a parent, append to the voluntary notice the most recent annual report of each such entity, in English. Separate reports are not required for any entity whose financial results are included within the consolidated financial results stated in the annual report of any parent of any such entity, unless the transaction involves the acquisition of a U.S. business whose parent is not being acquired, in which case the notice shall include the most recent audited financial statement of the U.S. business that is the subject of the transaction. If a U.S. business does not prepare an annual report and its financial results are not included within the consolidated financial results stated in the annual report of a parent, the filing shall include, if available, the entity's most recent audited financial statement (or, if an audited financial statement is not available, the unaudited financial statement).

(h) Persons filing a voluntary notice shall, during the time that the matter is pending before the Committee or the President, promptly advise the Staff Chairperson of any material changes in plans, facts and circumstances addressed in the notice, and information provided or required to be provided to the Committee under this section, and shall file amendments to the notice to reflect such material changes. Such amendments shall become part of the notice filed by such persons under § 800.501, and the certifications required under paragraphs (l) and (m) of this section shall apply to such amendments.

(i) Persons filing a voluntary notice shall include a copy of the most recent asset or stock purchase agreement or other document establishing the agreed terms of the transaction.

(j) Persons filing a voluntary notice shall include:

(1) Complete organizational charts, both pre- and post-transaction, including without limitation, information that identifies the name,

principal place of business and place of incorporation or other legal organization (for entities), nationality (for individuals), and ownership percentage (expressed in terms of both voting and economic interest, if different) for each of the following:

(i) The immediate parent, the ultimate parent, and each intermediate parent, if any, of each foreign person that is a party to the transaction;

(ii) Where the ultimate parent is a private company, the ultimate owner(s) of such parent;

(iii) Where the ultimate parent is a public company, any shareholder with an interest of greater than five percent in such parent; and

(iv) The U.S. business that is the subject of the transaction, both before and after completion of the transaction; and

(2) The opinion of the person regarding whether:

(i) It is a foreign person;

(ii) It is controlled by a foreign government;

(iii) A foreign government holds a substantial interest in the foreign person that is party to the transaction; and

(iv) The transaction has resulted or could result in a covered control transaction or a covered investment, and the reasons for its view, focusing in particular on any powers (for example, by virtue of a shareholders agreement, contract, statute, or regulation) that the foreign person will have with regard to the U.S. business, and how those powers can or will be exercised, or any other access, rights, or involvement the foreign person will have in a U.S. business with respect to critical technologies, critical infrastructure, or sensitive personal data.

(k) Persons filing a voluntary notice shall include information as to whether:

(1) Any party to the transaction is, or has been, a party to a mitigation agreement entered into or condition imposed under section 721, and if so, shall specify the date and purpose of such agreement or condition and the U.S. Government signatories; and

(2) Any party to the transaction (including such party's parents, subsidiaries, or entities under common control with the party) has been a party to a transaction previously notified to the Committee.

(l) Each party filing a voluntary notice shall provide a certification of the notice consistent with § 800.204. A sample certification may be found on the Committee's section of the Department of the Treasury website, currently available at <https://home.treasury.gov/policy-issues/international/the->

*committee-on-foreign-investment-in-the-united-states-cfius*.

(m) At the conclusion of a review or investigation, each party that has filed additional information subsequent to the original notice shall file a final certification. (See § 800.204.) A sample certification may be found at the Committee's section of the Department of the Treasury website, currently available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

(n) Parties filing a voluntary notice shall include with the notice a list identifying each document provided as part of the notice, including all documents provided as attachments or exhibits to the narrative response.

(o) A party filing a voluntary notice may stipulate that the transaction is a covered transaction and, if the party stipulates that the transaction is a covered transaction, that the transaction is a foreign government-controlled transaction. A stipulation offered by any party pursuant to this section must be accompanied by a detailed description of the basis for the stipulation. The required description of the basis shall include, but is not limited to, discussion of all relevant information responsive to paragraphs (c)(6)(iii) through (v) of this section. A party that offers such a stipulation acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered transaction, a foreign government-controlled transaction, and/or subject to mandatory declaration or notice for the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. 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.

#### **§ 800.503 Beginning of a 45-day review period.**

(a) The Staff Chairperson of the Committee shall accept a voluntary notice the next business day after the Staff Chairperson has:

(1) Determined that the notice complies with § 800.502; and

(2) Disseminated the notice to all members of the Committee.

(b) A 45-day period for review of a transaction shall commence on the date on which the voluntary notice has been accepted, agency notice has been received by the Staff Chairperson of the

Committee, or the Chairperson of the Committee has requested a notice pursuant to § 800.501(b). Such review shall end no later than the forty-fifth day after it has commenced, or if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(c) The Staff Chairperson shall promptly advise in writing all parties to a transaction that have filed a voluntary notice of:

(1) The acceptance of the notice;

(2) The date on which the review begins; and

(3) The designation of any lead agency or agencies.

