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DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Parts 800 and 801

RIN 1505-AC64

Provisions Pertaining to Certain Investments in the United States by Foreign Persons

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

ACTION: Final rule; and interim rule with request for comments.

SUMMARY: The final rule revises regulations that implement certain provisions of section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). The interim rule also adds a new definition for the term "principal place of business" and the Department of the Treasury is seeking comments on this definition. While this rule retains many features of the prior regulations, the rule makes a number of substantive changes, primarily to implement FIRRMA.

DATES: *Effective date:* The final rule is effective on February 13, 2020. The interim rule regarding § 800.239 is effective on February 13, 2020.

Applicability date: *See* § 800.104.

Comment date: The Department of the Treasury (Treasury Department) is seeking written comments from the public on the definition of "principal place of business" found at § 800.239, which must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments on § 800.239 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.

Please submit comments only and include your name and company name (if any), and cite "Provisions Pertaining to Certain Investments in the United States by Foreign Persons" 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: Laura Black, Director of Investment Security Policy and International Relations; Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations; David Shogren, Senior Policy Advisor; or Alexander Sevald, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220; telephone: (202) 622-3425; email: CFIUS.FIRRMA@treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Statute and Proposed Rules

On August 13, 2018, the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII of Public Law 115-232, 132 Stat. 2173, became law. FIRRMA amended and updated section 721 (section 721) of the Defense Production Act of 1950 (DPA), which delineates the authorities and jurisdiction of the Committee on Foreign Investment in the United States (CFIUS or the Committee). FIRRMA maintains the Committee's jurisdiction over any transaction which could result in foreign control of any U.S. business, and it broadens the authorities of the President and CFIUS under section 721 to review and to take action to address any national security concerns arising from certain non-controlling investments and real estate transactions. Additionally, FIRRMA modernizes CFIUS's processes to better enable timely and effective reviews of transactions falling under its jurisdiction. In FIRRMA, Congress acknowledged the important role of foreign investment in the U.S. economy and reaffirmed the United States' open investment policy, consistent with the protection of national security. *See* section 1702(b) of FIRRMA.

FIRRMA requires the issuance of regulations implementing its provisions. In Executive Order 13456, 73 FR 4677 (January 23, 2008), the President directs the Secretary of the Treasury to issue regulations implementing section 721. On October 11, 2018, the Treasury Department published its first rulemaking under FIRRMA in the form of an interim rule, which amended the regulations in part 800 to implement, and make updates consistent with, certain provisions of FIRRMA that became immediately effective (October 2018 Interim Rule). *See* 83 FR 51316 (October 11, 2018). The October 2018 Interim Rule took effect on November 10, 2018.

The Treasury Department published a second interim rule on October 11, 2018, pursuant to section 1727(c) of FIRRMA, setting forth the scope of, and procedures for, a pilot program to

review certain transactions involving foreign persons and critical technologies (Pilot Program Interim Rule). *See* 83 FR 51322 (October 11, 2018). The Pilot Program Interim Rule, which took effect on November 10, 2018, implemented jurisdiction over, and established mandatory declarations for, certain transactions involving investments by foreign persons in certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies.

On September 24, 2019, the Treasury Department published two proposed rules to implement provisions of FIRRMA. *See* 84 FR 50174 (September 24, 2019); 84 FR 50214 (September 24, 2019). (The Office of the Federal Register made versions available for public inspection on September 17, 2019.) Public comments on the proposed rules were due by October 17, 2019.

The proposed rule at 84 FR 50174 proposed amendments to CFIUS regulations codified at part 800 of title 31 of the Code of Federal Regulations (CFR). These provisions specifically relate to CFIUS's authorities and the process and procedures to review: (1) a merger, acquisition, or takeover by or with a foreign person that could result in foreign control of a U.S. business; (2) a non-controlling "other investment" that affords a foreign person specified access to information in the possession of, rights in, or involvement in the substantive decisionmaking of certain U.S. businesses related to critical technologies, critical infrastructure, or sensitive personal data; (3) any change in a foreign person's rights if such change could result in foreign control of a U.S. business or an "other investment" in certain U.S. businesses; or (4) any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721. Further explanation of FIRRMA and the proposed

provisions can be found in the proposed rule at 84 FR 50147; changes to the proposed rule are explained in further detail below.

The proposed rule at 84 FR 50214, which proposed regulations to implement the provisions of FIRRMA related to CFIUS's new jurisdiction to review certain types of transactions involving real estate in the United States, is being finalized in a separate and concurrent rulemaking. That rule adds a part 802 to chapter VIII of title 31 of the CFR to implement FIRRMA's expansion of CFIUS's jurisdiction over transactions involving the purchase or lease by, or concession to, a foreign person of certain real estate in the United States.

FIRRMA also authorizes the Committee to assess and collect fees with respect to covered transactions for which a written notice is filed. The Treasury Department will publish a separate proposed rule implementing the Committee's fee authority at a later date.

B. Structure of FIRRMA Rulemaking and this Rule

Consistent with CFIUS processes generally, this rule reflects extensive consultation with CFIUS member agencies, as well as other relevant U.S. Government agencies. Given the specificity of certain provisions of the rule, the Treasury Department anticipates that it will periodically review, and when necessary, amend the regulations to address changes in technology, data use, and the national security landscape more generally.

This action finalizes the revisions to part 800. The rule retains many features of the provisions of part 800 prior to their revision by the October 2018 Interim Rule and this rule. *See* 73 FR 70702 (November 21, 2008) (Prior Regulations), while implementing the changes that FIRRMA made to CFIUS's jurisdiction and process. In amending part 800 to incorporate CFIUS's new jurisdiction over certain non-controlling "other investments" (which this rule describes as "covered investments"), certain conforming revisions were made to existing

provisions. For example, the coverage section in subpart C of the rule regarding "covered control transactions" is based on the "covered transactions" section in the Prior Regulations and provides examples illustrating transactions that are covered control transactions and those that are not. There is also now a covered investment section within the coverage section in subpart C that provides examples illustrating transactions that are covered under the new jurisdiction. The rule seeks to provide clarity to the business and investment communities with respect to the types of U.S. businesses that are covered under FIRRMA's "other investment" authority.

The rule also incorporates the changes made to part 800 in the October 2018 Interim Rule published in October 2018, 83 FR 51316 (October 11, 2018), and updates certain other provisions, generally as a result of written submissions received during this rule's public comment period and the public comment period of the Pilot Program Interim Rule, such as amending the definitions of "excepted investor" and "sensitive personal data," clarifying the application of the "incremental acquisition rule," refining several examples, and making adjustments to the information requirements for declarations and notices. In response to public comments, this action also implements an interim rule with respect to the definition of "principal place of business" at § 800.239, and the Treasury Department is seeking public comment on this definition.

In the proposed rule, the Treasury Department noted that it was considering whether to retain the mandatory filing requirement under the Pilot Program Interim Rule. The rule incorporates many of the provisions of the Pilot Program Interim Rule, including the mandatory filing requirements for covered transactions involving critical technologies. However, the Treasury Department anticipates issuing a notice of proposed rulemaking that would revise the mandatory declaration requirement regarding critical technology at § 800.401(c) from one based

upon North American Industry Classification System (NAICS) codes to one based upon export control licensing requirements.

