

(2) The Agent's application shall be based on the following:

(i) Approved applications to the Agent by its member natural person credit unions for pending loans to meet liquidity needs; or

(ii) Outstanding loans previously made by the Agent to meet liquidity needs of its member natural person credit unions; or

(iii) Such other demonstrable liquidity needs as the NCUA Board may specify; or

(iv) The applicant Agent's own liquidity needs.

■ 7. In § 725.18, revise paragraphs (a) and (d) to read as follows:

§ 725.18 Creditworthiness.

(a) Prior to Facility approval of each application of a Regular member for a Facility advance or an Agent member for a Facility advance for such Agent member's own need, the Facility shall consider the creditworthiness of such member.

* * * * *

(d) A credit union (whether a Regular member of the Facility, Agent member, or a member natural person credit union) which does not meet the Facility's creditworthiness standards may be limited in or denied the use of advances for its liquidity needs.

■ 8. In § 725.19, revise paragraphs (a) and (b) to read as follows:

§ 725.19 Collateral requirements.

(a) Each Facility advance and each Agent loan shall be secured by a first priority security interest in collateral of the credit union with a net book value at least equal to an amount as required by the Facility's collateral table, published at www.NCUA.gov, or by guarantee of the National Credit Union Share Insurance Fund.

(b) The Facility may accept as collateral for each Facility advance to a Regular member or to an Agent member, for such Agent member's own needs, a security interest in all assets of the member; provided however, that the value of any assets in which any third party has a perfected security interest that is superior to the security interest of the Facility shall be excluded for purposes of complying with the requirements of paragraph (a) of this section.

* * * * *

[FR Doc. 2020-08101 Filed 4-28-20; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Parts 800 and 802

RIN 1505-AC65

Filing Fees for Notices of Certain Investments in the United States by Foreign Persons and Certain Transactions by Foreign Persons Involving Real Estate in the United States

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

ACTION: Interim rule with request for comments.

SUMMARY: The interim rule establishes a fee for parties filing a formal written notice of a transaction for review by the Committee on Foreign Investment in the United States (CFIUS). In establishing a fee for such notices, this rule implements section 1723 of the Foreign Investment Risk Review Modernization Act of 2018, which amends section 721 of the Defense Production Act of 1950 to allow CFIUS to collect fees. This interim rule includes a request for additional public comment.

DATES:

Effective date: The interim rule is effective on May 1, 2020.

Comment date: The Department of the Treasury (Treasury Department) is seeking written comments from the public on the interim rule, which must be received by June 1, 2020.

ADDRESSES: Written comments on the interim 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 Treasury Department to make the comments available to the public.

- *Mail:* Send to U.S. Department of the Treasury, Attention: Laura Black, Director of Investment Security Policy and International Relations, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

We encourage comments to be submitted via <https://www.regulations.gov>. Please submit comments only and include your name and company name (if any), and cite "*Filing Fees for Notices of Certain Investments in the United States by Foreign Persons and Certain Transactions by Foreign Persons*

Involving Real Estate in the United States" in all correspondence. In general, the Treasury Department 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 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 James Harris, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622-3425; email: CFIUS.FIRRMA@treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 9, 2020, the Department of the Treasury (Treasury Department) published a notice of proposed rulemaking amending 31 CFR part 800 (Part 800) and 31 CFR part 802 (Part 802) to establish filing fees. 85 FR 13586 (March 9, 2020). (The Office of the Federal Register made the proposed rule available for public inspection on March 4, 2020.) The proposed rule proposed establishing a filing fee for "covered transactions" under Part 800 and "covered real estate transactions" under Part 802 that are filed with the Committee on Foreign Investment in the United States (CFIUS or the Committee) as formal written notices. The proposed rule created a new subpart K on filing fees in each of Part 800 and Part 802, and made a limited number of revisions to other related sections of those regulations. Public comments on the proposed rule were due by April 3, 2020 and are discussed below. This interim rule establishes the filing fees for Part 800 and Part 802—effective May 1, 2020—and also allows the public an additional opportunity to comment on the rule.

In establishing a fee for formal written notices, this rule implements section 1723 of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which amends section 721 of the Defense Production Act of 1950 (DPA) to allow CFIUS to collect fees. FIRRMA authorizes the collection of

fees with respect to covered transactions and covered real estate transactions for which a formal written notice is filed with the Committee—as opposed to, for example, transactions submitted through a declaration. FIRRMA directs that the fee be based on the value of the transaction, taking various factors into account. It also provides that such fees may not exceed an amount equal to the lesser of one percent of the value of the transaction, or \$300,000, adjusted annually for inflation.

Through FIRRMA, Congress authorized CFIUS to collect fees for transactions filed by parties through written notices in order to offset the expenses of the Committee associated with conducting activities under section 721 of the DPA. Given the growing volume of work and resources devoted to CFIUS, the Treasury Department determined that implementing filing fees is appropriate at this time. As discussed in further detail below, the Treasury Department does not expect the filing fees to impact levels of foreign investment into the United States or decisions to file transactions with CFIUS more generally. The United States remains committed to its open investment policy, and the funding provided through the filing fees will support CFIUS in fulfilling its mission of protecting national security while continuing to welcome foreign investment.

II. Overview of Comments on the Proposed Rule

During the public comment period, the Treasury Department received written submissions on the proposed rule. All comments received by the end of the comment period are available on the public rulemaking docket at <https://www.regulations.gov>.

The Treasury Department considered each comment submitted on the proposed rule. Some of the comments were more general in nature, such as discussing the impact of the rule on foreign investment in the United States. The Treasury Department recognizes the vital importance of foreign investment to the U.S. economy. The Treasury Department drafted the proposed rule, and made revisions in issuing this interim rule, taking into consideration various factors including the effect on foreign investment, effect on small business concerns, and expenses of the Committee associated with conducting activities under section 721 of the DPA. As discussed in the preamble to the proposed rule, the Treasury Department considered different approaches to the fee structure and decided that the structure in the proposed rule and this

interim rule was the most appropriate for reasons including proportionality, administration, clarity, and impact on parties' decision whether to file a notice. Overall, this filing fee structure allows the Committee to appropriately generate funding—consistent with Congressional intent—in order to support the work of the Committee, but at the same time, the proportional cost in terms of transaction value is maintained at a low level. This is discussed further below.