(d) Within two business days after receipt of an agency notice by the Staff Chairperson, the Staff Chairperson shall send written advice of such notice to the parties to the transaction that is subject to the notice. Such written advice shall identify the date on which the review began.

(e) The Staff Chairperson shall promptly circulate to all Committee members any draft pre-filing notice, any agency notice, any complete notice, and any subsequent information filed by the parties.

#### **§ 800.504 Deferral, rejection, or disposition of certain voluntary notices.**

(a) The Committee, acting through the Staff Chairperson, may:

(1) Reject any voluntary notice that does not comply with § 800.501 or § 800.502 and so inform the parties promptly in writing;

(2) Reject any voluntary notice at any time, and so inform the parties promptly in writing, if, after the notice has been submitted and before action by the Committee or the President has been concluded:

(i) There is a material change in the transaction as to which notification has been made; or

(ii) Information comes to light that contradicts material information provided in the notice by the parties;

(3) Reject any voluntary notice at any time after the notice has been accepted, and so inform the parties promptly in writing, if the party or parties that have submitted the voluntary notice do not provide follow-up information requested by the Staff Chairperson within three business days of the request, or within a longer time frame if the parties so request in writing and the Staff Chairperson grants that request in writing; or

(4) Reject any voluntary notice before the conclusion of a review or investigation, and so inform the parties promptly in writing, if one of the parties submitting the voluntary notice has not

submitted the final certification required by § 800.502(m).

(b) Notwithstanding the authority of the Staff Chairperson under paragraph (a) of this section to reject an incomplete notice, the Staff Chairperson may defer acceptance of the notice, and the beginning of the review period specified by § 800.503, to obtain any information required under this section that has not been submitted by the notifying party or parties or other parties to the transaction. Where necessary to obtain such information, the Staff Chairperson may inform any non-notifying party or parties that notice has been filed with respect to a proposed transaction involving the party, and request that certain information required under this section, as specified by the Staff Chairperson, be provided to the Committee within seven days after receipt of the Staff Chairperson's request.

(c) The Staff Chairperson shall notify the parties when the Committee has found that the transaction that is the subject of a voluntary notice is not a covered transaction.

(d) Examples:

(1) *Example 1.* The Staff Chairperson receives a joint notice from Corporation A, a foreign person, and Corporation X, a company that is owned and controlled by U.S. nationals, with respect to Corporation A's intent to purchase all of the shares of Corporation X. The joint notice does not contain any information described under § 800.502 concerning classified materials and products or services supplied to the U.S. military services. The Staff Chairperson may reject the notice or defer the start of the review period until the parties have supplied the omitted information.

(2) *Example 2.* Same facts as in the first sentence of Example 1 of this section, except that the joint notice indicates that Corporation A does not intend to purchase Corporation X's Division Y, which is engaged in classified work for a U.S. Government agency. Corporations A and X notify the Committee on the 40th day of the 45-day notice period that Division Y will also be acquired by Corporation A. This fact constitutes a material change with respect to the transaction as originally notified, and the Staff Chairperson may reject the notice.

(3) *Example 3.* The Staff Chairperson receives a joint notice by Corporation A, a foreign person, and Corporation X, a U.S. business, indicating that Corporation A intends to purchase five percent of the voting securities of Corporation X. Under the particular facts and circumstances presented, the Committee concludes that Corporation A's purchase of this interest in Corporation X could not result in a covered investment in or foreign control of Corporation X. The Staff Chairperson shall advise the parties in writing that the transaction as presented is not subject to section 721.

(4) *Example 4.* The Staff Chairperson receives a voluntary notice involving the

acquisition by Company A, a foreign person, of the entire interest in Company X, a U.S. business. The notice mentions the involvement of a second foreign person in the transaction, Company B, but states that Company B is merely a passive investor in the transaction. During the course of the review, the parties provide information that clarifies that Company B has the right to appoint two members of Company X's board of directors. This information contradicts the material assertion in the notice that Company B is a passive investor. The Committee may reject this notice without concluding review under section 721.

**§ 800.505 Determination of whether to undertake an investigation.**

(a) After a review of a notified transaction under § 800.503, the Committee shall undertake an investigation of any transaction that it has determined to be a covered transaction if:

(1) A member of the Committee (other than a member designated as ex officio under section 721(k)) advises the Staff Chairperson that the member believes that the transaction threatens to impair the national security of the United States and that the threat has not been mitigated; or

(2) The lead agency recommends, and the Committee concurs, that an investigation be undertaken.