As noted in the Pilot Program Interim Rule, the pilot program was temporary and was required by FIRRMA to end no later than March 5, 2020. This rule modifies the applicability of the pilot program so that it applies only to transactions for which specified actions were taken prior to the effective date of this rule. Because the Committee retains jurisdiction over pilot program covered transactions that were subject to the Pilot Program Interim Rule during the period of its effectiveness, the regulations at part 801 will remain in chapter VIII of title 31 of the CFR for reference. Accordingly, this rule revises the applicability rule in part 801, at § 801.103, to specify that part 801 applies only to pilot program covered transactions (as defined in part 801) for which specified actions occurred between November 10, 2018, and February 12, 2020.

II. Overview of Comments on the Proposed Rule and the Pilot Program Interim Rule

During the public comment period, the Treasury Department received a number of written submissions on the proposed rule reflecting a wide range of views. All comments received by the end of the comment period are available on the public rulemaking docket at https://www.regulations.gov. Additionally, the Treasury Department hosted a public teleconference call to discuss the proposed rule on September 27, 2019, and a summary is available on the Committee's section of the Treasury Department website.

Following the publication of the Pilot Program Interim Rule in October 2018, the Treasury Department also received a number of written comments on that rule, which are similarly available on the public rulemaking docket and are addressed herein.

The Treasury Department considered each comment submitted. Some of the comments were general in nature, for example, supporting the Treasury Department's efforts and approach with respect to aspects of the proposed rule. Other commenters noted the potential impact of the proposed rule and the Pilot Program Interim 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 Pilot Program Interim Rule, and made revisions in finalizing the rule, to protect U.S. national security from the risk posed by certain foreign investment while at the same time maintaining the open foreign investment policy of the United States. The Treasury Department has determined that the specificity provided in the rule—with respect to, for example, identification of covered investment critical infrastructure in the appendix and specific categories of sensitive personal data—provides clarity to the business and investment communities with respect to the types of transactions that are covered by the Committee's new authority under FIRRMA. The Treasury Department will evaluate implementation of the rule and will provide, as appropriate, additional information to assist the public.

Some comments requested clarification of specific provisions. Where appropriate, the Treasury Department provided additional clarification in the text of the rule and included more illustrative examples. Some commenters, however, requested greater specificity than is feasible in regulations of general applicability, or revisions that conflict with the Committee's statutory authority under FIRRMA. The section-by-section analysis below includes responses to comments. Further edits were made to the rule for consistency and clarity.

In addition to comments on the substance of the rule, two commenters requested an extension of the public comment period for the proposed rule. The Treasury Department did not

extend the public comment period in light of the fixed effective date established by FIRRMA. The Treasury Department anticipates that it will periodically review, and as necessary, make changes to the regulations (and any appendices), consistent with applicable law and, when appropriate, will provide the public an opportunity to comment.

III. Discussion of the Rule

a. Relationship with Part 802

Before addressing individual sections of the rule raised in the comments or otherwise revised from the proposed rule, it is important to address the relationship between this rule and the new rule for part 802 of this chapter, which as noted is being issued concurrently with this rule.

The new part 802 clarifies that a "covered transaction," as defined by this part 800, that also includes the purchase, lease, or concession of "covered real estate," as that term is defined in part 802, is not a "covered real estate transaction," as defined in part 802. If a party intends to notify CFIUS of a transaction as subject to this part 800, the transaction should not be notified under part 802. The concurrent rulemaking for part 802 discusses the relationship between the two rules in greater detail.

b. Interim Rule: Section 800.238 – Principal Place of Business

This rule includes a definition of "principal place of business" as an interim rule. The interim rule is effective as of February 13, 2020, and the Treasury Department is seeking public comment on the new definition through [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. The substance of the new definition is discussed below in conjunction with comments received to § 800.220 (definition of "foreign entity").

c. Summary of Comments and Changes from the Proposed Rule

1. Subpart A – General

Section 800.104 – Applicability rule.

The rule makes clarifying edits to § 800.104 by inserting the date the regulations become effective (February 13, 2020), as well as clarifying that the Pilot Program Interim Rule will, going forward, apply only to transactions for which specified actions were taken on or after the effective date of the Pilot Program Interim Rule and prior to the effective date of this rule. This rulemaking includes conforming amendments to part 801 at § 801.104 to specify which transactions remain subject to part 801. As discussed further below, certain aspects of the mandatory declaration provisions of the Pilot Program Interim Rule have been incorporated into part 800 through this rule.

Section 800.105 – Rules of construction and interpretation.

The rule adds a new section to clarify that the examples included in the regulations are provided for informational purposes and should not be construed to alter the meaning of the text of the regulations in this part, as well as to clarify that, as used throughout the regulations, the term "including" means "including without limitation."

2. Subpart B – Definitions

The proposed rule made several changes to the definitions in the Prior Regulations and added several new definitions that are broadly applicable to both covered control transactions and covered investments.

Before addressing individual definitions, the Treasury Department notes that one commenter remarked that the regulations do not define "national security." The rule makes no change to subpart B in response to this comment. In evaluating any transaction, CFIUS's analysis is guided by the law, including the applicable legislation. FIRRMA states that it is the

sense of Congress that the Committee "should continue to review transactions for the purpose of protecting national security and should not consider issues of national interest absent a national security nexus." *See* Section 1702(b)(9) of FIRRMA. Section 721(f) of the DPA provides an illustrative list of factors for consideration by the Committee and the President in determining whether a covered transaction poses a national security risk. Additionally, the Treasury Department previously published Guidance Concerning the National Security Review Conducted by CFIUS, 73 FR 74567 (December 8, 2008), which is still in effect.

Section 800.206 – Completion date.

The proposed rule included a definition for "completion date" to clarify that, in the event that a covered transaction will be effectuated through multiple or staged closings, the completion date is the earliest date on which any transfer of interest or change in rights that constitutes a covered transaction occurs.

Commenters expressed concern that parties may be required to submit a declaration 30 days before completing the acquisition of a contingent equity interest, but that, under § 800.308 (*i.e.*, the timing rule for a contingent equity interest), the Committee could conclude that there is no covered transaction until the interest is converted. Commenters suggested that the definition of "completion date" be further refined to explicitly exclude transfers of contingent equity interests that are not subject to CFIUS jurisdiction consistent with § 800.308.

The rule makes no change to § 800.206 in response to these comments. The acquisition of a contingent equity interest alone, without the acquisition of control or the access, rights, or involvement specified in § 800.211(b), is not a covered transaction. Where a party later acquires control or the access, rights, or involvement specified in § 800.211(b) in connection with the earlier acquisition of a contingent equity interest, the submission of a mandatory declaration, if

applicable, is required 30 days before the acquisition of such control or the access, rights, or involvement specified in § 800.211(b). The timing rule under § 800.308 specifies when a party will be considered to have acquired control or the access, rights, or involvement specified in § 800.211(b) (*i.e.*, upon actual conversion of the contingent equity interest, or upon initial acquisition of the contingent equity interest if certain factors are present).