One commenter noted that the proposed rule would not establish filing fees for declarations, but that parties could submit a declaration on a transaction for which CFIUS subsequently requests a written notice. The commenter noted that this structure could create a financial incentive for CFIUS not to complete all action through the declaration process. The Treasury Department disagrees with this assertion. First, the approach in the proposed rule and this interim rule is consistent with what Congress authorized under FIRRMA—that is, the Committee may impose a filing fee for notices, but not for declarations. Second, it is in the Committee's interest—both financially and administratively—to complete all action with respect to appropriate transactions through the declaration process. The personnel and resource costs to the Committee of reviewing a notice are not insignificant and may often exceed the fee for filing a notice. Thus, there is no real financial incentive for CFIUS not to complete all action with respect to a transaction through the declaration process. Third, CFIUS is further bound by the requirement in FIRRMA that the total amount of fees collected may not exceed the costs of administering section 721. Finally, as noted above, foreign investment is vital to the U.S. economy. CFIUS is committed to completing all action with respect to benign transactions as quickly as possible and maintaining an open investment environment. The incentives weigh in favor of CFIUS completing all action with respect to transactions in a timely manner, as appropriate in light of national security considerations.

In addition to the comments on the substance of the rule, one commenter requested an extension of the public comment period for the proposed rule in light of the challenges posed by the novel coronavirus pandemic. The Treasury Department recognizes the challenges posed by the coronavirus pandemic during the public comment period for the proposed rule. Therefore, as discussed further below, this rule is being issued as an interim rule and the

public will have until June 1, 2020 to provide additional comments. The Treasury Department will, however, begin to collect fees on May 1, 2020 to ensure that revenue collected in fiscal year 2020 is as closely aligned as possible to the estimates made in the Consolidated Appropriations Act, 2020. These fees will partially offset the ongoing expenses of the Committee, including workforce expansion and resource expenditure to support the full implementation of FIRRMA.

The section-by-section analysis below includes responses to other comments and notes edits that were made to the rule for consistency and clarity.

III. Summary of Comments and Changes from the Proposed Rule

a. Sections 800.1101/802.1101—Amount of Fee

Consistent with the proposed rule, §§ 800.1101 and 802.1101 set forth the fee amount based on the value of the transaction.

Commenters suggested that the Treasury Department impose no fee, or set the fees lower than those in the proposed rule. The commenters noted that filing fees could discourage foreign investment in the United States, and that money used for filing fees would detract from money that would otherwise go into U.S. business expansion. No specific data or examples were provided in support of these comments.

The interim rule does not make any changes to the fee structure or amounts. As explained in the preamble to the proposed rule, because the fees represent only a small amount (0.15 percent or less) of the overall value of a given transaction, the Treasury Department does not believe that the imposition of fees will impact the flow of foreign investment into the United States. In fact, the Treasury Department expects that parties may routinely expend more on legal and accounting fees in connection with a transaction. Additionally, the benefit of filing a notice and paying the fee is the “safe harbor” that may be obtained upon the conclusion of CFIUS review. This is of considerable value to transaction parties. Furthermore, transaction parties can take advantage of the declaration process, which does not require a fee.

One commenter requested that the Treasury Department create an exemption for “low-risk” foreign investors from specific ally and partner countries of the United States. The commenter suggested either relieving the relevant filers of the obligation to pay a fee or creating a separate fee structure with lower fees for these

foreign investors. The commenter asserted that, with respect to low threat investors, the administrative burden on CFIUS resources is relatively low and that investments by these investors would not require CFIUS to spend a considerable amount of time and money reviewing such transactions.

The interim rule does not make any changes in response to this comment. CFIUS reviews every transaction based on the particular facts and circumstances of the transaction. Every transaction filed with the Committee as a notice requires specific analysis, due diligence, and work product, regardless of whether the foreign person is from an ally or partner country. Therefore, creating an exemption from fees, or a lower fee structure, for certain foreign investors is not appropriate.

The interim rule clarifies that the filing fees take effect for formal written notices filed with the Committee on or after May 1, 2020. Parties that have filed a draft written notice pursuant to § 800.501(g) or § 802.501(g) prior to May 1, 2020, but file a formal written notice on or after May 1, 2020, will be required to pay the filing fee.

*b. Sections 800.1102/802.1102—
Timing of Payment*

Consistent with the proposed rule, §§ 800.1102 and 802.1102 discuss the timing of acceptance of a formal written notice in connection with transactions where a fee is required. Payment must be received by the Treasury Department before a formal written notice will be accepted for review.

A commenter requested that the Treasury Department consider allowing a “grace period” for payment of the fee (e.g., 15 days after acceptance of a written notice) when the Committee is not able to complete all action with respect to a transaction through a declaration and the parties subsequently file a written notice. The commenter explained that the grace period would reduce delay with respect to the Committee’s review of the transaction.

The interim rule does not make any changes in response to this comment. Based on over a year of experience with parties filing a notice after a declaration, the Treasury Department does not anticipate that requiring payment of the fee at the time of filing a formal written notice will cause unnecessary delay. Parties filing a notice after a declaration typically take a few days, if not longer, to prepare and file the notice. Additionally, the Treasury Department will accept electronic payment of filing fees, which allows fast payment processing. Therefore, allowing a grace period for payment of the fee is unnecessary.

*c. Sections 800.1103/802.1103—
Valuation*

The proposed rule described how to determine the value of a transaction for purposes of the fee at §§ 800.1103 and 802.1103.

One commenter requested clarification whether “other ownership interests” and “in-kind consideration” include intangible assets, such as intellectual property rights. In most cases, the value of a transaction will be the total value of all consideration that has been or will be paid in the context of the transaction by or on behalf of the foreign person that is a party to the transaction, including cash, assets, shares or other ownership interests, debt forgiveness, services, or other in-kind consideration. This encompasses intangible assets, in whatever form. The interim rule adds a reference to intellectual property in the example at § 800.1103(f)(3) to further clarify this point.

One commenter requested that the “value of the transaction” be calculated on the basis of the target’s U.S. business operations alone rather than the combination of U.S. and non-U.S. operations as proposed. The commenter argued that because CFIUS’s jurisdiction is with respect to particular types of transactions involving a U.S. business or real estate, the calculation of transaction value for determining fees should follow the same principle.

The interim rule does not make any changes in response to this comment. FIRRMA directs that the fee shall be based on the “value of the transaction,” and the approach in the proposed rule and interim rule is consistent with the statute. Moreover, basing the filing fee on only the value of the U.S. business operations of the target company, rather than on the contemplated or completed transaction itself, could introduce undesirable complexity to the filing fee rule. Parties negotiate and arrive at a value for the overall transaction in the standard course of dealmaking, which is not always the case with respect to ascribing a value to a particular geographic portion of the target’s business. It is important to note, however, that the Treasury Department recognizes there may be situations where a target company with global operations has a limited presence in the United States. In response, the proposed rule and interim rule include an exception for transactions where the value of the transaction is equal to or greater than \$5,000,000, but the value of the interest acquired in the U.S. business is less than \$5,000,000. In such cases, the fee will be \$750.

One commenter requested that the rule take into account the unique characteristics of biotechnology companies, arguing that revenue (rather than valuation) is the true indicator of company size, or in the alternative, there should be a separate fee schedule for low or pre-revenue companies.

