

Column 1—Covered investment critical infrastructure	Column 2—Functions related to covered investment critical infrastructure
<p>(xxvii) Any public water system, as defined in section 1401(4) of the Safe Drinking Water Act, as amended (42 U.S.C. 300f(4)(A)), or treatment works, as defined in section 212(2)(A) of the Clean Water Act, as amended (33 U.S.C. 1292(2)), which:</p> <p>(a) Regularly serves 10,000 individuals or more, or</p> <p>(b) directly serves any military installation identified in § 802.227.</p> <p>(xxviii) Any industrial control system utilized by a public water system or treatment works as described above in item (xxvii) of column 1 of this appendix A.</p>	<p>(xxvii) Own or operate any public water system, as defined in section 1401(4) of the Safe Drinking Water Act, as amended (42 U.S.C. 300f(4)(A)), or treatment works, as defined in section 212(2)(A) of the Clean Water Act, as amended (33 U.S.C. 1292(2)), which:</p> <p>(a) Regularly serves 10,000 individuals or more, or</p> <p>(b) directly serves any military installation identified in § 802.227.</p> <p>(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 this appendix A.</p>

PART 801—PILOT PROGRAM TO REVIEW CERTAIN TRANSACTIONS INVOLVING FOREIGN PERSONS AND CRITICAL TECHNOLOGIES

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ANNEX A TO PART 801—INDUSTRIES

AUTHORITY: 50 U.S.C. 4565; Pub. L. 115–232.

SOURCE: 83 FR 51327, Oct. 11, 2018, unless otherwise noted.

Subpart A—General

§ 801.101 Scope.

The regulations in this part implement a pilot program in accordance with section 1727(c) of the Foreign Investment Risk Review Modernization Act of 2018. Pursuant to section 1727(c), the pilot program implements authorities provided in certain provisions of, or amendments made by, the Foreign Investment Risk Review Modernization Act of 2018 that did not take effect on

the date of its enactment. This pilot program expands the scope of transactions reviewable by CFIUS to include certain 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 also requires that parties to a pilot program covered transaction notify CFIUS of the transaction by either submitting a declaration or filing a written notice. The regulations in this part supplement the existing regulations implementing section 721 of the Defense Production Act of 1950, as amended, under part 800 to Title 31 CFR Chapter VIII, which remain in effect. The pilot program implemented through these regulations will end no later than the date on which the full regulations implementing the Foreign Investment Risk Review Modernization Act of 2018 become effective, and in no event later than the date that is 570 days after the enactment of the Foreign Investment Risk Review Modernization Act of 2018. These regulations will be amended, replaced, or removed no later than the date on which the pilot program ends.

§ 801.102 Effect on other law.

Unless otherwise indicated, 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 the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), or any other authority of the President or the Congress under the Constitution of the United States.

§ 801.103 Applicability rule.

The regulations in this part apply to any pilot program covered transaction for which the following occurred on or after November 10, 2018, and prior to February 13, 2020:

(a) The completion date, unless any of the following occurred before October 11, 2018:

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

(2) A party made a public offer to shareholders to buy shares of the pilot program U.S. business that is the subject of the transaction; or

(3) A shareholder solicited proxies in connection with an election of the board of directors of the pilot program U.S. business that is the subject of the transaction;

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

(c) A party made a public offer to shareholders to buy shares of the pilot program U.S. business that is the subject of the transaction; or

(d) A shareholder solicited proxies in connection with an election of the board of directors of the pilot program U.S. business that is the subject of the transaction or has requested the conversion of convertible voting securities thereof.

[85 FR 3155, Jan. 17, 2020]

Subpart B—Definitions

§ 801.201 General.

Unless otherwise indicated, terms used in the regulations in this part that are defined in §§ 800.201 through 800.228 of this chapter have the meanings set forth therein.

§ 801.202 Completion date.

The term *completion date* means, with respect to a transaction, the date upon which an ownership interest, including a contingent equity interest, is conveyed, assigned, delivered, or otherwise transferred to a person, or a change in rights occurs.

§ 801.203 Contingent equity interest.

The term *contingent equity interest* means a financial instrument that currently does not entitle its owner or holder to voting rights but is convertible into an equity interest with voting rights.

§ 801.204 Critical technologies.

The term *critical technologies* means the following:

§ 801.205

(a) Defense articles or defense services included on the United States Munitions List 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 non-proliferation, 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.