Section 800.208 – Control.

Although the proposed rule did not significantly modify the definition of "control" from the Prior Regulations, commenters suggested that the threshold for control is too low, thereby discouraging foreign investment in U.S. companies. Commenters also requested additional clarifications, such as whether the rights described in § 800.307(a)(4) should be added to § 800.208. Finally, commenters suggested incorporating the excepted investor concept into the definition of "control."

The rule makes no change to § 800.208 in response to these comments. As noted in the preamble to the proposed rule, FIRRMA maintains the Committee's jurisdiction over any transaction which could result in foreign control of any U.S. business, and provides no legislative direction to substantively narrow the existing definition of "control." In addition, given the many changes to the regulations required by FIRRMA, the Treasury Department determined that substantive amendments to the well-established control standard would not advance the goal of transactional certainty at this time. The Treasury Department also notes that additional information regarding control transactions is available in responses to certain frequently asked questions that may be found at the Committee's section of the Treasury Department website.

Furthermore, as noted in the preamble to the proposed rule, the excepted investor concept addresses FIRRMA's requirement that the Committee limit the application of FIRRMA's

expanded jurisdiction over covered investments to certain categories of foreign persons. The Treasury Department followed this legislative direction by limiting the excepted investor concept to covered investments, and not extending it to control transactions, thereby maintaining the same jurisdiction over control transactions as in the Prior Regulations.

Regarding the limited partner rights described in § 800.307(a)(4), each of the rights is already substantively covered in § 800.208(a). While the rule makes no specific revisions to § 800.208 with respect to limited partners, the rule does provide additional clarification for investment funds in other provisions, including in the definitions of "principal place of business" and "substantial interest," and in § 800.401.

Finally, the rule makes a technical correction to § 800.208(c)(4) to clarify that anti-dilution protections are more accurately characterized as a right instead of a power.

Section 800.211 – Covered investment.

The proposed rule used the term "covered investment" to capture an investment by a foreign person in certain types of U.S. businesses that affords the foreign person certain access to information in the possession of, rights in, or involvement in the substantive decisionmaking of such U.S. businesses but that does not afford the foreign person control over the U.S. business. One commenter requested clarification regarding the applicability of the access, rights, or involvement described in § 800.211(b) in situations in which the U.S. business that produces, designs, tests, manufactures, fabricates, or develops the critical technology is a subsidiary of the U.S. business in which the foreign person invests. The rule adds an example showing the application of § 800.211(b) in situations where the investment affords a foreign person membership or observer rights on the board of directors or equivalent governing body of a U.S. business that operates as a TID U.S. business through a subsidiary.

Other commenters requested additional clarification regarding the meaning of "access to material nonpublic technical information," including the timing of access and whether theoretical or potential access should be included. The rule makes no change to § 800.211 in response to these comments. CFIUS's new jurisdiction under FIRRMA is established once a foreign investor in a TID U.S. business has been afforded access to material nonpublic technical information, regardless of whether or when the investor exercises the right of access.

Section 800.212 – Covered investment critical infrastructure.

To distinguish the subset of critical infrastructure that is relevant for the Committee's jurisdiction over covered investments from critical infrastructure more broadly, the proposed rule created a new term, "covered investment critical infrastructure." This definition references a list of specific systems and assets in appendix A of the rule. As noted in the preamble to the proposed rule, the subset of critical infrastructure identified in appendix A does not alter the definition of "critical infrastructure" as used in any other regulatory regime or context. Different commenters suggested either narrowing this subset or expanding it, for example to include railcars and communication equipment. The rule makes no change to § 800.212 or appendix A in response to these comments. Appendix A reflects extensive consultation with subject matter experts at CFIUS member agencies, as well as other relevant U.S. Government agencies, who, in developing appendix A, considered, among other factors, whether other U.S. Government authorities provided adequate protections for national security. The Treasury Department will evaluate implementation of the rule, and when necessary, revise the regulations (and any appendices) to address changes in the national security landscape.

Section 800.213 – Covered transaction.

The proposed rule defined "covered transactions" to include covered control transactions, covered investments, changes in a foreign person's rights with respect to a U.S. business that could result in foreign control of a U.S. business or a covered investment in certain U.S. businesses, and transactions structured to evade or circumvent CFIUS review. Commenters sought additional information about what types of changes in rights trigger CFIUS's jurisdiction over a covered transaction, including in the context of a foreign investor in a U.S. business exercising the right to purchase additional interest to prevent the dilution of its *pro rata* interest. Commenters also suggested that transactions falling below a minimum threshold for the investment amount or the annual revenue of the U.S. business should be exempted from the definition of "covered transaction."

The rule makes no change to § 800.213 in response to these comments. With respect to a change in rights that results in a "covered transaction," the rule provides examples in § 800.213(e)(1) and (2), respectively (note that these and certain other examples were moved to § 800.213 from subpart C for clarity). Additionally, the examples in § 800.304(f)(2) and (5) address the acquisition of additional equity interest. With respect to implementing a minimum threshold for a covered transaction, the Treasury Department has determined that a categorical exemption for transactions below a minimum threshold is unwarranted. The Committee evaluates each transaction based upon the particular facts and circumstances, including the size of the investment and other factors.

Section 800.215 – Critical technologies.

The proposed rule defined "critical technologies" as set forth in FIRRMA. Commenters recommended narrowing the definition and noted that the Department of Commerce, at the time of the proposed rule, had yet to define emerging and foundational technologies under section

1758 of the Export Control Reform Act of 2018 (ECRA). The rule makes no change to § 800.215 in response to these comments. FIRRMA defines "critical technologies," and FIRRMA does not give the Treasury Department discretion to change this statutory definition through these regulations. Accordingly, the rule does not independently define emerging and foundational technologies. Rather, it incorporates by cross-reference the emerging and foundational technologies that the Department of Commerce identifies pursuant to a separate rulemaking, as required by ECRA.

Section 800.218 – Excepted foreign state.

The proposed rule defined "excepted foreign state" to refer to a group of eligible foreign states for purposes of implementing FIRRMA's requirement that the Committee limit the application of FIRRMA's expanded jurisdiction over covered investments to certain categories of foreign persons. The Treasury Department received several comments on this definition, including requests that the Committee publish the criteria by which a foreign state is identified as an eligible foreign state. Other commenters suggested that the Committee identify certain countries or certain defined lists of countries as excepted foreign states. Some commenters recommended against the excepted foreign state and excepted investor provisions and argued that the provisions treat allies of the United States differently from other countries.