The interim rule does not make any changes in response to this comment. First, FIRRMA directs that the fee be based on the value of the transaction taking various factors into account, including the effect on small business concerns. Basing the fee on the transaction value, rather than the target company’s revenue, is consistent with FIRRMA, as noted above, and an appropriate way to set the fee. The measure of the value of a transaction should be the amount of consideration that has been or will be paid, not solely the revenue of a company. In the event that a target company is a low revenue or pre-revenue business, the Treasury Department anticipates that the transaction parties will apportion the fee amount between the parties appropriately. Regardless of the target’s revenue, the foreign investor is electing to acquire the assets or invest in the U.S. business, and therefore has some ability to pay. Moreover, in no event will the fee exceed 0.15 percent of the value of the transaction. Alternatively, parties have the option of submitting a declaration, which does not require a fee.

The interim rule includes some clarifying and technical edits in §§ 800.1103 and 802.1103. These edits include clarifications to § 800.1103(c)(2) to account for the possibility that more than one U.S. business might be contributed to a joint venture, in which case, the value of the transaction is the collective value of each U.S. business contributed. The Treasury Department is considering, and in particular welcomes comment on, alternative approaches to valuing a joint venture transaction. One alternative approach under consideration is to value a joint venture transaction on the basis of the foreign person’s proportional ownership interest in the joint venture. Another approach is to base the value on the contribution made by the foreign person to the joint venture. In addition, references in subpart K of the rule to “interests,” “assets,” and “rights” were streamlined, as appropriate. For example, in § 800.1103(c)(3) “interest” is meant to be inclusive of any assets or rights acquired, as the case may be for a particular transaction. Clarifying edits were also made to some of the examples, now consolidated at §§ 800.1103(f) and 802.1103(i).

Finally, in § 800.1103(e), and the corresponding provision in § 802.1103(h), edits were made to clarify the treatment of multiple-phase transactions and transactions involving contingent equity interest. In a multiple-phase transaction, the value of the transaction includes the total value of each phase, as may be reasonably determined as of the date of the filing. For contingent equity interest, the rule describes how to value the consideration for the acquisition of the contingent equity interest as well as the consideration for the interest upon conversion, subject to certain factors. The examples at §§ 800.1103(f)(7) and (8), and 802.1103(i)(5) and (6), add further clarity.

d. Sections 800.1104/802.1104—Manner of Payment

No comments were received concerning this section. Accordingly, consistent with the proposed rule, §§ 800.1104 and 802.1104 provide the manner in which payment is to be made. Parties must pay by electronic payment, in U.S. dollars, and in accordance with the instructions available on the Treasury Department's website.

e. Sections 800.1105/802.1105—Refunds

No comments were received concerning this section. Consistent with the proposed rule, §§ 800.1105 and 802.1105 discuss the circumstances when refunds may be issued. The Treasury Department will not refund a filing fee except in the specific instances noted in the rule.

f. Sections 800.1106/802.1106—Waiver

No comments were received concerning this section. Consistent with the proposed rule, §§ 800.1106 and 802.1106 describe when a waiver of the filing fee in whole or in part may be issued.

g. Sections 800.1107/802.1107—Refilings

No comments were received concerning this section. Consistent with the proposed rule, §§ 800.1107 and 802.1107 discuss applicability of the filing fee in the context of refiled notices.

h. Sections 800.1108/802.1108—Rejection of Voluntary Notice

No comments were received concerning this section. Consistent with the proposed rule, §§ 800.1108 and 802.1108 discuss the process of rejecting a notice for insufficient payment of the fee.

IV. Rulemaking Requirements

Executive Order 12866

This rule is not subject to the general requirements of Executive Order 12866, which covers review of regulations by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB), because it relates to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order. In addition, this rule is not subject to review under section 6(b) of Executive Order 12866 pursuant to section 7(c) of the April 11, 2018 Memorandum of Agreement between the Treasury Department and OMB, which states that CFIUS regulations are not subject to OMB's standard centralized review process under Executive Order 12866.

Justification for Interim Rule

The proposed rule on filing fees was filed with the Office of the Federal Register on March 4, 2020 and made available for public inspection at that time. The public comment period ended 30 days later on April 3, 2020. The Treasury Department received five comment letters from the public, including one letter requesting an extension in light of the challenges posed by the novel coronavirus pandemic to the normal operations of potentially interested parties.

Although several public comments were timely submitted, the Treasury Department recognizes that some potentially interested parties may have been unable to comment because of the unique challenges posed by the coronavirus pandemic. While the Treasury Department has determined that publishing this rule now and making it effective on May 1, 2020, is appropriate for the reasons stated above, the Treasury Department also believes that it would benefit the public and the Committee to receive additional comments on the rule before it is made final. For that reason, an additional public comment period will commence concurrently with the filing of this rule with the Office of the Federal Register. The Treasury Department will consider additional comments submitted before finalizing this interim rule.

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the OMB for review along with the proposed rule, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1505-0121.

The notice requirements in Part 800 and Part 802 were approved under the

Paperwork Reduction Act with a per respondent burden of 130 hours and 116 burden hours, respectively. In the proposed rule, the Treasury Department invited public comments with respect to the amended reporting requirements under §§ 800.502(c)(1)(viii) and 802.502(b)(1)(ix). No comments were received. 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 OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, RFA) generally requires an agency to prepare an initial 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 APA, or any other law. As set forth in the preamble to the proposed rule at Section III, because rules issued pursuant to the DPA, such as this rule, are not subject to the APA or another law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply. Nevertheless, for the reasons detailed in the RFA section of the proposed rule, the Secretary of the Treasury certified that the proposed rule, if implemented, will not have a "significant economic impact on a substantial number of small entities," 5 U.S.C. 605(b). The Treasury Department also invited public comment on how the proposed rule would affect small entities.

Only one commenter discussed the proposed rule's analysis with respect to the potential impact on small businesses, particularly in the biotechnology industry. The commenter noted that an analysis of venture capital investment trends in the U.S. biotechnology industry suggests that biotechnology companies may be disproportionately impacted by the rule due to having characteristics of small businesses despite valuations being more typical of large businesses. The commenter did not offer additional details supporting the implicit assertion that biotechnology companies are small businesses or the conclusion that they are disproportionately impacted by the rule. Due to the limitations in available data, it is difficult to draw conclusions with respect to the biotechnology industry and the particular impact of this interim rule. In any case, as discussed in the proposed rule, the fee is only incurred when parties file a

formal written notice of a transaction with the Committee. (Even then, transactions under a certain size pay no fee or only a small fee of no more than 0.15 percent of the value of the transaction.) No fee is required for the submission of a declaration, which is available for any transaction under Part 800 and Part 802. Declarations will take less time and incur less cost for parties to complete. Additional information about declarations, including the procedures to file them and their content requirements, is available in the final CFIUS rules at 85 FR 3112 (Jan. 17, 2020) and 85 FR 3158 (Jan. 17, 2020).