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

§ 801.205 FIRRMA.

The term *FIRRMA* means the Foreign Investment Risk Review Modernization Act of 2018, Subtitle A of Title XVII of Public Law 115–232 (Aug. 13, 2018).

§ 801.206 Investment.

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

§ 801.207 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.

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§ 801.208 Material nonpublic technical information.

(a) The term *material nonpublic technical information* means information that is not available in the public domain, and is necessary to design, fabricate, develop, test, produce, or manufacture critical technologies, including processes, techniques, or methods.

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

§ 801.209 Pilot program covered investment.

The term *pilot program covered investment* means an investment, direct or indirect, by a foreign person in an unaffiliated pilot program U.S. business that could not result in control by a foreign person of a pilot program U.S. business and that affords the foreign person:

(a) Access to any material nonpublic technical information in the possession of the pilot program U.S. business;

(b) Membership or observer rights on the board of directors or equivalent governing body of the pilot program U.S. business or the right to nominate an individual to a position on the board of directors or equivalent governing body of the pilot program U.S. business; or

(c) Any involvement, other than through voting of shares, in substantive decisionmaking of the pilot program U.S. business regarding the use, development, acquisition, or release of critical technology.

§ 801.210 Pilot program covered transaction.

The term *pilot program covered transaction* means:

(a) Any pilot program covered investment; or

(b) Any transaction by or with any foreign person that could result in foreign control of any pilot program U.S. business, including such a transaction carried out through a joint venture.

§ 801.211 Pilot program effective date.

The term *pilot program effective date* means November 10, 2018.

§ 801.212 Pilot program industry.

The term *pilot program industry* means any industry identified in Annex A to part 801 by reference to the North American Industry Classification System (NAICS).

§ 801.213 Pilot program U.S. business.

The term *pilot program U.S. business* means any U.S. business that produces, designs, tests, manufactures, fabricates, or develops a critical technology that is:

(a) Utilized in connection with the U.S. business's activity in one or more pilot program industries; or

(b) Designed by the U.S. business specifically for use in one or more pilot program industries.

§ 801.214 Unaffiliated pilot program U.S. business.

The term *unaffiliated pilot program U.S. business* means, with respect to a foreign person, a pilot program U.S. business in which that foreign person does not directly hold more than fifty 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.

Subpart C—Pilot Program Covered Transactions

§ 801.301 Control.

For the sole purpose of determining whether a transaction could result in control of a pilot program U.S. business by a foreign person, the provisions set forth in subpart C of this part (excluding § 800.302(b) of this chapter and the examples thereunder) regarding covered transactions shall apply to any pilot program covered transaction declared to the Committee pursuant to § 801.401 or notified to the Committee pursuant to § 801.501.

§ 801.302 Transactions that are pilot program covered transactions.

Transactions that are pilot program covered transactions include, without limitation:

(a) A transaction that meets the requirements of § 801.209, irrespective of

the percentage of voting interest acquired.

Example 1. Corporation A, a foreign person, 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 as part of its business in a pilot program industry. Corporation B is therefore a pilot program 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 pilot program covered investment and therefore a pilot program covered transaction.

Example 2. Corporation A, a foreign person, proposes to acquire a four percent, non-controlling equity interest in Corporation B, a pilot program U.S. business as described above. Pursuant to the terms of the investment, Corporation A has approval 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 pilot program covered investment and a pilot program covered transaction.

(b) A transaction that meets the requirements of § 801.209, irrespective of the fact that the Committee concluded all action under section 721 for a previous pilot program covered investment by the same foreign person in the same pilot program U.S. business, where such transaction involves the acquisition of access or rights described by § 801.209 in addition to those notified to the Committee in the transaction for which the Committee previously concluded action.

Example. The Committee concludes all action under section 721 with respect to a pilot program covered investment by Corporation A, a foreign person, in which Corporation A acquires a four percent, non-controlling equity interest with board observer rights in Corporation B, a pilot program 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 be provided access to material nonpublic technical information in the possession of Corporation B to which Corporation A did not previously have access. The proposed transaction is a pilot program covered investment and therefore a pilot program covered transaction because the transaction involves both an acquisition

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of an equity interest in a pilot program U.S. business and a new right to access material nonpublic technical information.