(b) The Committee shall also undertake, after a review of a covered transaction under § 800.503, an investigation to determine the effects on national security of any covered transaction that:

(1) Is a foreign government-controlled transaction; or

(2) Would result in control by a foreign person of critical infrastructure of or within the United States, if the Committee determines that the transaction could impair the national security and such impairment has not been mitigated.

(c) The Committee shall undertake an investigation as described in paragraph (b) of this section unless the Chairperson of the Committee (or the Deputy Secretary of the Treasury) and the head of any lead agency (or his or her delegate at the deputy level or equivalent) designated by the Chairperson determine on the basis of the review that the covered transaction will not impair the national security of the United States.

**§ 800.506 Determination not to undertake an investigation.**

If the Committee determines, during the review period described in § 800.503, not to undertake an investigation of a notified covered transaction, action under section 721 shall be concluded. An official at the

Department of the Treasury shall promptly inform the parties to a covered transaction in writing of a determination of the Committee not to undertake an investigation and to conclude action under section 721.

**§ 800.507 Commencement of investigation.**

(a) If it is determined that an investigation should be undertaken, such investigation shall commence no later than the end of the review period described in § 800.503.

(b) An official of the Department of the Treasury shall promptly inform the parties to a covered transaction in writing of the commencement of an investigation.

**§ 800.508 Completion or termination of investigation and report to the President.**

(a) Subject to paragraph (e) of this section, the Committee shall complete an investigation no later than the forty-fifth day after the date the investigation commences, or, if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(b) Upon completion or termination of any investigation, the Committee shall send a report to the President requesting the President's decision if:

(1) The Committee recommends that the President suspend or prohibit the transaction;

(2) The Committee is unable to reach a decision on whether to recommend that the President suspend or prohibit the transaction; or

(3) The Committee requests that the President make a determination with regard to the transaction.

(c) In circumstances when the Committee sends a report to the President requesting the President's decision with respect to a covered transaction, such report shall include information relevant to sections 721(d)(4)(A) and (B), and shall present the Committee's recommendation. If the Committee is unable to reach a decision to present a single recommendation to the President, the Chairperson of the Committee shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for decision.

(d) Upon completion or termination of an investigation, if the Committee determines to conclude all deliberative action under section 721 with regard to a notified covered transaction without sending a report to the President, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly advise the parties to such a transaction in writing of a determination to conclude action.

(e) In extraordinary circumstances, the Chairperson may, upon a written request signed by the head of a lead agency, extend an investigation for one 15-day period. A request to extend an investigation must describe, with particularity, the extraordinary circumstances that warrant the Chairperson extending the investigation. The authority of the head of a lead agency to request the extension of an investigation may not be delegated to any person other than the deputy head (or equivalent thereof) of the lead agency. If the Chairperson extends an investigation pursuant to this paragraph with respect to a covered transaction, the Committee shall promptly notify the parties to the transaction of the extension.

(f) For purposes of paragraph (e) of this section, “extraordinary circumstances” means circumstances for which extending an investigation is necessary and the appropriate course of action due to a force majeure event or to protect the national security of the United States.

#### **§ 800.509 Withdrawal of notices.**

(a) A party (or parties) to a transaction that has filed notice under § 800.501(a) may request in writing, at any time prior to conclusion of all action under section 721, that such notice be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made. Such requests will ordinarily be granted, unless otherwise determined by the Committee. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee’s decision.

(b) Any request to withdraw an agency notice by the agency that filed it shall be in writing and shall be effective only upon approval by the Committee. An official of the Department of the Treasury shall advise the parties to the transaction in writing of the Committee’s decision to approve the withdrawal request within two business days of the Committee’s decision.

(c) In any case where a request to withdraw a notice is granted under paragraph (a) of this section:

(1) The Staff Chairperson, in consultation with the Committee, shall establish, as appropriate:

(i) A process for tracking actions that may be taken by any party to the covered transaction before notice is refiled under § 800.501; and

(ii) Interim protections to address specific national security concerns with the transaction identified during the

review or investigation of the transaction.

(2) The Staff Chairperson shall specify a time frame, as appropriate, for the parties to resubmit a notice and shall advise the parties of that time frame in writing.

(d) A notice of a transaction that is submitted pursuant to paragraph (c)(2) of this section shall be deemed a new notice for purposes of the regulations in this part, including § 800.701.