For the reasons above, the Secretary of the Treasury certifies that this interim rule will not have a significant economic impact on a substantial number of small entities.

Congressional Review Act

This rule has been submitted to OIRA which has determined that the rule is not a “major” rule under the Congressional Review Act.

List of Subjects

31 CFR Part 800

Foreign investments in the United States, Investments, Investment companies, National defense, Fees.

31 CFR Part 802

Foreign investments in the United States, Federal buildings and facilities, Government property, Investigations, Investments, Investment companies, Land sales, National defense, Public lands, Real property acquisition, Reporting and Recordkeeping requirements, Fees.

For the reasons set forth in the preamble, the Treasury Department amends 31 CFR parts 800 and 802 as follows:

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

- 1. The authority citation for part 800 continues to read as follows:

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

Subpart E—Notices

§ 800.501 [Amended]

- 2. Amend § 800.501:
 - a. In paragraph (a) by adding “, and paying the fee required under subpart K of this part” after “including the certification required under paragraph (l) of that section”; and
 - b. In paragraph (f) by adding “, and payment of the fee required under

subpart K of this part,” after “including the certification required by § 800.502(l)”.

- 3. Amend § 800.502 by revising paragraph (c)(1)(viii) to read as follows:

§ 800.502 Contents of voluntary notices.

* * * * *

(c) * * *

(1) * * *

(viii)(A) The value of the transaction in U.S. dollars, as determined under § 800.1103, and the parties’ assessment of the applicable fee due under § 800.1101, including an explanation of the methodology used to determine such valuation and applicable fee; and

(B) If different than the value of the transaction provided in paragraph (c)(1)(viii)(A) of this section, 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.

* * * * *

- 4. Amend § 800.503:

- a. In paragraph (a)(1), by removing the word “and”;

- b. By redesignating paragraph (a)(2) as paragraph (a)(3); and

- c. By adding new paragraph (a)(2).

The addition reads as follows:

§ 800.503 Beginning of 45-day review period.

(a) * * *

(2) Confirmed that the applicable fee required under subpart K of this part has been received by the Department of the Treasury, or waived; and

* * * * *

- 5. Amend § 800.504 by redesignating paragraphs (a)(3) and (4) as paragraphs (a)(4) and (5), respectively, and adding new paragraph (a)(3) to read as follows:

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

(a) * * *

(3) Reject any voluntary notice at any time upon determining that the filing fee paid by the parties was insufficient under subpart K of this part, subject to § 800.1108.

* * * * *

- 6. Add subpart K to read as follows:

Subpart K—Filing Fees

Sec.

800.1101	Amount of fee.
800.1102	Timing of payment.
800.1103	Valuation.
800.1104	Manner of payment.
800.1105	Refunds.
800.1106	Waiver.
800.1107	Refilings.
800.1108	Rejection of voluntary notice.

Subpart K—Filing Fees

§ 800.1101 Amount of fee.

Except as otherwise provided in this subpart, the parties filing a formal written notice of a transaction with the Committee under § 800.501(a) on or after May 1, 2020, shall pay a filing fee as follows:

(a) Where the value of the transaction is less than \$500,000: No fee;

(b) Where the value of the transaction is equal to or greater than \$500,000 but less than \$5,000,000: \$750;

(c) Where the value of the transaction is equal to or greater than \$5,000,000 but less than \$50,000,000: \$7,500;

(d) Where the value of the transaction is equal to or greater than \$50,000,000 but less than \$250,000,000: \$75,000;

(e) Where the value of the transaction is equal to or greater than \$250,000,000 but less than \$750,000,000: \$150,000;

(f) Where the value of the transaction is equal to or greater than \$750,000,000: \$300,000.

§ 800.1102 Timing of payment.

Subject to §§ 800.1106 through 800.1108, the Staff Chairperson shall not accept a formal written notice under § 800.503(a) until payment of any fee required under this subpart is received by the Department of the Treasury in the manner specified on the Committee’s section of the Department of the Treasury website.

§ 800.1103 Valuation.

(a) Except as provided in paragraph (c) of this section, the value of the transaction for purposes of determining the required fee amount in this subpart means the total value of all consideration that has been or will be provided in the context of the transaction by or on behalf of the foreign person that is a party to the transaction, including cash, assets, shares or other ownership interests, debt forgiveness, or services or other in-kind consideration.

(b) Determining the value of consideration:

(1) Where the consideration is or includes securities traded on a national securities exchange, the value of the securities is the closing price on the national securities exchange on which the securities are primarily traded on the trading day immediately prior to the date the parties file the formal written notice with the Committee under § 800.501(a), or if the securities were not traded on that day, the last published closing price.

(2) Where the consideration is or includes other non-cash assets, services, interests, or other in-kind consideration, the value of the assets, services,

interests, or other in-kind consideration is their fair market value as of the date the parties file the formal written notice.

(3) Where the transaction is or includes a lending transaction, the consideration includes the cash value of the loan, or similar financing arrangement, made available or provided by or on behalf of the foreign person that is a party to the transaction.

(4) Where the transaction is or includes the conversion of a contingent equity interest previously acquired by a foreign person that is a party to the transaction, the consideration includes what was paid by or on behalf of the foreign person to initially acquire the contingent equity interest, in addition to any other consideration paid or to be paid in connection with the conversion.

(c) Exceptions:

(1) To the extent the consideration to be provided by the foreign person has not been or cannot reasonably be determined as of the date the parties file the notice, the value of the transaction includes, with respect to the interest for which consideration has not been determined, the fair market value of the interest being acquired in the transaction as of the date the parties file the formal written notice.

Note 1 to § 800.1103(c)(1): The consideration amount may be determined notwithstanding minor standard adjustments that are to be made at closing.

(2) Where the transaction involves a merger or the contribution of one or more U.S. businesses to a joint venture, the value of the transaction is the fair market value of the U.S. business(es) being merged or contributed.

(3) Where the value of a transaction is \$5,000,000 or more, but the transaction includes one or more non-U.S. businesses, and the value of the interest acquired in the U.S. business is less than \$5,000,000, the filing fee under § 800.1101(b) is applicable. The value of the U.S. business, for purposes of this paragraph, is the fair market value of the assets of the U.S. business.

(d) Fair market value means the price that would be received in exchange for sale of an interest, or paid to receive a service or to transfer liability, in an orderly transaction between market participants.

(1) In determining fair market value, parties shall make a good faith estimate and generally may rely on the last valuation as presented in financial statements prepared in accordance with generally accepted accounting principles (GAAP) or other widely recognized accounting principles, such as the International Financial Reporting Standards, or the valuation of an

independent appraiser; provided, however, that if no valuation has occurred within the prior two fiscal quarters, or if there have been significant changes to the fair market value since the last valuation, the parties shall make a good faith estimate at the time of filing the formal written notice, or, if the parties are filing after the completion of the transaction, the completion date of the transaction.