(c) A transaction that meets the requirements of § 801.209, irrespective of the fact that the critical technology produced, designed, tested, manufactured, fabricated, or developed by the pilot program U.S. business became controlled pursuant to section 1758 of the Export Control Reform Act of 2018 after the pilot program effective date, unless any of the criteria set forth in paragraphs (b) through (d) of § 801.103 is satisfied with respect to the transaction prior to the critical technology becoming controlled pursuant to section 1758 of the Export Control Reform Act of 2018.

Example. Corporation A, a foreign person, has executed a written agreement establishing the material terms of a proposed non-controlling investment in Corporation B, a pilot program 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 pilot program effective date but prior to the date upon which the written agreement establishing the material terms of the investment was executed. The proposed transaction is a pilot program covered investment and therefore a pilot program covered transaction.

(d) A transaction by or with any foreign person that could result in foreign control of any pilot program U.S. business.

Example. Corporation A, a foreign person, acquires a 40 percent interest and the ability to determine important matters with respect to Corporation B, a U.S. pilot program business. The proposed transaction is a pilot program covered transaction.

[83 FR 51327, Oct. 11, 2018, as amended at 85 FR 3156, Jan. 17, 2020]

§ 801.303 Transactions that are not pilot program covered transactions.

Transactions that are not pilot program covered transactions include, without limitation:

(a) An investment by a foreign person in a U.S. business that manufactures a technology that it utilizes in connection with its activity in one or more

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pilot program industries, but does not produce, design, test, manufacture, fabricate, or develop one or more critical technologies.

Example. Corporation A, a foreign person, proposes to acquire a four percent, non-controlling equity interest in Corporation B, a U.S. business that operates in a pilot program industry. 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. Corporation B does not produce, design, test, manufacture, fabricate, or develop any critical technology. Assuming no other relevant facts, the proposed transaction is not a pilot program covered transaction.

(b) An investment by a foreign person in a pilot program U.S. business that does not afford the foreign person any of the rights specified in paragraphs (a), (b), or (c) of § 801.209 or any control rights.

Example. The Committee concluded all action under section 721 with respect to a pilot program covered transaction in which Corporation A, a foreign person, acquired a four percent, non-controlling equity interest with board observer rights in Corporation B, a pilot program 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 rights with respect to Corporation B, including the rights specified in § 801.209. Assuming no other relevant facts, the proposed transaction is not a pilot program covered transaction.

(c) A transaction that results or could result in control by a foreign person of a U.S. business that is not a pilot program U.S. business.

Example. Corporation A, a foreign person, proposes to purchase all of the shares of Corporation B, which is a U.S. business that operates in a pilot program industry but does not produce, design, test, manufacture, fabricate, or develop any critical technology. 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 pilot program covered transaction. It is, however, a covered transaction (see § 800.301 of this chapter).

§ 801.304 Treatment of certain investment fund investments.

(a) An indirect investment by a foreign person in a pilot program 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 pilot program covered transaction 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 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 otherwise meets the requirements of paragraph (4)(D) of subsection (a) of section 721 made effective by part 801.

(b) For the purposes of paragraphs (a)(3) and (4), 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 trans-

action 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.

Example 1. Corporation A, a foreign person, makes an investment in an investment fund as a limited partner. The investment confers membership on an advisory board of the investment fund. The investment fund holds 100 percent of the ownership interests in a pilot program U.S. business. Corporation A will have the right to approve decisions made by the general partner with respect to the use and development of the critical technologies produced by the pilot program U.S. business. This transaction is a pilot program covered transaction.

Example 2. Corporation A, a foreign person, makes an investment in an investment fund as a limited partner. The investment confers membership on an advisory board of the investment fund. The investment fund holds 100 percent of the ownership interests in a pilot program U.S. business. Corporation A is not the general partner that wholly manages the investment fund. Corporation A lacks any ability to control the investment fund or its decisions. As a member of the advisory board, Corporation A has the right to vote on the compensation of the general partner and the right to vote on the dismissal of the general partner for cause, but does not have the power to determine either of these matters unilaterally. Assuming no other relevant facts, this transaction is not a pilot program covered transaction with respect to Corporation A.

§ 801.305 Exception for air carriers.

No investment involving an air carrier, as defined in section 40102(a)(2) of title 49, United States Code, that holds a certificate issued under section 41102 of that title shall be a pilot program covered transaction.

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§ 801.306 Timing rule for contingent equity interests.