### **Subpart F—Committee Procedures**

#### **§ 800.601 General.**

(a) In any assessment, review, or investigation of a covered transaction, the Committee should consider the factors specified in section 721(f) and, as appropriate, require parties to provide to the Committee the information necessary to consider such factors. The Committee’s assessment, review, or investigation (if necessary) shall examine, as appropriate, whether:

(1) The transaction is a covered transaction;

(2) There is credible evidence to support a belief that any foreign person party to a covered transaction might take action that threatens to impair the national security of the United States; and

(3) Provisions of law, other than section 721 and the International Emergency Economic Powers Act, provide adequate and appropriate authority to protect the national security of the United States.

(b) During an assessment, review, or investigation, the Staff Chairperson may invite the parties to a notified transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction. During an investigation, a party to the transaction under investigation may request a meeting with the Committee staff; such a request ordinarily will be granted.

(c) The Staff Chairperson shall be the point of contact for receiving material filed with the Committee, including notices.

(d) Where more than one lead agency is designated, communications on material matters between a party to the transaction and a lead agency shall include all lead agencies designated with regard to those matters.

(e) The parties’ description of a transaction in a declaration or notice does not limit the ability of the Committee to, as appropriate, assess, review, or investigate, or exercise any other authorities available under section 721 with respect to any covered transaction that the Committee

identifies as having been notified to the Committee based upon the facts set forth in the declaration or notice, any additional information provided to the Committee subsequent to the original declaration or notice, or any other information available to the Committee.

#### **§ 800.602 Role of the Secretary of Labor.**

In response to a request from the Chairperson of the Committee, the Secretary of Labor shall identify for the Committee any risk mitigation provisions proposed to or by the Committee that would violate U.S. employment laws or require a party to violate U.S. employment laws. The Secretary of Labor shall serve no policy role on the Committee.

#### **§ 800.603 Materiality.**

The Committee generally will not consider as material minor inaccuracies, omissions, or changes relating to financial or commercial factors not having a bearing on national security.

#### **§ 800.604 Tolling of deadlines during lapse in appropriations.**

Any deadline or time limitation under subparts D or E imposed on the Committee shall be tolled during a lapse in appropriations.

### **Subpart G—Finality of Action**

#### **§ 800.701 Finality of actions under section 721.**

(a) All authority available to the President or the Committee under section 721(d), including without limitation divestment authority, shall remain available at the discretion of the President with respect to:

(1) Covered control transactions proposed or pending on or after August 23, 1988;

(2) Transactions that, between November 10, 2018, and [EFFECTIVE DATE], fell within the scope of part 801 of this title; and

(3) Covered investments proposed or pending after the effective date.

(b) Subject to § 800.501(c)(1)(ii), such authority shall not be exercised if:

(1) The Committee, through its Staff Chairperson, has advised a party (or the parties) in writing that a particular transaction with respect to which a voluntary notice or a declaration has been filed is not a covered transaction;

(2) The parties to the transaction have been advised in writing pursuant to § 800.407(a)(4), § 800.506, or § 800.508(d) that the Committee has concluded all action under section 721 with respect to the covered transaction; or

(3) The President has previously announced, pursuant to section 721(d),

his decision not to exercise his authority under section 721 with respect to the covered transaction.

(c) Divestment or other relief under section 721 shall not be available with respect to transactions that were completed prior to August 23, 1988.

#### Subpart H—Provision and Handling of Information

##### § 800.801 Obligation of parties to provide information.

(a) Parties to a transaction that is notified or declared under subparts D or E, or a transaction for which no notice or declaration has been submitted and for which the Staff Chairperson has requested information to assess whether the transaction is a covered transaction, shall provide information to the Staff Chairperson that will enable the Committee to conduct a full assessment, review, and/or investigation of the proposed transaction, and shall promptly advise the Staff Chairperson of any material changes in plans or information pursuant to § 800.403(d) or § 800.502(h). If deemed necessary by the Committee, information may be obtained from parties to a transaction or other persons through subpoena or otherwise, pursuant to the Defense Production Act Reauthorization of 2003, as amended, Public Law 108–195 (50 U.S.C. 4555(a)).

(b) Documentary materials or information required or requested to be filed with the Committee under this part shall be submitted in English. Supplementary materials, such as annual reports, written in a foreign language, shall be submitted in certified English translation.

(c) Any information filed with the Committee in connection with any action for which a report is required pursuant to section 721(l)(3)(B) with respect to the implementation of a mitigation agreement or condition described in section 721(l)(1)(A) shall be accompanied by a certification that complies with the requirements of section 721(n) and § 800.204. A sample certification may be found at the Committee's section of the Department of the Treasury website, currently available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

##### § 800.802 Confidentiality.

(a) Except as provided in paragraph (b) of this section, any information or documentary material submitted or filed with the Committee pursuant to this part, including information or documentary material filed pursuant to

§ 800.501(g) shall be exempt from disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552, *et seq.*), and no such information or documentary material may be made public.