(2) In determining the fair market value of services, the parties may rely upon the value of services determined by the parties as set forth in an executed written agreement, or make an estimate at the time of filing the formal written notice based upon rates charged to third parties or upon recent industry reports or other sources of comparable commercial data; provided, however, if such sources are unavailable, the parties shall make a good faith estimate. If the parties are filing after completion of the transaction, the parties shall make an estimate of the fair market value as of the completion date.

(3) The Staff Chairperson is not bound by the parties' characterization of the transaction and its value or the parties' good faith approximation provided to the Committee under § 800.502(c)(1)(viii).

(e) Multiple-phase and contingent equity interest transactions:

(1) Where a transaction will be effectuated in multiple phases, the value of the transaction includes the total value of the multiple phases, as may be reasonably determined as of the date the parties file the formal written notice.

(2) Where a transaction is or includes the acquisition of contingent equity interest, the value of the transaction includes the consideration that was paid by or on behalf of the foreign person to acquire the contingent equity interest, and, if the conditions that lead to conversion will occur imminently, the conditions are within the control of the acquiring party, and the consideration for the interest that would be acquired upon conversion or satisfaction of contingent conditions can be reasonably determined at the time of acquisition, any other consideration paid or to be paid in connection with the conversion.

Note 2 to § 800.1103(e)(2): See § 800.1103(b)(4) regarding consideration for a contingent equity interest where the interest has been converted to equity.

(f) Examples:

(1) *Example 1.* Corporation A, a foreign person, proposes to acquire all of the issued and outstanding shares of Corporation B, a U.S. business, in exchange for \$100,000,000 in cash. Assuming no other relevant facts, the

value of the transaction is \$100,000,000, and the filing fee is \$75,000.

(2) *Example 2.* Corporation A, a foreign person, proposes to acquire all of the issued and outstanding shares of Corporation B, a U.S. business, in a two-for-one stock swap transaction whereby a holder of a share of Corporation B's stock is entitled to receive two shares of Corporation A's stock. Corporation A's stock is listed on the NASDAQ, a national securities exchange. In aggregate, the holders of Corporation B's stock will receive 10,000,000 shares of Corporation A's stock in the transaction. On the trading day immediately prior to the filing of the formal written notice, the closing price of Corporation A's stock on NASDAQ was \$20 per share. Assuming no other relevant facts, the value of the transaction is \$200,000,000, and the filing fee is \$75,000.

(3) *Example 3.* Corporation B, a U.S. business, is issuing new shares that will represent 50 percent of its issued and outstanding shares. Corporation A, a foreign person, proposes to acquire these shares. As consideration, Corporation A will contribute to Corporation B certain inventory, machines, and intellectual property. The parties to the transaction estimate in good faith, based on the most recent quarterly financial statements of Corporation A, which were prepared in accordance with GAAP, that the fair market value of the assets contributed as consideration is \$40,000,000. Assuming no other relevant facts, the value of the transaction is \$40,000,000, and the filing fee is \$7,500.

(4) *Example 4.* Corporation A and Corporation B are establishing a joint venture, JV Corp., which will be controlled by Corporation B, a foreign person. Corporation A contributes a U.S. business, the fair market value of which is \$150,000,000, to JV Corp. Corporation B contributes \$150,000,000 in cash to JV Corp. The value of the transaction is \$150,000,000, which is equal to the value of the U.S. business being contributed. Assuming no other relevant facts, the filing fee is \$75,000.

(5) *Example 5.* Corporation A, a foreign person, enters into a stock purchase agreement with Person Z to acquire 100 percent of the issued and outstanding shares of Corporation B, a U.S. business. The value of the consideration has not been determined because it will be payable only once Corporation B achieves certain development and sales milestones, and it will be 10 percent of Corporation B's revenue over a future five-year period. The parties estimate in good faith that the fair market value of 100 percent of the shares of Corporation B is

\$30,000,000 based on a number of factors, including application of well-known accounting standards such as Financial Accounting Standards Board Statement 157, a recent valuation conducted by a third-party auditor, and a proposal to acquire Corporation B made by another bidder for approximately \$30,000,000 in cash. Assuming no other relevant facts, the value of the transaction is \$30,000,000, and the filing fee is \$7,500.

(6) *Example 6.* Corporation A, a foreign person, proposes to acquire 100 percent of the assets of Corporation B, a foreign person, for \$100,000,000. Corporation B has subsidiaries in several countries, including Corporation C, a U.S. business. The fair market value of Corporation C's assets is \$1,000,000. Assuming no other relevant facts, under paragraph (c)(3) of this section, a \$750 filing fee is required.

(7) *Example 7.* Corporation A, a foreign person, proposes to acquire 50 percent of the voting interest of Corporation B, a U.S. business. Under the terms of a stock purchase agreement, the transaction will be effectuated in two phases. First, Corporation A will acquire 25 percent of the voting interest of Corporation B in exchange for \$30,000,000 (phase 1). Two months later, Corporation A will acquire the other 25 percent of the voting interest of Corporation B in exchange for another \$30,000,000 (phase 2). Assuming no other relevant facts, the value of the consideration is \$60,000,000 (the total consideration for both phases), and the filing fee is \$75,000.

(8) *Example 8.* Corporation A, a foreign person, pays \$5,000,000 to acquire 100,000 shares and call options from Corporation B, a U.S. business. The call options can be exercised after 90 days, and if exercised, Corporation A will have the right to acquire another 60,000 shares of Corporation B in exchange for an additional \$3,000,000. Because the options may be exercised imminently, conversion of the call options is in the control of Corporation A, and the consideration for the interest acquired as a result of conversion can be reasonably determined, the value of the transaction includes the consideration for the shares and the call options as well as the consideration paid to exercise the options. Assuming no other relevant facts, the value of the consideration is \$8,000,000, and the filing fee is \$7,500.

(g) The determination of the value of the transaction for purposes of calculating the filing fee in no way limits the Committee's jurisdiction or its authority to review, investigate, mitigate, impose penalties regarding, or

take any other action regarding any covered transaction.

§ 800.1104 Manner of payment.

Parties to a transaction must pay any filing fee by electronic payment. The filing fee must be paid in U.S. dollars. Instructions for paying filing fees are available on the Committee's section of the Department of the Treasury website.

§ 800.1105 Refunds.

(a) Except as provided in paragraphs (b) and (c) of this section, the Department of the Treasury shall not refund a filing fee in whole or in part.

(b) If the Committee determines that the transaction is not a covered transaction, the filing fee shall be refunded.