The provisions set forth in § 800.304 of this chapter regarding convertible voting instruments shall apply to contingent equity interests.

Subpart D—Mandatory Declarations Under the Pilot Program

§ 801.401 Mandatory declarations under the pilot program.

(a) Except as provided in paragraph (b) of this section, the parties to a pilot program covered transaction shall submit to the Committee a declaration with information regarding the transaction in accordance with § 801.402.

(b) Notwithstanding paragraph (a) of this section, parties to a pilot program covered transaction may elect to submit a written notice pursuant to subpart E of this part regarding the transaction instead of a declaration. Parties to a pilot program covered transaction that have filed with the Committee a written notice regarding a transaction pursuant to § 801.501 may not submit to the Committee a declaration regarding the same transaction or a substantially similar transaction without the approval of the Staff Chairperson.

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

(1) November 10, 2018, or promptly thereafter, if the completion date of the transaction is between November 10, 2018 and December 25, 2018; or

(2) 45 days before the completion date of the transaction, if the completion date of the transaction is after December 25, 2018.

(d) Section 800.204(e) of this chapter shall not apply with respect to any pilot program covered transaction for which the Committee completes all action under section 721 pursuant to § 801.407(a)(4).

§ 801.402 Procedures for declarations under the pilot program.

(a) A party or parties shall submit a declaration of a pilot program covered transaction pursuant to § 801.401 by submitting electronically the information set out in § 801.403, including the

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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).

(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 required to be provided to the Committee under § 801.406(a)(3). Such changes shall become part of the declaration filed by such persons under § 801.401, and the certification required under § 801.405(c) shall apply to such changes.

§ 801.403 Contents of declarations under the pilot program.

(a) The party or parties submitting a declaration of a pilot program covered transaction pursuant to § 801.401 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 § 801.501, 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 § 801.401 shall describe or provide, as applicable:

(1) The name of the foreign person(s) and pilot program 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 nature of the transaction and its structure (e.g., share purchase, merger, asset purchase);

(ii) The percentage of voting interest acquired;

(iii) The percentage of economic interest acquired;

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

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

(vi) The expected closing date; and

(vii) All sources of financing for the transaction.

(3) The following:

(i) A statement as to whether a party to the transaction is stipulating that the transaction is a pilot program 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 could result in control of a pilot program U.S. business by a foreign person or that the transaction is a foreign government-controlled transaction and, in each case, a description of the basis for the stipulation.

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

(i) Access to any material nonpublic technical information in the possession of the pilot program 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 § 801.209(b), 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 pilot program

U.S. business regarding the use, development, acquisition, or release of critical technologies 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 pilot program U.S. business and, if so, a brief explanation of these rights.

(5) The following information regarding the pilot program 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 pilot program U.S. business, including the pilot program U.S. business's headquarters, facilities, and operating locations.

(6) With respect to the pilot program U.S. business that is the subject of the transaction and any entity of which that pilot program 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 NAICS codes.

(7) A statement as to which critical technology or critical technologies the pilot program U.S. business and its subsidiaries produce, design, test, manufacture, fabricate, or develop, and the relevant six-digit NAICS code or codes, as applicable under §§ 801.212 and 801.213, for each critical technology listed. This statement shall include a description (which may group similar items into general product categories) of the items and a list of any relevant Export Control Classification Numbers under the EAR and United States Munitions List categories under the ITAR, and, if applicable, identify whether any are specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 CFR part 810, nuclear facilities, equipment, and materials covered by 10 CFR part 110 or select agents and toxins covered by 7 CFR part 331, 9 CFR part 121 or 42 CFR part 73.

(8) A statement as to whether the pilot program 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.

(9) A statement as to whether the pilot program 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.

(10) A statement as to whether the pilot program 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 pilot program industries within the past five years.

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

(12) A statement as to whether the pilot program 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.

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

(14) A complete organizational chart, including, without limitation, information that identifies the name, principal place of business and place of incorporation or other legal organization (for entities), and nationality (for individuals) 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; and

(iii) Where the ultimate parent is a public company, any shareholder with

an interest of greater than five percent in such parent.

(15) 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.

(16) 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.

(17) 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).

(18) A statement (including relevant jurisdiction and criminal case law number or legal citation) as to whether the pilot program 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.