The rule makes no change to § 800.218 in response to these comments. As noted above, FIRRMA directs that implementing regulations must limit the application of "other investment" jurisdiction to certain categories of foreign persons, and the Treasury Department therefore cannot eliminate the concepts of excepted foreign state and excepted investor entirely without adopting an alternative limitation. With respect to the eligible foreign states, the Committee has initially selected Australia, Canada, and the United Kingdom of Great Britain and Northern

Ireland. The Committee identified these countries due to aspects of their robust intelligence-sharing and defense industrial base integration mechanisms with the United States. Additionally, as noted in the preamble to the proposed rule, the concept and definition of "excepted foreign states" are new and an expansive application carries potentially significant implications for the national security of the United States. Consequently, the Committee is initially identifying a limited number of eligible foreign states and may expand the list in the future.

The rule revises § 800.218 to clarify that the definition of "excepted foreign state" operates as a two-criteria conjunctive test, with delayed effectiveness for the second criterion. Thus, as of February 13, 2020, each of the three foreign states that the Committee identifies as an eligible foreign state will be an excepted foreign state, without regard to the second criterion (*i.e.*, favorable determination under § 800.1001). In order for each of these countries to remain an excepted foreign state after the end of the two-year delayed effectiveness period (*i.e.*, February 13, 2022), the Committee must make a determination under § 800.1001. This two-year period is intended to provide these initial eligible foreign states time to ensure that their national security-based foreign investment review processes and bilateral cooperation with the United States on national security-based investment reviews meet the requirement under § 800.1001. This two-year period also provides the Committee time to develop processes and procedures for making determinations under § 800.1001, which could be applied to a broader group of countries in the future. In selecting the initial eligible foreign states, the Committee takes no position on whether the foreign states currently meet the determination factors discussed below at § 800.1001. Finally, the rule removes language regarding internal Committee processes (for which a conforming change was also made in § 800.1001), and revises note 1 to § 800.218 to clarify the

publication mechanics for identifying the foreign states that have met each of the two separate criteria of the definition of "excepted foreign state."

Section 800.219 – Excepted investor.

The proposed rule set forth a definition of "excepted investor," taking into account increasingly complex ownership structures and accounting for such structures in the application of the Committee's jurisdiction. Commenters suggested relaxing the criteria to allow more entities to qualify as excepted investors, including the criteria related to the nationality of board members and observers, the percentage ownership limit for an individual investor in an excepted investor, and the minimum excepted ownership. In response to these comments, the rule modifies the definition of "excepted investor." First, the board member nationality criterion is revised to allow up to 25 percent representation by foreign nationals of foreign states that are not excepted foreign states. Second, the percentage ownership limit for an individual investor in an excepted investor is revised from five to 10 percent. Third, the definition of "minimum excepted ownership" under § 800.233 is revised as discussed below.

One commenter suggested that the Committee narrow the types of felonies that disqualify an investor from excepted investor status to those relating to national security. The rule makes no change to § 800.219 in response to this comment. Because excepted investor status limits the Committee's jurisdiction, the regulations appropriately preserve jurisdiction over transactions by foreign investors that have been convicted of, or entered into a deferred prosecution agreement or non-prosecution agreement with the Department of Justice with respect to, any felony, in the five years prior to the completion date of the transaction.

Some commenters requested that the Committee consider the specific commenters themselves to be excepted investors or sought additional information regarding the process to

qualify as an excepted investor, including how an excepted investor can prove that status, or whether an excepted investor would receive a form or certificate from the Committee establishing that status. The rule makes no change to § 800.219 in response to these comments. There is no separate process for the Committee to provide a determination for a prospective investor on whether it qualifies as an excepted investor. As with other jurisdictional determinations, parties themselves should assess whether they qualify as excepted investors.

Commenters suggested that the Committee adopt a category similar to excepted investor, which some termed "trusted investor," that would allow certain investors who are not connected to an excepted foreign state to receive the benefits of excepted investor status. Commenters further suggested various criteria for this "trusted investor" concept, including the individual investor's previous interactions with the Committee, the investor's record of compliance with mitigation agreements, and whether the investor is subject to an agreement to mitigate foreign ownership, control, or influence (FOCI) pursuant to the National Industrial Security Program regulations.

The rule makes no change to § 800.219 in response to these comments. Consistent with FIRRMA, the "excepted investor" definition focuses on the investor's connection to an excepted foreign state, which provides the greatest clarity to the business and investment communities while protecting national security interests. Such a definition also furthers the Committee's efforts to encourage partner countries to implement robust processes to review foreign investment in their countries and increase cooperation with the United States. Notably, the "excepted investor" definition eliminates Committee jurisdiction for specified transactions by certain investors. Therefore, some criteria suggested by commenters as part of the "trusted investor" concept are less suitable for determining jurisdiction and more suitable for other

aspects of the rule, such as determining which parties must make mandatory filings under § 800.401. For example, the rule now provides an exception to mandatory filings for foreign investments via FOCI-mitigated entities under § 800.401, as discussed below.

One commenter cautioned that the public may equate excepted investor status with trust and may misconstrue that an investor who does not qualify as an excepted investor is not trusted and could present greater national security concerns. In this regard, it is important to note that not qualifying as an excepted investor should not be interpreted as an individualized assessment that the particular foreign person poses a threat to national security.

Commenters expressed an inaccurate view of the minimum excepted ownership criterion's application up the ownership chain of the foreign person. All of the conditions under § 800.219(a)(3), including the minimum excepted ownership conditions, apply to *each "parent"* (as defined at § 800.235) of the foreign person.

Finally, the rule revises § 800.219(b) to specify when the ownership interests of separate foreign persons will be aggregated for the purposes of § 800.219(a)(3)(iv). The rule also modifies § 800.219(d) to include the criteria in § 800.219(c)(1)(i) through (iii) in order to retain jurisdiction over certain transactions where the foreign investor is deemed not to be an excepted investor subsequent to the transaction due to action by the President under section 721, or enforcement by the Committee of violations under this part, parts 801 or 802, or section 721.

Section 800.220 – Foreign entity/New Section 800.239 – Principal place of business.

The proposed rule did not change the definition of "foreign entity" from the Prior Regulations. Commenters requested further clarification regarding CFIUS's jurisdiction over transactions by investment funds, and recommended revising the definition of "foreign entity" to focus on control by foreign persons, rather than the amount of equity held by foreign persons.

Other commenters urged the Committee to provide additional clarity by defining "principal place of business." The rule makes no change to § 800.220, but does include a new definition of "principal place of business" as an interim rule at § 800.239 in response to these comments.

The proposed rule used the term "principal place of business" but did not define it. Commenters recommended that the regulations include a definition, and one suggested the "nerve center" test used by U.S. courts to evaluate federal diversity jurisdiction. Under the new definition at § 800.239, a party's "principal place of business" is defined as "the primary location where an entity's management directs, controls, or coordinates the entity's activities, or, in the case of an investment fund, where the fund's activities and investments are primarily directed, controlled, or coordinated by or on behalf of the general partner, managing member, or equivalent," subject to the qualification in § 800.239(b). For those entities whose nerve center is in the United States, the purpose of the qualification in § 800.239(b) is to nevertheless ensure consistent treatment of an entity's principal place of business in accordance with its own assertions to government entities, provided the facts have not changed since those assertions. The Treasury Department believes that this definition achieves substantially the same result as potential revisions to the definition of "foreign entity" suggested by commenters to address investment funds managed and controlled by U.S. persons in the United States.