(c) In response to a petition by a party, if the Staff Chairperson determines, based on the information and representations contained in the formal written notice, as well as any other information provided by the parties, that a party or the parties to a transaction paid a filing fee in an amount greater than required at the time of filing, the Department of the Treasury shall refund the amount of overpayment to the party or parties who paid the filing fee.

§ 800.1106 Waiver.

If the Staff Chairperson determines that extraordinary circumstances relating to national security warrant, the Staff Chairperson may waive the filing fee in whole or in part and will notify the parties in writing. No waiver shall be implied, even where the Staff Chairperson does not reject a voluntary notice under § 800.1108 for failure to pay the required filing fee.

§ 800.1107 Refilings.

The parties to a transaction shall not be required to pay an additional filing fee in the event that the Staff Chairperson permits the parties to withdraw and refile a notice under § 800.509(c)(2), unless the Staff Chairperson determines that a material change to the transaction has occurred, or a material inaccuracy or omission was made by the parties in information provided to the Committee, that requires the Committee to consider new information, in which case the Staff Chairperson will inform the parties in writing.

§ 800.1108 Rejection of voluntary notice.

The Staff Chairperson may reject a voluntary notice under § 800.504(a)(3) upon a determination that the amount of the filing fee paid by the parties was insufficient under this subpart. Prior to rejecting a notice under § 800.504(a)(3),

the Staff Chairperson shall inform the parties in writing of the insufficiency of payment and provide the parties three business days to pay the remainder of the filing fee. If the Staff Chairperson does not reject a voluntary notice under § 800.504(a)(3) upon a determination that the amount of the filing fee payment paid by the parties was insufficient under this section, the balance of the fee remains payable unless the Staff Chairperson notifies the parties in writing that the payment has been waived in whole or in part.

PART 802—PROVISIONS PERTAINING TO CERTAIN TRANSACTIONS BY FOREIGN PERSONS INVOLVING REAL ESTATE IN THE UNITED STATES

■ 7. The authority citation for part 802 continues to read as follows:

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

Subpart E—Notices

§ 802.501 [Amended]

■ 8. Amend § 802.501:

■ a. In paragraph (a) by adding “, and paying the fee required under subpart K of this part” after “including the certification required under paragraph (h) of that section”; and

■ b. In paragraph (f) by adding “, and payment of the fee required under subpart K of this part,” after “including the certification required by § 802.502(h)”.

■ 9. Amend § 802.502 by revising paragraph (b)(1)(ix) to read as follows:

§ 802.502 Contents of voluntary notices.

* * * * *

(b) * * *

(1) * * *

(ix)(A) The value of the transaction in U.S. dollars, as determined under § 802.1103, and the parties' assessment of the applicable fee due under § 802.1101, including an explanation of the methodology used to determine such valuation and applicable fee; and

(B) If different than the value of the transaction provided in paragraph (b)(1)(ix)(A) of this section, a good faith approximation of the fair market value of the interest acquired in the covered real estate in U.S. dollars, as of the date of the notice.

* * * * *

■ 10. Amend § 802.503:

■ a. In paragraph (a)(1), by removing the word “and”;

■ b. By redesignating paragraph (a)(2) as paragraph (a)(3); and

■ c. By adding new paragraph (a)(2).

The addition reads as follows:

§ 802.503 Beginning of 45-day review period.

(a) * * *

(2) Confirmed that the applicable fee required under subpart K of this part has been received by the Department of the Treasury, or waived; and

* * * * *

■ 11. Amend § 802.504 by redesignating paragraphs (a)(3) and (4) as paragraphs (a)(4) and (5), respectively, and adding new paragraph (a)(3) to read as follows:

§ 802.504 Deferral, rejection, or disposition of certain voluntary notices.

(a) * * *

(3) Reject any voluntary notice at any time upon determining that the filing fee paid by the parties was insufficient under subpart K of this part, subject to § 802.1108.

* * * * *

■ 12. Add subpart K to read as follows:

Subpart K—Filing Fees

Sec.

802.1101	Amount of fee.
802.1102	Timing of payment.
802.1103	Valuation.
802.1104	Manner of payment.
802.1105	Refunds.
802.1106	Waiver.
802.1107	Refilings.
802.1108	Rejection of voluntary notice.

Subpart K—Filing Fees**§ 802.1101 Amount of fee.**

Except as otherwise provided in this subpart, the parties filing a formal written notice of a transaction with the Committee under § 802.501(a) on or after May 1, 2020, shall pay a filing fee as follows:

(a) Where the value of the transaction is less than \$500,000: No fee;

(b) Where the value of the transaction is equal to or greater than \$500,000 but less than \$5,000,000: \$750;

(c) Where the value of the transaction is equal to or greater than \$5,000,000 but less than \$50,000,000: \$7,500;

(d) Where the value of the transaction is equal to or greater than \$50,000,000 but less than \$250,000,000: \$75,000;

(e) Where the value of the transaction is equal to or greater than \$250,000,000 but less than \$750,000,000: \$150,000;

(f) Where the value of the transaction is equal to or greater than \$750,000,000: \$300,000.

§ 802.1102 Timing of payment.

Subject to §§ 802.1106 through 802.1108, the Staff Chairperson shall not accept a formal written notice under § 802.503(a) until payment of any fee required under this subpart is received by the Department of the Treasury in the manner specified on the Committee's

section of the Department of the Treasury website.

§ 802.1103 Valuation.

Except as provided in paragraph (e) of this section, the value of the transaction for purposes of determining the required fee amount in this subpart shall be determined as follows:

(a) For a transaction structured as a purchase, by the total value of all consideration that has been or will be provided in the context of the transaction by or on behalf of the foreign person that is a purchaser in the transaction, including cash, assets, shares or other ownership interests, debt forgiveness, or services or other in-kind consideration.

(b) For a transaction structured as a lease, by the value of the sum of, as applicable:

(1) Any fixed payments to be paid by the foreign person that is a lessee in the transaction to, or for the benefit of, the lessor over the term of the lease;

(2) Any variable payments that depend on an index or a rate (such as a market interest rate) to be paid by the foreign person that is a lessee in the transaction to, or for the benefit of, the lessor, over the term of the lease, measured for purposes of this section by using the index or rate on the day immediately prior to the date the parties file the formal written notice; and

(3) Any non-cash consideration to be provided by the foreign person that is a lessee in the transaction to, or for the benefit of, the lessor, over the term of the lease, as may be reasonably determined as of the date the parties file the formal written notice.

(c) For a transaction structured as a concession, by the value of the sum of all rent, fees, and charges to be paid by the foreign person to the grantor and any non-cash consideration to be provided by such foreign person to, or for the benefit of, the grantor, over the term of a concession agreement, as may be reasonably determined as of the date the parties file the formal written notice.