(b) Paragraph (a) of this section shall not prohibit disclosure of the following:

(1) Information relevant to any administrative or judicial action or proceeding;

(2) Information to Congress or to any duly authorized committee or subcommittee of Congress;

(3) Information important to the national security analysis or actions of the Committee to any domestic governmental entity, or to any foreign governmental entity of a United States ally or partner, under the exclusive direction and authorization of the Chairperson, only to the extent necessary for national security purposes, and subject to appropriate confidentiality and classification requirements; or

(4) Information that the parties have consented to be disclosed to third parties.

(c) This section shall continue to apply with respect to information and documentary material submitted or filed with the Committee in any case where:

(1) Action has concluded under section 721 concerning a notified transaction;

(2) A request to withdraw a notice or a declaration is granted under § 800.509 or § 800.406(c), respectively, or where a notice or a declaration has been rejected under § 800.504(a) or § 800.406(a), respectively;

(3) The Committee determines that a notified or declared transaction is not a covered transaction; or

(4) Such information or documentary material was filed pursuant to subpart D and the parties do not subsequently file a notice pursuant to subpart E.

(d) Nothing in paragraph (a) of this section shall be interpreted to prohibit the public disclosure by a party of documentary material or information that it has submitted or filed with the Committee. Any such documentary material or information so disclosed may subsequently be reflected in the public statements of the Chairperson, who is authorized to communicate with the public and the Congress on behalf of 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 material misstatement or omission in a declaration or notice, 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 per violation 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 October 11, 2018, 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. 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 Committee shall set the amount of any liquidated damages as 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 will 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 penalized conduct and the amount of the penalty, shall be sent to the penalized party electronically and by U.S. mail.

(f) Upon receiving notice of the imposition of a penalty under paragraphs (a) through (c) of this section, the penalized party may, within 15 days of receipt of the notice of the penalty, submit a petition for reconsideration to the Staff Chairperson, including a defense, justification, or explanation for the penalized conduct. The Committee will review the petition and issue a final decision within 15 days of receipt of the petition.

(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 pursuant to 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.**

(a) 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 pursuant to section 721(h) and to unilaterally initiate a review of any covered transaction pursuant to section 721(b)(1)(D)(iii):

(1) 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;

(2) 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 determination 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

(3) Seek injunctive relief.

**Subpart J—Foreign National Security Investment Review Regimes**

**§ 800.1001 Determinations.**

(a) The Chairperson of the Committee, with the agreement of two-thirds of the voting members of 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 Chairperson of the Committee may rescind a determination under paragraph (a) of this section if the Chairperson of the Committee determines, with the agreement of two-thirds of the voting members of the Committee, 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 pursuant to paragraph (b) of this section.

(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 pursuant to § 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):

(i) The parties to the transaction have executed a binding written agreement, or other binding document, establishing the material terms of the transaction that is ultimately consummated;

(ii) A party has made a public offer to shareholders to buy shares of a U.S. business; or

(iii) A shareholder has solicited proxies in connection with an election of the board of directors of a U.S. business or has requested the conversion of convertible voting securities.

**Appendix A to Part 800—Covered Investment Critical Infrastructure and Functions Related to Covered Investment Critical Infrastructure**

Column 1—Covered investment critical infrastructure	Column 2—Functions related to covered investment critical infrastructure
<p>(i) Any:</p> <p>(a) internet protocol network that has access to every other internet protocol network solely via settlement-free peering; or</p> <p>(b) telecommunications service or information service, each as defined in section 3(a)(2) of the Communications Act of 1934 (47 U.S.C. 153), as amended, or fiber optic cable that directly serves any military installation identified in § 802.229.</p> <p>(ii) Any internet exchange point that supports public peering.</p>	<p>(i) Own or operate any:</p> <p>(a) internet protocol network that has access to every other internet protocol network solely via settlement-free peering; or</p> <p>(b) telecommunications service or information service, each as defined in section 3(a)(2) of the Communications Act of 1934 (47 U.S.C. 153), as amended, or fiber optic cable that directly serves any military installation identified in § 802.229.</p> <p>(ii) Own or operate any internet exchange point that supports public peering.</p>