Because the definition of "principal place of business" in § 800.239 is new, it is being made effective by this rule on an interim basis and may be amended based on comments received. As an interim rule, § 800.239 will become effective on the same date as the other provisions in this rule (*i.e.*, February 13, 2020) to provide clarity and certainty for transaction parties. The Treasury Department invites comments on this interim rule, in particular with

respect to whether § 800.239 adequately addresses concerns raised by commenters seeking greater clarity concerning investment funds managed and controlled by U.S. persons.

Section 800.224 – Foreign person.

The proposed rule used the definition of "foreign person" from the Prior Regulations. The rule adds a new subsection (b) to clarify that an entity which is controlled by a "foreign person" is itself a "foreign person."

Section 800.225 – Identifiable data.

The proposed rule defined the term "identifiable data" to mean data that can be used to distinguish or trace an individual's identity, including through the use of any personal identifier. The definition noted that, for the avoidance of doubt, aggregated data or anonymized data is "identifiable data" if any party to the transaction has, or as a result of the transaction will have, the ability to disaggregate or de-anonymize the data, or if the data is otherwise capable of being used to distinguish or trace an individual's identity. Commenters addressed data aggregation and anonymization in the context of this definition. Some commenters suggested that the Treasury Department was incorrectly considering the ability of the foreign acquirer to disaggregate or de-anonymize data; they suggested that the focus of the Committee's inquiry should be on whether the U.S. business being acquired or invested in could disaggregate or de-anonymize the data. Similar comments were received regarding encryption and de-encryption capabilities. The rule makes no change in response to these comments. A foreign acquirer that would receive access to data that has been encrypted or anonymized, and for which the foreign acquirer has the ability to re-identify, is a relevant factor in the Committee's risk assessment. Any militating effect afforded by de-identification would be lost if the foreign acquirer is able to re-identify the data.

Section 800.232 – Material nonpublic technical information.

The proposed rule provided a definition of "material nonpublic technical information" consistent with the definition in FIRRMA. Commenters asked for clarification about the scope of the definition of material nonpublic technical information, such as whether it is limited to information necessary to reverse engineer a technology or product, whether it includes information typically afforded to minority investors such as technical milestones, and what is meant by "not available in the public domain."

The rule adds an illustrative example regarding technical milestones in response to the comments. No other changes were made. What constitutes "material nonpublic technical information" will depend on particular facts and circumstances. "Material nonpublic technical information may include," but is not limited to, information necessary to reverse engineer a component of a company's product. Conversely, information that is readily accessible to people with no connections to the TID U.S. business is likely in the public domain and therefore not material nonpublic technical information. However, any such a determination requires a fact-specific evaluation of the information that may be provided.

Section 800.233 – Minimum excepted ownership.

The proposed rule defined "minimum excepted ownership" along with other terms which operate together to exclude from CFIUS's jurisdiction covered investments by certain foreign persons who meet certain criteria establishing sufficiently close ties to certain foreign states. Commenters suggested that the percentage threshold of minimum excepted ownership should be lowered; that privately held and publicly traded entities be treated the same; and that for investment funds, the minimum excepted ownership requirement should apply only to the

general partner. Commenters also requested clarifications to address situations where the interests in an entity are not voting interests and to help entities determine whether § 800.233(a) or § 800.233(b) is applicable.

In response to these comments, the rule amends § 800.233 by reducing the minimum excepted ownership percentage in § 800.233(b) from 90 to 80 percent. The rule does not adopt the suggestion to treat privately held and publicly traded entities the same. The different treatment reflects the difference in governance realities between publicly traded companies (typically one share, one vote) and privately held companies (which can vary widely and may provide minority shareholders outsized rights relative to their ownership stake). The rule also does not adopt the suggestion to apply the minimum excepted ownership criteria only to the general partner in a fund setting. Investment fund structures can vary significantly, and limited partners may have significant rights vis-à-vis their investment interests.

With regard to non-voting interests, note that the regulations already accommodate different structures by also considering rights to profits or rights to assets in the event of dissolution, a formulation that has existed in the definition of "parent" since the Prior Regulations. Finally, to qualify for the lower threshold in § 800.233(a), which is in turn used in the application of the criteria in § 800.219(a)(3)(v), the majority of an entity's outstanding shares must be traded on one or more exchanges in the United States or in an excepted foreign state.

Section 800.235 – Parent.

The proposed rule did not change the definition of "parent" from the Prior Regulations. One commenter, however, asked if the regulations should clarify whether a general partner of a partnership (or equivalent) is a "parent" of that partnership. The rule adds a provision at

§ 800.235(a)(2) that explicitly includes a general partner, managing member, or equivalent of an entity within the definition of "parent." The rule also makes some minor technical edits and adds an example illustrating an entity with more than one parent.

Section 800.236 – Party to a transaction.

The proposed rule provided, at § 800.236(a)(1), that a party to a transaction includes a target U.S. business whose ownership interest is being transferred between third parties. One commenter sought additional clarification about which party or parties to a covered transaction are required to submit a mandatory declaration under § 800.401. The rule makes no change to the text of § 800.236 in response to this comment. The obligation to file a mandatory declaration is on the parties to such transaction. Finally, there appears to be confusion by some commenters about which entity is a party to a transaction in a fund context. Note that § 800.236 provides a definition of "party to a transaction," which includes the person acquiring an ownership interest. In a fund context, this is typically the fund itself (and not the general partner), though, as noted in § 800.401(j)(3), there are circumstances in which a limited partner may have a mandatory filing obligation based on its indirect investment while the fund itself does not.

Section 800.241 – Sensitive personal data.

The proposed rule set forth a detailed definition of "sensitive personal data." Commenters suggested that the scope of "sensitive personal data," as defined in the proposed rule, may exceed what is necessary to protect national security. Commenters also noted that unnecessarily burdensome regulation negatively impacts technological advancements, such as artificial intelligence. The Treasury Department is cognizant of the potential impacts of the CFIUS process on foreign investment and has endeavored to be specific and circumspect in delineating

the Committee's new authorities over covered investments where appropriate and consistent with national security.

One commenter suggested further narrowing the definition by focusing the "target or tailor" prong on contractors or employees of national security agencies that support the national security functions, rather than all employees of such agencies. The rule makes no change in response to this comment. Certain U.S. Government employees may not have direct national security functions, but may nevertheless support critical missions of the agency and present equal sensitivity with respect to sensitive personal data as colleagues that do have direct national security functions. In many cases, it would be difficult for parties to ascertain the specific functions that U.S. Government employees may have within their respective agency.

Commenters also suggested that CFIUS exempt from the definition data held by companies that meet certain internationally-recognized standards for the protection of data, such as those set out by the National Institute of Standards and Technology (NIST) or International Organization for Standardization. However, these standards are voluntary in nature, and currently no enforcement mechanism exists to require that businesses comply with them. The Treasury Department is not the appropriate entity to monitor compliance with voluntary standards such as these, and the rule makes no change in response to this comment.