(d) Determining the value of consideration:

(1) Where the consideration is or includes securities traded on a national securities exchange, the value of the securities is the closing price on the national securities exchange on which the securities are primarily traded on the trading day immediately prior to the date the parties file the formal written notice with the Committee under § 802.501(a), or if the securities were not traded on that day, the last published closing price.

(2) Where the consideration is or includes other non-cash assets, services,

interests, or other in-kind consideration, including real property contributed by a foreign person that is party to a transaction involving the exchange of land or contribution to a joint venture, the value of the assets, service, interests, or other in-kind consideration is their fair market value as of the date the parties file the formal written notice.

(3) Where the transaction is or includes a lending transaction, the consideration includes the cash value of the mortgage, loan, or similar financing arrangement, made available or provided by or on behalf of the foreign person that is a party to the transaction.

(4) Where the transaction is or includes the conversion of a contingent equity interest previously acquired by a foreign person that is a party to the transaction, the consideration includes what was paid by or on behalf of the foreign person to initially acquire the contingent equity interest, in addition to any other consideration paid or to be paid in connection with the conversion.

(e) Exceptions:

(1) In the case of a purchase, to the extent the consideration to be provided by the foreign person has not been or cannot reasonably be determined as of the date the parties file the formal written notice, the value of the transaction includes, with respect to assets for which consideration has not been determined, the fair market value of the assets being purchased in the transaction as of the date the parties file the formal written notice.

Note 1 to § 802.1103(e)(1): The consideration amount may be determined notwithstanding minor standard adjustments that are to be made at closing.

(2) In the case of a lease or concession, where the consideration to be provided by the foreign person has not been or cannot reasonably be determined at the time of filing, or, where the parties cannot reasonably determine the value of rent, fees, charges, or services under paragraph (c) of this section, the filing fee required shall be that required under § 802.1101(b).

(f) The Staff Chairperson is not bound by the parties' characterization of the transaction and its value or their good faith approximation provided to the Committee under § 802.502(b)(1)(ix).

(g) Fair market value means the price that would be received in exchange for sale of an interest, or paid to receive a service or to transfer liability, in an orderly transaction between market participants.

(1) In determining fair market value, parties shall make a good faith estimate and generally may rely on the last

valuation as presented in financial statements prepared in accordance with generally accepted accounting principles or other widely recognized accounting principles, such as the International Financial Reporting Standards, or the valuation of an independent appraiser; provided, however, that if no valuation has occurred within the prior two fiscal quarters, or if there have been significant changes to the fair market value since the last valuation, the parties shall make a good faith estimate at the time of filing the formal written notice, or, if the parties are filing after the completion of the transaction, the completion date of the transaction.

(2) In determining the fair market value of services, the parties may rely upon the value of services determined by the parties as set forth in an executed written agreement, or make an estimate at the time of filing the formal written notice based upon rates charged to third parties or recent industry reports or other sources of comparable commercial data; provided, however, if such sources are unavailable, the parties shall make a good faith estimate. If the parties are filing after completion of the transaction, the parties shall make an estimate of the fair market value as of the completion date.

(h) Multiple-phase and contingent equity interest transactions:

(1) Where a transaction will be effectuated in multiple phases, the value of the transaction includes the total value of the multiple phases, as may be reasonably determined as of the date the parties file the formal written notice.

(2) Where a transaction is or includes the acquisition of contingent equity interest, the value of the transaction includes the consideration that was paid by or on behalf of the foreign person to acquire the contingent equity interest, and, if the conditions that lead to conversion will occur imminently, the conditions are within the control of the acquiring party, and the consideration for the interest that would be acquired upon conversion or satisfaction of contingent conditions can be reasonably determined at the time of acquisition, any other consideration paid or to be paid in connection with the conversion.

Note 2 to § 800.1103(h)(2): See § 802.1103(d)(4) regarding consideration for a contingent equity interest where the interest has been converted to equity.

(i) Examples:

(1) *Example 1.* Corporation A, a foreign person, enters into an agreement for the purchase of a parcel of covered real estate (Parcel X) from Corporation B. In exchange for ownership of Parcel

X, Corporation A forgives a debt owed to it by Corporation B that is valued at \$5,000,000 and pays \$35,000,000 to Corporation B. Assuming no other relevant facts, the value of the transaction is \$40,000,000, and the filing fee is \$7,500.

(2) *Example 2.* Corporation A, a foreign person, enters into an agreement to lease a parcel of covered real estate from Corporation B. Pursuant to the agreement, Corporation A will pay Corporation B a fixed annual payment of \$300,000 for a term of three years, with an option to renew the lease at the end of the term. Assuming no other relevant facts, the value of the transaction is \$900,000, and the filing fee is \$750.

(3) *Example 3.* Corporation A, a foreign person, proposes to enter into a concession agreement with a U.S. public entity for the right to use certain covered real estate for the purpose of developing and operating terminal infrastructure at a covered port. The concession agreement is for a five-year term. Under the concession agreement, Corporation A will pay the U.S. public entity a use charge of \$450,000 per year starting in the second year. The concession agreement also requires Corporation A to pay utility fees and common area maintenance charges of \$5,000 per month for the full concession term. Assuming no other relevant facts, the value of the transaction is \$2,100,000, based on the \$1,800,000 use charge and \$300,000 in utility fees. The filing fee is \$750.

(4) *Example 4.* Corporation A, a foreign person, proposes to enter into an oil, gas and mineral lease with a U.S. public entity. Under the terms of the lease, Corporation A pays a lease bonus of \$1,000 per acre as an inducement to execute the lease with respect to a 10-acre parcel of covered real estate. The lease has a 10-year term. Corporation A must pay a royalty of 12.5 percent with respect to oil or gas production from the leased parcel. In the absence of such production, the foreign person is obligated to pay a rental fee of \$1,000 per acre per year for the first five years and \$2,000 per acre thereafter. Assuming no other relevant facts, the value of the transaction is \$160,000 and there is no filing fee.

(5) *Example 5.* Corporation A, a foreign person, proposes to purchase Plot X and Plot Y. The transaction will be completed in two phases. Corporation A will first acquire Plot X for \$30,000,000 (phase 1). One month later, Corporation A will acquire Plot Y for another \$30,000,000 (phase 2). Assuming no other relevant facts, the value of the consideration is

\$60,000,000 (the total consideration for both phases), and the filing fee is \$75,000.

(6) *Example 6.* Corporation A, a foreign person, proposes to purchase Plot X and acquire an option to purchase Plot Y. Corporation A will acquire Plot X and the option related to Plot Y in exchange for \$30,000,000. Corporation A informs its shareholders that within two months, it will exercise the option to purchase Plot Y in exchange for another \$30,000,000. Because the option to convert is imminent and in the control of Corporation A, and the consideration can be reasonably determined, the value of the transaction includes the consideration to be paid in connection with the conversion. Assuming no other relevant facts, the value of the consideration is \$60,000,000 (the total consideration for the purchase of Plot X and the option to purchase Plot Y), and the filing fee is \$75,000.