Column 1—Covered investment critical infrastructure	Column 2—Functions related to covered investment critical infrastructure
<p>(iii) Any submarine cable system requiring a license pursuant to section 1 of the Cable Landing Licensing Act of 1921 (47 U.S.C. 34), as amended, which includes any associated submarine cable, submarine cable landing facilities, and any facility that performs network management, monitoring, maintenance, or other operational functions for such submarine cable system.</p> <p>(iv) Any submarine cable, landing facility, or facility that performs network management, monitoring, maintenance, or other operational function that is part of a submarine cable system described above in item (iii) of Column 1 of appendix A to part 800.</p> <p>(v) Any data center that is collocated at a submarine cable landing point, landing station, or termination station.</p> <p>(vi) Any satellite or satellite system providing services directly to the Department of Defense or any component thereof.</p> <p>(vii) Any industrial resource other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996 (41 U.S.C. 104), as amended, that is manufactured or operated for a Major Defense Acquisition Program, as defined in section 7(b)(2)(A) of the Defense Technical Corrections Act of 1987 (10 U.S.C. 2430), as amended, or a Major System, as defined in 10 U.S.C. 2302d, as amended and:</p> <p>(a) the U.S. business is a “single source,” “sole source,” or “strategic multisource,” to the extent the U.S. business has been notified of such status; or</p> <p>(b) the industrial resource:</p> <p>(1) requires 12 months or more to manufacture; or</p> <p>(2) is a “long lead” item, to the extent the U.S. business has been notified that such industrial resource is a “long lead” item.</p> <p>(viii) Any industrial resource, other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996 (41 U.S.C. 104), as amended, that is manufactured pursuant to a “DX” priority rated contract or order under the Defense Priorities and Allocations System regulation (15 CFR part 700, as amended) in the preceding 24 months.</p> <p>(ix) Any facility in the United States that manufactures:</p> <p>(a) specialty metal, as defined in section 842(a)(1)(i) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (10 U.S.C. 2533b), as amended;</p> <p>(b) covered material, as defined in 10 U.S.C. 2533c, as amended;</p> <p>(c) chemical weapons antidote contained in automatic injectors, as described in 10 U.S.C. 2534, as amended; or</p> <p>(d) carbon, alloy, and armor steel plate that is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.</p> <p>(x) Any industrial resource other than commercially available off-the-shelf items, as defined in 41 U.S.C. 104, as amended, that has been funded, in whole or in part, by any of the following sources in the last 60 months:</p> <p>(a) Defense Production Act of 1950 Title III program (50 U.S.C. 4501, et seq.), as amended;</p> <p>(b) Industrial Base Fund pursuant to section 896(b)(1) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2508), as amended;</p> <p>(c) Rapid Innovation Fund pursuant to section 1073 of Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2359a), as amended;</p> <p>(d) Manufacturing Technology Program pursuant to 10 U.S.C. 2521, as amended;</p> <p>(e) Defense Logistics Agency Warstopper Program, as described in DLA Instruction 1212, Industrial Capabilities Program—Manage the WarStopper Program; or</p> <p>(f) Defense Logistics Agency Surge and Sustainment contract, as described in Subpart 17.93 of the Defense Logistics Acquisition Directive.</p> <p>(xi) Any system, including facilities, for the generation, transmission, distribution, or storage of electric energy comprising the bulk-power system, as defined in section 215(a)(1) of the Federal Power Act (16 U.S.C. 824o(a)(1)), as amended.</p>	<p>(iii) Own or operate any submarine cable system requiring a license pursuant to section 1 of the Cable Landing Licensing Act of 1921 (47 U.S.C. 34), as amended, which includes any associated submarine cable, submarine cable landing facilities, and any facility that performs network management, monitoring, maintenance, or other operational functions for such submarine cable system.</p> <p>(iv) Supply or service any submarine cable, landing facility, or facility that performs network management, monitoring, maintenance, or other operational function that is part of a submarine cable system described above in item (iii) of Column 1 of appendix A to part 800.</p> <p>(v) Own or operate any data center that is collocated at a submarine cable landing point, landing station, or termination station.</p> <p>(vi) Own or operate any satellite or satellite system providing services directly to the Department of Defense or any component thereof.</p> <p>(vii) As applicable, manufacture any industrial resource other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996 (41 U.S.C. 104), as amended, or operate any industrial resource that is a facility, in each case, for a Major Defense Acquisition Program, as defined in section 7(b)(2)(A) of the Defense Technical Corrections Act of 1987 (10 U.S.C. 2430), as amended, or a Major System, as defined in 10 U.S.C. 2302d, as amended and:</p> <p>(a) the U.S. business is a “single source,” “sole source,” or “strategic multisource,” to the extent the U.S. business has been notified of such status; or</p> <p>(b) the industrial resource:</p> <p>(1) requires 12 months or more to manufacture; or</p> <p>(2) is a “long lead” item, to the extent the U.S. business has been notified that such industrial resource is a “long lead” item.</p> <p>(viii) Manufacture any industrial resource, other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996 (41 U.S.C. 104), as amended, pursuant to a “DX” priority rated contract or order under the Defense Priorities and Allocations System regulation (15 CFR part 700, as amended) within 24 months of the transaction in question.</p> <p>(ix) Manufacture any of the following in the United States:</p> <p>(a) specialty metal, as defined in section 842(a)(1)(i) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (10 U.S.C. 2533b), as amended;</p> <p>(b) covered material, as defined in 10 U.S.C. 2533c, as amended;</p> <p>(c) chemical weapons antidote contained in automatic injectors, as described in 10 U.S.C. 2534, as amended; or</p> <p>(d) carbon, alloy, and armor steel plate that is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.</p> <p>(x) As applicable, manufacture any industrial resource other than commercially available off-the-shelf items, as defined in 41 U.S.C. 104, as amended, or operate any industrial resource that is a facility, in each case, that has been funded, in whole or in part, by any of the following sources within 60 months of the transaction in question:</p> <p>(a) Defense Production Act of 1950 Title III program (50 U.S.C. 4501, et seq.), as amended;</p> <p>(b) Industrial Base Fund pursuant to section 896(b)(1) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2508), as amended;</p> <p>(c) Rapid Innovation Fund pursuant to section 1073 of Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (10 U.S.C. 2359a), as amended;</p> <p>(d) Manufacturing Technology Program pursuant to 10 U.S.C. 2521, as amended;</p> <p>(e) Defense Logistics Agency Warstopper Program, as described in DLA Instruction 1212, Industrial Capabilities Program—Manage the WarStopper Program; or</p> <p>(f) Defense Logistics Agency Surge and Sustainment contract, as described in Subpart 17.93 of the Defense Logistics Acquisition Directive.</p> <p>(xi) Own or operate any system, including facilities, for the generation, transmission, distribution, or storage of electric energy comprising the bulk-power system, as defined in section 215(a)(1) of the Federal Power Act (16 U.S.C. 824o(a)(1)), as amended.</p>