(d) Each party submitting a declaration shall provide a certification of the information contained in the declaration consistent with § 800.202 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 pilot program covered transaction, a transaction that could result in control of a pilot program U.S. business by a foreign person, 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 pilot program covered transaction.

§ 801.404 Beginning of thirty-day period.

(a) Upon receipt of a declaration submitted pursuant to § 801.401, 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 provide an explanation of the material respects in which the declaration is incomplete.

(b) A thirty-day period for assessment of a pilot program 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.

§ 801.405 General.

(a) In assessing a pilot program covered transaction submitted pursuant to § 801.401, 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 shall examine, as appropriate, whether:

(1) The transaction constitutes a pilot program covered transaction and whether it could result in foreign government control over a pilot program U.S. business;

(2) There is credible evidence to support a belief that any foreign person exercising control of the pilot program U.S. business or exercising rights related to a pilot program covered in-

vestment 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 with respect to the risk arising from the pilot program covered transaction.

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

(c) If the Committee notifies the parties to a transaction that have submitted a declaration pursuant to § 801.401 that the Committee intends to complete 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 § 800.202 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>.

(d) If a party fails to provide the certification required under paragraph (c) of this section, the Committee may, at its discretion, take any of the actions under § 801.407(a).

§ 801.406 Rejection, disposition, or withdrawal of declarations.

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

(1) Reject any declaration that does not comply with § 801.403 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 § 801.407(a):

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

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(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 pilot program covered transaction.

(c) Parties to a transaction that have submitted a declaration pursuant to § 801.401(a) may request in writing, at any time prior to the Committee taking action under § 801.407(a), 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 pilot program covered transaction to correct material errors or omissions in the declaration submitted with respect to that pilot program 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.

§ 801.407 Committee actions.

(a) Upon receiving a declaration submitted pursuant to § 801.401 with respect to a pilot program covered transaction, the Committee may, at the discretion of the Committee:

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(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 complete action under section 721 with respect to the transaction on the basis of the declaration and that the parties may file a written notice under part 800 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 § 801.504; 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) within the time period set forth in § 801.404(b).

§ 801.408 Confidentiality.

The provisions of § 800.702 of this chapter shall apply to information submitted to the Committee through a declaration.

§ 801.409 Penalties.

(a) Any person who fails to comply with the requirements of § 801.401 may be liable to the United States for a civil penalty not to exceed the value of the pilot program covered transaction.

(b) The provisions of § 800.801(a), (d), (e), (f), (g), and (h) shall apply to a declaration submitted to the Committee pursuant to § 801.401.

Subpart E—Notice of Pilot Program Covered Transaction

§ 801.501 Notice of pilot program covered transactions.

Parties to a pilot program covered transaction may notify the Committee of the transaction by filing with the Committee a written notice pursuant to § 800.401(a) of this chapter and this subpart.

§ 801.502 Applicability of part 800.

(a) The provisions set forth in Subpart D—Notice; Subpart E—Committee Procedures: Review and Investigation; Subpart F—Finality of Action; Subpart

G—Provision and Handling of Information; and Subpart H—Penalties of Part 800 regarding covered transactions shall apply to any pilot program covered transaction notified to the Committee.

(b) Section 800.204(e) shall not apply with respect to any pilot program covered investment for which the Committee completes all action under section 721 pursuant to § 800.504 or § 800.506(d) of this chapter.

§ 801.503 Additional contents of written notice.

(a) In addition to the information required pursuant to § 800.402(c), a written notice of a pilot program covered transaction filed pursuant to § 800.401(a) of this chapter shall include the following information:

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

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

(i) Access to any material nonpublic technical information in the possession of the pilot program 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 § 801.209(b), and if so, a statement as to the composition of the board or other body both before and after the transaction; or

(iii) Any involvement, other than through voting shares, in substantive decisionmaking of the United States business regarding the use, development, acquisition, or release of critical technologies and if so, a statement as to the involvement in such substantive decisionmaking; and

(3) With respect to the pilot program U.S. business that is the subject of the transaction, a statement as to which critical technology or critical technologies the pilot program U.S. business and its subsidiaries produce, design, test, manufacture, fabricate, or develop, and the relevant six-digit NAICS code, as applicable under §§ 801.212 and 801.213, for each critical

technology listed. This statement shall include a description (which may group similar items into general product categories) of the items and a list of any relevant Export Control Classification Numbers under the EAR and United States Munitions List categories under the ITAR, and, if applicable, identify whether any are specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 CFR part 810, nuclear facilities, equipment, and materials covered by 10 CFR part 110 or select agents and toxins covered by 7 CFR part 331, 9 CFR part 121 or 42 CFR part 73.