(j) The determination of the value of the transaction for purposes of calculating the filing fee in no way limits the Committee's jurisdiction or its authority to review, investigate, mitigate, impose penalties regarding, or take any other action regarding any covered real estate transaction.

§ 802.1104 Manner of payment.

Parties to a transaction must pay any filing fee by electronic payment. The filing fee must be paid in U.S. dollars. Instructions for paying filing fees are available on the Committee's section of the Department of the Treasury website.

§ 802.1105 Refunds.

(a) Except as provided in paragraphs (b) and (c) of this section, the Department of the Treasury shall not refund a filing fee in whole or in part.

(b) If the Committee determines that the transaction is not a covered real estate transaction, the filing fee shall be refunded.

(c) In response to a petition by a party, if the Staff Chairperson determines, based on the information and representations contained in the formal written notice, as well as any other information provided by the parties, that a party or the parties to a transaction paid a filing fee in an amount greater than required at the time of filing, the Department of the Treasury shall refund the amount of overpayment to the party or parties who paid the filing fee.

§ 802.1106 Waiver.

If the Staff Chairperson determines that extraordinary circumstances relating to national security warrant, the

Staff Chairperson may waive the filing fee in whole or in part and will notify the parties in writing. No waiver shall be implied, even where the Staff Chairperson does not reject a voluntary notice under § 802.1108 for failure to pay the required filing fee.

§ 802.1107 Refilings.

The parties to a transaction shall not be required to pay an additional filing fee in the event that the Staff Chairperson permits the parties to withdraw and refile a notice under § 802.509(c)(2), unless the Staff Chairperson determines that a material change to the transaction has occurred, or a material inaccuracy or omission was made by the parties in information provided to the Committee, that requires the Committee to consider new information, in which case the Staff Chairperson will inform the parties in writing.

§ 802.1108 Rejection of voluntary notice.

The Staff Chairperson may reject a voluntary notice under § 802.504(a)(3) upon a determination that the amount of the filing fee paid by the parties was insufficient under this subpart. Prior to rejecting a notice under § 802.504(a)(3), the Staff Chairperson shall inform the parties in writing of the insufficiency of payment and provide the parties three business days to pay the remainder of the filing fee. If the Staff Chairperson does not reject a voluntary notice under § 802.504(a)(3) upon a determination that the amount of the filing fee payment paid by the parties was insufficient under this section, the balance of the fee remains payable unless the Staff Chairperson notifies the parties in writing that the payment has been waived in whole or in part.

Dated: April 22, 2020.

Thomas Feddo,

Assistant Secretary for Investment Security.

[FR Doc. 2020-08916 Filed 4-28-20; 8:45 am]

BILLING CODE 4810-25-P

POSTAL SERVICE

39 CFR Part 113

New Mailing Standards for COVID-19 Related Category B Infectious Substances

AGENCY: Postal Service™.

ACTION: Temporary final rule.

SUMMARY: The Postal Service is revising its Hazardous, Restricted and Perishable Mail regulations by replacing Publication 52, *Hazardous, Restricted, and Perishable Mail*, Appendix C,

Packaging Instructions 6C, currently incorporated by reference, to support the rapid deployment of coronavirus (COVID-19) diagnostic tests using the mail during this public health emergency. In addition to the updated packaging instructions, all shippers of COVID-19 related Infectious Substances Category B UN3373 must obtain authorization from the Postal Service prior to mailing. These measures are necessary to ensure that diagnostic kits potentially containing Category B Infectious Substances are packaged, marked and labelled properly to ensure safety and containment throughout transport.

DATES: *Effective:* April 27, 2020 until the Federal public health emergency first declared on March 13, 2020 is terminated (following procedures prescribed in 50 U.S. Code § 1622). The Postal Service will publish a document announcing the termination date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Mary J. Collins at (202) 268-5551 or Dale Kennedy at (202) 268-6592 or by email at pcfederalregister@usps.gov.

SUPPLEMENTARY INFORMATION:

Overview

The United States Postal Service is currently experiencing a greater demand for the transportation of Infectious Substances, Category B UN3373 as a result of the ongoing COVID-19 pandemic. Due to the infectious nature of these materials, there exists a need for higher levels of awareness, safety and compliance in order to protect our employees, customers, and transportation partners.

When a package containing infectious substances is moved between the point of origin and its destination, it may be subjected to physical challenges, including movement, vibration, and changes of temperature, humidity and pressure. It is therefore, essential that the packaging used to contain infectious substances meets all required standards, and is able to withstand the normal conditions of transportation. It is the responsibility of the shipper to ensure they comply with all applicable regulations. The revisions will provide conformity and harmonization with other regulatory entities, prevent the shipment of fraudulent test kits in the mail, and reduce risk to employees and the general public by preventing exposure to this infectious substance.

The current packaging requirements incorporated by reference in Publication 52 Appendix C, Packaging Instruction 6C are replaced with new required shipper authorization and updated

packaging requirements added as § 113.3. Section 113.3 will be in place until the end of this public health emergency.

The Postal Service will publish a document announcing the termination date in the **Federal Register**. If you want to know whether this rule has been terminated, email or call either person identified in **FOR FURTHER INFORMATION CONTACT**.

The specific requirements to be used in place of Appendix C, Packaging Instruction 6C to Publication 52, *Hazardous, Restricted, and Perishable Mail* adopted in this document will be published in *Postal Bulletin 22544* on April 23, 2020, and can be viewed at <http://about.usps.com/postal-bulletin>.

List of Subjects in Part 113

Administrative practice and procedure, Postal Service.

For the reasons set forth above, the Postal Service amends 39 CFR part 113 as follows:

PART 113—HAZARDOUS, RESTRICTED, AND PERISHABLE MAIL

■ 1. The authority citation for part 113 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301-307; 18 U.S.C. 1692-1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Amend § 113.1 by adding a final sentence to read as follows:

§ 113.1 Scope and purpose.

* * * Follow the requirements of § 113.3 in place of Publication 52, Appendix C, Packaging Instruction 6C.

■ 3. Add § 113.3 to read as follows:

§ 113.3 Mailing Standards for COVID-19 related Category B Infectious Substances.

(a) *Required Shipper Authorization.*
(1) All shippers of COVID-19 related Infectious Substances Category B must obtain an authorization from the Postal Service prior to mailing. It is the responsibility of the shipper to ensure that they are aware of, and comply with, all other applicable requirements and regulations for the mailing of these materials; and they must be able to provide evidence of compliance before a written request is submitted to the manager of Product Classification, Postal Service Headquarters.

(2) Under this section, only tests developed and being performed by laboratories certified under the Clinical Laboratory Improvement Amendments (CLIA) or equivalent clinical oversight regulations, and commercial tests and home collection kits authorized by