Column 1—Covered investment critical infrastructure	Column 2—Functions related to covered investment critical infrastructure
(xii) Any electric storage resource, as defined in 18 CFR § 35.28(b)(9), as amended, that is physically connected to the bulk-power system.	(xii) Own or operate any electric storage resource, as defined in 18 CFR § 35.28(b)(9), as amended, that is physically connected to the bulk-power system.
(xiii) Any facility that provides electric power generation, transmission, distribution, or storage directly to or located on any military installation identified in § 802.229.	(xiii) Own or operate any facility that provides electric power generation, transmission, distribution, or storage directly to or located on any military installation identified in § 802.229.
(xiv) Any industrial control system utilized by:	(xiv) Manufacture or service any industrial control system utilized by:
(a) system comprising the bulk-power system as described above in item (xi) of Column 1 of appendix A to part 800; or	(a) system comprising the bulk-power system as described above in item (xi) of Column 1 of appendix A to part 800; or
(b) a facility directly serving any military installation as described above in item (xiii) of Column 1 of appendix A to part 800.	(b) a facility directly serving any military installation as described above in item (xiii) of Column 1 of appendix A to part 800.
(xv) Any:	(xv) Own or operate:
(a) any individual refinery with the capacity to produce 300,000 or more barrels per day (or equivalent) of refined oil or gas products; or	(a) any individual refinery with the capacity to produce 300,000 or more barrels per day (or equivalent) of refined oil or gas products; or
(b) collection of one or more refineries owned or operated by a single U.S. business with the capacity to produce, in the aggregate, 500,000 or more barrels per day (or equivalent) of refined oil or gas products.	(b) one or more refineries with the capacity to produce, in the aggregate, 500,000 or more barrels per day (or equivalent) of refined oil or gas products.
(xvi) Any crude oil storage facility with the capacity to hold 30 million barrels or more of crude oil.	(xvi) Own or operate any crude oil storage facility with the capacity to hold 30 million barrels or more of crude oil.
(xvii) Any:	(xvii) Own or operate any:
(a) liquefied natural gas (LNG) import or export terminal requiring:	(a) liquefied natural gas (LNG) import or export terminal requiring:
(1) approval pursuant to section 3(e) of the Natural Gas Act (15 U.S.C. 717b(e)), as amended, or	(1) approval pursuant to section 3(e) of the Natural Gas Act (15 U.S.C. 717b(e)), as amended, or
(2) a license pursuant to section 4 of the Deepwater Port Act of 1974 (33 U.S.C. 1503), as amended; or	(2) a license pursuant to section 4 of the Deepwater Port Act of 1974 (33 U.S.C. 1503), as amended; or
(b) natural gas underground storage facility or LNG peak-shaving facility requiring a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717f), as amended.	(b) natural gas underground storage facility or LNG peak-shaving facility requiring a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717f), as amended.
(xviii) Any financial market utility that the Financial Stability Oversight Council has designated as systemically important pursuant to section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5463), as amended.	(xviii) Own or operate any financial market utility that the Financial Stability Oversight Council has designated as systemically important pursuant to section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5463), as amended.
(xix) Any exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f), as amended, that facilitates trading in any national market system security, as defined in 17 CFR § 242.600, as amended, and which exchange during at least four of the preceding six calendar months had:	(xix) Own or operate any exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f), as amended, that facilitates trading in any national market system security, as defined in 17 CFR § 242.600, as amended, and which exchange during at least four of the preceding six calendar months had:
(a) with respect to all national market system securities that are not options, ten percent or more of the average daily dollar volume reported by applicable transaction reporting plans; or	(a) with respect to all national market system securities that are not options, ten percent or more of the average daily dollar volume reported by applicable transaction reporting plans; or