Commenters suggested that the "demonstrated business objective" concept is vague and would deter investment in start-up businesses. In response to this comment, an example has been added to the rule, at § 800.241(c)(5), to illustrate a case where a "demonstrated business objective" exists under § 800.241(a)(1)(i)(C).

In response to a comment requesting clarity, the rule specifies that § 800.241(a)(1)(ii)(A) applies only to financial data that could be used to determine an individual's financial distress or hardship.

Commenters also discussed the threshold for the number of individuals on whom a business collects and maintains data. Some suggested increasing the threshold for capturing sensitive personal data from one million individuals to, for example, five million U.S. citizens. These commenters argued that the lower threshold in the proposed rule might capture too many businesses that do not pose national security risks. Other commenters stated that these provisions could hinder the growth of social networking companies or financial technology start-ups. One commenter asked whether, for a company with a defined business plan to maintain or collect data on over one million people, the rule requires that the business plan describe with particularity an objective to maintain or collect such data, or merely the objective to have one million users, whose data is incidentally collected or maintained.

The rule does not make any changes to the threshold of one million individuals. Section 800.241(a)(1)(i)(B) and (C) accounts for the possibility that a U.S. business holds sensitive personal data on sensitive individuals despite not targeting or tailoring their products or services to sensitive populations. In accordance with FIRRMA, the rule requires that a U.S. business collect or maintain "sensitive personal data" on U.S. citizens. *See* § 800.248(c). The threshold, however, refers to individuals, rather than U.S. citizens, because it is unfeasible in most cases for a U.S. business to confirm the citizenship status of individuals of whom it has maintained or collected sensitive personal data. The threshold of one million individuals will ensure that large data collectors, which in many industries account for the vast majority of data being collected, will be included. Conversely, the threshold will minimize additional regulatory burden for many

small businesses and companies that incidentally collect or maintain data on a small number of individuals.

The rule makes clarifying edits to § 800.241(a)(1)(i) and adds examples in § 800.241(c)(1)-(5) to further illustrate the rule's application. Examples 1-3 in § 800.241(c) address the timing element of the one million individual threshold, showing that if the U.S. business collects or maintains the applicable data on over one million people at any time over the preceding twelve months, the requirement in § 800.241(a)(1)(i)(A) is met. Example 4 clarifies that the parties should consider the number of individuals for whom sensitive personal data is maintained or collected in the aggregate across the enumerated categories. Example 5, as noted above, illustrates the scope of the "demonstrated business objective" provision.

Commenters also addressed the proposed rule's treatment of genetic data. Some suggested that the scope of genetic information as proposed was too broad, and that it should be narrowed in a way that remains consistent with national security. Others suggested narrowing the definition to focus on, for example, identifiable data or information about a person's full genome, to better tailor the definition to national security concerns. Other commenters recommended modifying the definition to exclude anonymized data obtained from drug discovery or clinical trials, or aggregated data from large heterogeneous populations.

In response to these comments, the rule recalibrates this provision on genetic testing data and does so in two ways: first, by focusing the definition on "genetic tests" as that term is defined in the Genetic Information Non-Discrimination Act of 2008 (GINA); and second, by limiting the coverage of the rule to identifiable data. To account for datasets commonly used in research, the rule also carves out genetic testing data derived from databases maintained by the U.S. Government and routinely provided to private parties for the purposes of research.

Section 800.244 – Substantial interest.

The proposed rule established a voting interest threshold for the definition of "substantial interest." Commenters requested additional clarification on its application, including with respect to limited partners of investment funds, asked whether this provision applies to only a single foreign government, and inquired about the mechanics of § 800.244 regarding the voting interests of parents.

The rule revises § 800.244 in response to these comments. It clarifies, in § 800.244(a), that substantial interest applies to a single foreign government, which is consistent with the definition of "foreign government" at § 800.222, which, in turn, includes both national and subnational governments, including their respective departments, agencies, and instrumentalities. In § 800.244(a), the rule also excludes governments of excepted foreign states in order to better synchronize the application of the two mandatory filing requirements under § 800.401.

Additionally, the rule revises § 800.244(b) to define "substantial interest," in certain circumstances, as a foreign government's interests in the general partner (or equivalent) only, disregarding its limited partner interests. This provides clarity to parties in the investment fund context and focuses the substantial interest analysis on the entity that typically is responsible for the day-to-day decisionmaking regarding the investment fund. Finally, the rule adds illustrative examples.

Section 800.248 – TID U.S. business.

The proposed rule defined the types of businesses with certain involvement in critical technology, critical infrastructure, and sensitive personal data in which an investment may constitute a covered investment. Commenters requested clarification regarding the application of

this rule to a U.S. business that indirectly maintains or collects sensitive personal data. In response to these comments, the rule adds examples addressing scenarios in which a U.S. business is maintaining or collecting sensitive personal data indirectly via an intermediary.

Additionally, the rule adds illustrative examples with respect to critical technology, informed by the Committee's experience with respect to the pilot program on certain transactions involving foreign persons and critical technologies. One example illustrates that the mere verification of the fit and form of a relevant critical technology is not "testing" under § 800.248(a). Another example illustrates that a U.S. business that ceases performing one of the actions listed in § 800.248(a) but retains the ability to perform the relevant action with regard to a critical technology, is a TID U.S. business.

Finally, with respect to TID U.S. businesses described in § 800.252(a) (*i.e.*, those related to critical technology) it is important for parties to be aware that the rule establishes the Committee's jurisdiction over covered investments in any U.S. business that "produces, designs, tests, manufactures, fabricates, or develops" one or more critical technologies. However, as discussed below in connection with § 800.401, the rule requires mandatory declarations for transactions involving only a subset of these TID U.S. businesses.

Section 800.251 – United States.

The rule revises the definition of "United States" for consistency with the definition in FIRRMA.

Section 800.252 – U.S. business.

The proposed rule revised the definition of "U.S. business" from the Prior Regulations by excluding the phrase "but only to the extent of its activities in interstate commerce in the United

States." Commenters requested that the Committee restore the prior definition of "U.S. business" or provide clarity with respect to the Committee's intended interpretation of that term. The rule makes no change to the proposed definition. The proposed definition tracks the language of FIRRMA and is not intended to suggest that the extent of a business's activities in interstate commerce in the United States is irrelevant to the Committee's analysis of national security risk.

The rule also makes amendments to example 2 of § 800.252(b) to illustrate that a business may export and license technology and provide services into the United States, yet not qualify as a U.S. business for purposes of the rule.

Section 800.254 – Voting interest.

The proposed rule did not change the definition of "voting interest" from the Prior Regulations. Commenters sought additional clarification about the scope of the voting interest involved, including whether it includes consent, veto, or other special rights, or how parties should calculate voting interest in situations where there are different levels of voting interest types (*e.g*., preferred stock). Commenters also suggested the term be limited to voting interests in major decisions.

