

§ 800.227

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.

§ 800.227 Investment.

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

§ 800.228 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.

§ 800.229 Involvement.

The term *involvement* means the right or ability to participate, whether or not exercised, including 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 officers or selecting employees who are engaged in substantive decisionmaking.

§ 800.230 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 all or a portion of an assessment, a review, an investigation, or the negotiation or monitoring of a mitigation agreement or condition.

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§ 800.231 Manufacture.

Solely for the purposes of column 2 of appendix A to this part, the term *manufacture* means to produce or reproduce, whether physically or virtually.

§ 800.232 Material nonpublic technical information.

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

(1) Provides knowledge, know-how, or understanding, in each case not available in the public domain, of the design, location, or operation of covered investment critical infrastructure, including 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 processes, techniques, or methods.

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

(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 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 this part. 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.

(2) *Example 2.* Fund A, a foreign person that is not an excepted investor, proposes to acquire a five percent, non-controlling equity interest in Corporation B. Corporation B is an unaffiliated

TID U.S. business that develops a critical technology (Technology Z). Pursuant to the terms of the investment, Corporation B will notify Fund A when it achieves the developmental milestone of completing a demonstration prototype of Technology Z. The notification will only set out the milestone achieved and will not include technical details. Assuming no other facts, the proposed investment does not afford Fund A access to material nonpublic technical information in the possession of Corporation B necessary to design, fabricate, develop, test, produce, or manufacture a critical technology.

§ 800.233 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, 80 percent or more of its voting interest, the right to 80 percent or more of its profits, and the right in the event of dissolution to 80 percent or more of its assets.

§ 800.234 Own.

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

§ 800.235 Parent.

(a) The term *parent* means, with respect to an entity:

(1) A person who or which directly or indirectly:

(i) Holds or will hold at least 50 percent of the outstanding voting interest in the entity; or

(ii) Holds or will hold the right to at least 50 percent of the profits of the entity, or has or will have the right in the event of dissolution to at least 50 percent of the assets of the entity; or

(2) The general partner, managing member, or equivalent of the 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; and 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.

(3) *Example 3.* Investor A holds 60 percent of the outstanding voting interest in Corporation B. Investor C holds the right to 80 percent of the profits of Corporation B. Each of Investor A and Investor C is a parent of Corporation B.

§ 800.236 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 whom 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 with or into that entity in 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;