(b) If the party (or parties) stipulate pursuant to § 800.402(n) of this chapter that the pilot program covered transaction that is the subject of the written notice could result in a covered transaction under part 800, the party (or parties) are not required to include in the written notice the information required by this section.

(c) A party that offers a stipulation acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a pilot program covered transaction, a transaction that could result in control of a pilot program U.S. business by a foreign person, 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 pilot program covered transaction.

§ 801.504 Agency notice of pilot program covered transactions.

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 pilot program covered transaction for which no declaration has been submitted pursuant to § 801.401 and no written notice has been filed under § 801.501(a) if that member has

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reason to believe that the transaction is a pilot program covered transaction and may raise national security considerations. Notices filed under this paragraph are deemed accepted upon their receipt by the Staff Chairperson.

Subpart F—Implementation of Certain Authority Provided In FIRMA

§ 801.601 Implementation of certain authority regarding covered transactions.

Paragraphs (4)(A)(ii) (solely with respect to clauses (iii)(II) and (iv)(II) (solely with respect to an investment described in section 721(a)(4)(B)(iii)(II)) of subparagraph (B)), (4)(B)(iii)(II), (4)(B)(iv)(II) (solely with respect to an investment described in section 721(a)(4)(B)(iii)(II)), (4)(D)(i)(I), (4)(D)(i)(II), (4)(D)(i)(III)(bb), (4)(D)(ii)(I)(bb), (4)(D)(ii)(II), (4)(D)(iii)(I), (4)(D)(iv), and (4)(D)(v) of subsection (a) of section 721 shall take effect on the pilot program effective date solely with respect to any pilot program covered transaction. Paragraph (4)(A)(ii) (solely with respect to clauses (iv)(I) and (v) of subparagraph (B)) of subsection (a) of section 721 shall take effect on the pilot program effective date.

§ 801.602 Implementation of certain authority regarding mandatory declarations.

Paragraphs (1)(C)(v)(I), (II), (III), (IV)(aa), (IV)(cc), (IV)(dd), (IV)(ee), (IV)(ff), and (IV)(gg) of subsection (b) of section 721 shall take effect on the pilot program effective date solely with respect to any pilot program covered transaction.

ANNEX A TO PART 801—INDUSTRIES

Aircraft Manufacturing
NAICS Code: 336411
Aircraft Engine and Engine Parts Manufacturing
NAICS Code: 336412
Alumina Refining and Primary Aluminum Production
NAICS Code: 331313
Ball and Roller Bearing Manufacturing
NAICS Code: 332991
Computer Storage Device Manufacturing
NAICS Code: 334112
Electronic Computer Manufacturing

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NAICS Code: 334111
Guided Missile and Space Vehicle Manufacturing
NAICS Code: 336414
Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing
NAICS Code: 336415
Military Armored Vehicle, Tank, and Tank Component Manufacturing
NAICS Code: 336992
Nuclear Electric Power Generation
NAICS Code: 221113
Optical Instrument and Lens Manufacturing
NAICS Code: 333314
Other Basic Inorganic Chemical Manufacturing
NAICS Code: 325180
Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing
NAICS Code: 336419
Petrochemical Manufacturing
NAICS Code: 325110
Powder Metallurgy Part Manufacturing
NAICS Code: 332117
Power, Distribution, and Specialty Transformer Manufacturing
NAICS Code: 335311
Primary Battery Manufacturing
NAICS Code: 335912
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing
NAICS Code: 334220
Research and Development in Nanotechnology
NAICS Code: 541713
Research and Development in Biotechnology (except Nanobiotechnology)
NAICS Code: 541714
Secondary Smelting and Alloying of Aluminum
NAICS Code: 331314
Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing
NAICS Code: 334511
Semiconductor and Related Device Manufacturing
NAICS Code: 334413
Semiconductor Machinery Manufacturing
NAICS Code: 333242
Storage Battery Manufacturing
NAICS Code: 335911
Telephone Apparatus Manufacturing
NAICS Code: 334210
Turbine and Turbine Generator Set Units Manufacturing
NAICS Code: 333611