The rule makes no change to § 800.254 in response to these comments. The definition of "voting interest" is long-established, and, as many commenters noted, any revisions will have wide-ranging effects throughout the regulations because voting interest is incorporated into other defined terms, such as parent. Where appropriate, the Treasury Department provided clarification through revisions to other sections of the regulations, for instance, with respect to the definition of "substantial interest" in § 800.244, discussed above.

3. Subpart C – Coverage

Subpart C of the proposed rule included provisions that described with particularity transactions that are, or are not, "covered control transactions" or "covered investments." These provisions contain several examples illustrating different scenarios, and commenters requested additional examples, including particular examples illustrating the rule's treatment of export agreements or technology transfers.

In response to these comments, the rule revises and supplements the examples in § 800.305 through § 800.307, as further discussed below. The rule also makes technical revisions to § 800.301 through § 800.304, and § 800.308. Note that technology transfers are separately addressed by export control regulations promulgated by the Department of Commerce and the Department of State. The Treasury Department refers the public to the Export Administration Regulations, at 15 CFR parts 730-774, and the International Traffic in Arms Regulations, at 22 CFR parts 120-130.

Section 800.305 – Incremental acquisitions.

The proposed rule provided affirmative assurance that certain transactions subsequent to a covered control transaction for which the Committee concluded all action under section 721 on the basis of a notice are not covered transactions. Commenters requested a number of clarifications, including regarding whether an incremental investment or acquisition of additional rights in a U.S. business by a foreign person that already controls that business would constitute a covered transaction. Other commenters asked whether the Committee will communicate to parties whether the Committee found jurisdiction over a particular investment as a covered control transaction or a covered investment, or how the incremental acquisition rule applies to related but not wholly owned entities.

Revisions were made in response to some of the comments. The rule expands the incremental acquisition rule to apply to transactions made subsequent to a covered control transaction submitted to the Committee via declaration, and for which the Committee concludes action based upon that declaration. The rule also makes technical edits and adds an example regarding related entities. Additionally, note that the Committee, in response to a notice, currently informs parties whether an investment is a covered control transaction or a covered investment.

Section 800.306 – Lending transactions.

The proposed rule expanded the Prior Regulations' provision on "lending transactions" to address covered investments. A commenter noted that the mandatory declaration requirement may present challenges in the context of lending transactions and recommended that the Treasury Department not subject lenders to the mandatory declaration requirement for transactions involving a default on a loan, or, in the alternative, the parties in such a situation be required to file as soon as practicable.

The rule makes no change in response to this comment. Lenders typically do not automatically acquire title to assets in the event of a default on a loan. In these cases, the lender must first perform an affirmative act, such as transferring ownership interests using a stock power, thus allowing the lender to comply with the mandatory declaration provision in § 800.401, if applicable, before performing such act. Moreover, even in the event of a default on a loan, lenders typically use commercially reasonable efforts to cure the event of default with the borrower, and only resort to taking title of assets as a last resort. These efforts typically last longer than the 30-day advance notification time requirement for mandatory declarations under § 800.401. If, however, parties to a transaction subject to the mandatory declaration requirement

are unable to timely file a submission due to circumstances of a default, the Committee will consider the circumstances in assessing any potential civil monetary penalty determination.

The rule does, however, revise § 800.306, including its examples, to further clarify and illustrate its application to covered investments.

Section 800.307 – Specific clarification for investment funds.

The proposed rule implemented FIRRMA's provisions relating to investment funds. Commenters to the investment fund provisions supported the limitation on the application of CFIUS's review authority over certain investment funds. Other commenters requested clarification on the scope of CFIUS's jurisdiction with respect to investment funds. For example, a commenter asked if CFIUS's jurisdiction extends to an investment fund organized outside of the United States but which has U.S. general and limited partners. The rule makes no change in response to these comments in § 800.307 because the Treasury Department cannot provide confirmation of commenters' legal interpretations, clarifications, or examples based on hypothetical scenarios that are highly fact-specific. Note that, as discussed further below, additional examples have been added in § 800.401 addressing investment funds in the context of mandatory declarations.

Another commenter suggested including additional examples illustrating certain rights that would not provide a limited partner with the ability to control the fund, or in the alternative, narrowing the statutorily enumerated examples of rights that would constitute control. The Committee's authority in this respect is limited by the provision in FIRRMA relating to investment funds, and the rule makes no change in response to this comment.

One commenter noted that the Committee's section of the Treasury Department website describing the pilot program (which features responses to frequently asked questions) clarifies

that failure to meet all of the criteria in § 801.304(a) does not necessarily mean that an indirect investment by the foreign person in a TID U.S. business through an investment fund is a covered transaction. Consistent with § 801.304, § 800.307(a) is not intended to create a presumption that any investment by a foreign person in a TID U.S. business through an investment fund is a covered transaction if the criteria in § 800.307(a) are not met; the particular facts and circumstances of the investment would need to be considered.

A commenter suggested that the definition is intended as a barrier to investment by foreign-government owned investment funds, because foreign-government owned or controlled funds cannot seek exemption to the mandatory declaration requirements, while some investment funds that are not state-owned or controlled may seek this waiver. The investment fund clarification addresses scenarios involving foreign limited partners in investment funds that are managed exclusively by another party. A foreign-government owned or controlled investment fund is inconsistent with such scenarios, which typically involve passive limited partners. The rule makes no change in response to this comment.

Finally, the rule revises the lead-in of § 800.307(a) and criteria in § 800.307(a)(2) regarding a general partner of an entity, in both instances to conform with the language of FIRRMA.

Section 800.308 – Timing rule for a contingent equity interest.

The Treasury Department received comments regarding the interaction of the timing rule in § 800.308 with mandatory filings required under § 800.401, including suggestions to revise the definition of "completion date" in § 800.206, discussed above. The rule makes no change in response to these comments. In cases where the conversion of a contingent equity interest may result in a covered transaction that requires the submission of a filing under §

800.401, parties are advised to carefully consider whether § 800.308 is applicable to avoid potential penalties.

4. Subpart D – Declarations

The proposed rule set out an abbreviated filing process through the submission of a declaration, as directed by FIRRMA. Commenters stated that the declaration process impacts foreign direct investment by putting foreign firms at a competitive disadvantage vis-à-vis U.S. investors, especially in the context of competitive auctions. Commenters also proposed that CFIUS commit to notify parties of specific national security concerns, if any, in a transaction to enable the parties to promptly address such concerns.

Commenters also requested that the Treasury Department create an expedited review process for evaluating declarations (or notices) submitted by parties with whom the Committee is already familiar through having reviewed and cleared prior transactions involving the same foreign person. One commenter suggested the Committee provide "comfort letters" to certain investors who have been reviewed by the Committee previously and found not to pose a national security threat. Finally, commenters requested that CFIUS make available a list of factors it considers when reviewing declarations that, if addressed by the parties, would lead to the Committee concluding all action on the transaction in 30 days.