(b) with respect to all listed options, fifteen percent or more of the average daily dollar volume reported by applicable national market system plans for reporting transactions in listed options.	(b) with respect to all listed options, fifteen percent or more of the average daily dollar volume reported by applicable national market system plans for reporting transactions in listed options.
(xx) Any technology service provider in the Significant Service Provider Program of the Federal Financial Institutions Examination Council that provides core processing services.	(xx) Own or operate any technology service provider in the Significant Service Provider Program of the Federal Financial Institutions Examination Council that provides core processing services.
(xxi) Any rail line and associated connector line designated as part of the Department of Defense's Strategic Rail Corridor Network.	(xxi) Own or operate any rail line and associated connector line designated as part of the Department of Defense's Strategic Rail Corridor Network.
(xxii) Any interstate oil pipeline that:	(xxii) Own or operate any interstate oil pipeline that:
(a) has the capacity to transport:	(a) has the capacity to transport:
(1) 500,000 barrels per day or more of crude oil, or	(1) 500,000 barrels per day or more of crude oil, or
(2) 90 million gallons per day or more of refined petroleum product; or	(2) 90 million gallons per day or more of refined petroleum product; or
(b) directly serves the strategic petroleum reserve, as defined in section 152 of the Energy Policy and Conservation Act (42 U.S.C. 6232), as amended.	(b) directly serves the strategic petroleum reserve, as defined in section 152 of the Energy Policy and Conservation Act (42 U.S.C. 6232), as amended.
(xxiii) Any interstate natural gas pipeline with an outside diameter of 20 or more inches.	(xxiii) Own or operate any interstate natural gas pipeline with an outside diameter of 20 or more inches.
(xxiv) Any industrial control system utilized by:	(xxiv) Manufacture or service any industrial control system utilized by:
(a) an interstate oil pipeline as described above in item (xxii) of Column 1 of appendix A to part 800; or	(a) an interstate oil pipeline as described above in item (xxii) of Column 1 of appendix A to part 800; or
(b) an interstate natural gas pipeline as described above in item (xxiii) of Column 1 of appendix A to part 800.	(b) an interstate natural gas pipeline as described above in item (xxiii) of Column 1 of appendix A to part 800.
(xxv) Any airport identified in § 802.201.	(xxv) Own or operate any airport identified in § 802.201.
(xxvi) Any:	(xxvi) Own or operate any:
(a) maritime port identified in § 802.228; or	(a) maritime port identified in § 802.228; or
(b) any individual terminal at such maritime ports.	(b) any individual terminal at such maritime ports.
(xxvii) Any public water system, as defined in section 1401(4) of the Safe Drinking Water Act (42 U.S.C. 300f(4)(A)), as amended, or treatment works, as defined in section 212(2)(A) of the Clean Water Act (33 U.S.C. 1292(2)), as amended, which:	(xxvii) Own or operate any public water system, as defined in section 1401(4) of the Safe Drinking Water Act (42 U.S.C. 300f(4)(A)), as amended, or treatment works, as defined in section 212(2)(A) of the Clean Water Act (33 U.S.C. 1292(2)), as amended, which:

Column 1—Covered investment critical infrastructure	Column 2—Functions related to covered investment critical infrastructure
(a) regularly serves 10,000 individuals or more, or (b) directly serves any military installation identified in § 802.229. (xxviii) Any industrial control system utilized by a public water system or treatment works as described above in item (xxvii) of Column 1 of appendix A to part 800.	(a) regularly serves 10,000 individuals or more, or (b) directly serves any military installation identified in § 802.229. (xxviii) Manufacture or service any industrial control system utilized by a public water system or treatment works as described above in item (xxvii) of Column 1 of appendix A to part 800.

Dated: September 11, 2019.

**Thomas Feddo,**

*Deputy Assistant Secretary for Investment Security.*

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