The rule makes no change to the process and procedures for declarations in response to these comments. The Treasury Department is aware of the importance of timing to transaction parties and notes that the declaration process itself is an expedited review. The Committee must evaluate each transaction based upon the particular facts and circumstances, including the identity of the parties involved. As a result, the DPA provided for a specific review period to enable CFIUS agencies to carry out their national security responsibilities, and it would not be in

the interest of national security for the Committee to further accelerate the assessment period. Similarly, it is not appropriate for the Committee to prescribe in regulations a list of factors that will expedite the Committee's assessment of a declaration, given the fact-specific nature of each assessment conducted by the Committee.

Section 800.401 – Mandatory declarations.

The proposed rule included a mandatory declaration requirement for transactions involving a "substantial interest" by a foreign government. Comments related to the mandatory filing requirement under § 800.401(b) are addressed in the discussion of the definition of "substantial interest" under § 800.244, above. The Pilot Program Interim Rule set forth a mandatory declaration requirement for covered transactions involving certain critical technology TID U.S. businesses. The Treasury Department received comments on the Pilot Program Interim Rule, both in response to the October 2018 publication of the Pilot Program Interim Rule and in response to the September 2019 publication of the proposed rule for part 800.

Commenters noted the complexity involved in assessing which investments require mandatory filings under the Pilot Program Interim Rule, including with respect to assessing whether a certain U.S. business's connection to certain industries identified by NAICS codes meets the requirements of § 801.213 in the Pilot Program Interim Rule. Some commenters suggested that the Committee not continue to exercise its authority under FIRRMA to require mandatory declarations for transactions involving certain U.S. businesses with activities relating to critical technologies. Other commenters recommended that the regulations require mandatory declarations only for transactions involving a defined subset of critical technologies (*e.g.*, only emerging and foundational technologies), or remove the mandatory filing requirement for certain other critical technologies that do not raise national security concerns (*e.g.*, non-sensitive

encryption software) or certain sectors (*e.g.*, biotechnology) in order to encourage foreign investment in those sectors.

Commenters also suggested that certain categories of investors, such as excepted investors or FOCI-mitigated entities, be exempted from the mandatory declaration requirement for control transactions or, as applicable, covered investments, or that the Committee waive mandatory filings for transactions involving the acquisition of certain rights—such as a board seat—in a U.S. business so as not to impact foreign investment.

The rule integrates the mandatory declaration requirement from the Pilot Program Interim Rule, which is based upon whether a transaction involves certain U.S. businesses with a nexus to specified industries identified by NAICS codes. However, the Treasury Department anticipates issuing a separate notice of proposed rulemaking that would replace this requirement with a mandatory declaration requirement based upon export control licensing requirements. Additionally, in response to public comments, the rule exempts certain transactions from the critical technology mandatory declaration requirement. These exemptions relate to excepted investors, FOCI-mitigated entities, certain encryption technology, and investment funds managed exclusively by, and ultimately controlled by, U.S. nationals. The Treasury Department anticipates that these exemptions would continue to apply even if the scope of the mandatory declaration requirement is modified as described above.

Commenters also requested the inclusion of a mechanism to the mandatory declaration requirements, through which the Committee would grant waivers to individual foreign investors (which some commenters described as "trusted investors") after evaluating such investors pursuant to various criteria. Some commenters suggested that this mechanism only apply to parties that have filed a notice that was cleared by the Committee, noting that the Committee will

have already examined the investor and any national security concerns it presents through its review of the notice. The rule makes no change in response to these comments. The Treasury Department will continue to consider instituting a potential waiver mechanism in the future. Once the Committee has more data on mandatory declarations under this rule, it can better assess the potential for a waiver program and mechanisms for implementation and administration.

Finally, one commenter requested clarification about the commencement of the 30-day advance notification requirement for mandatory declarations. As stated in § 800.401(g), this 30-day period begins when a declaration or notice, as applicable, is submitted, and not upon acceptance by the Staff Chairperson. Under § 800.401(i), in the event the Committee rejects or permits a withdrawal of the declaration (or notice), the 30-day period resets from the date of resubmission, absent written approval of the Staff Chairperson. The rule also includes an exception from mandatory declarations for air carriers to conform to FIRRMA.

Section 800.403 – Procedures for declarations.

The proposed rule set forth the procedures for declarations. Commenters requested that CFIUS begin assessments of declarations, or provide feedback on a declaration, within five days of receiving it. The rule makes no change in response to these comments. The Committee makes every effort to provide feedback to the parties and initiate review of a transaction as quickly as possible. Consistent with FIRRMA, the rule does prescribe that the Committee respond within a set timeframe to voluntary notices that include certain stipulations.

Section 800.404 – Contents of declarations.

The proposed rule set forth the information requirements for a declaration, consistent with FIRRMA's requirement that CFIUS establish declarations as "abbreviated notices that would not generally exceed five pages in length." As part of a declaration, parties may

voluntarily stipulate that the transaction is a covered transaction and, if so, whether the transaction is a foreign-government controlled transaction.

One commenter objected to the provision in § 800.404(e) that parties stipulate in a declaration that a transaction is a covered investment, covered transaction, or a foreign government-controlled transaction. Note that, under § 800.404(e), stipulations are not required from parties submitting declarations, but are available as an option and may help expedite the Committee's review. Making a stipulation does not affect judicial review of CFIUS's final decision regarding a transaction. Rather, parties that make a stipulation may not challenge a decision as to whether the transaction is a covered investment, covered transaction, or foreign government-controlled transaction, where that decision is based on the stipulation.

While no change was made to the declaration content requirement as a result of this comment, the rule makes modifications in this section to require additional information, including to allow the Committee to more efficiently assess whether a transaction is a covered transaction. For example, for declarations involving the acquisition of a U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies, parties must describe the item(s) and the applicable export control classification/category.

Section 800.407 – Committee actions.

The rule clarifies that the Committee may request that parties file a written notice under subpart E if it has reason to believe that the transaction may raise national security considerations.

5. Subpart E – Notices

The proposed rule set out the process for filing notices.

Section 800.501 – Procedures for notices.

One commenter suggested that the Committee be prohibited from reviewing a transaction after a certain time period following its completion. The rule makes no change in response to this comment. Parties that wish to obtain safe harbor from the Committee with respect to previously completed transactions can undertake to do so by filing a voluntary notice or submitting a declaration.

Section 800.502 – Contents of voluntary notices.

One commenter suggested that asking parties for a cyber-security plan is insufficient to determine whether the party's information technology systems are adequately protected. The commenter recommended that the Committee rely on cyber-security standards promulgated by other federal agencies, such as the Department of Homeland Security, or NIST within the Department of Commerce. Alternatively, the commenter recommended using an algorithm to assess a filing party's cyber-security vulnerabilities and suggested requiring parties to meet certain cyber security standards. The rule makes no change in response to these comments. A company's cyber-security plan is relevant information for the Committee to consider. Adherence by a party to government or industry standards could be a relevant factor in the Committee's risk assessment, but is not necessary to prescribe in regulations. Revisions were made to § 800.502, which are similar to the revisions discussed above under § 800.404, as well as other clarifying edits.

6. Subpart G – Finality of Action

Section 721 maintains that a covered transaction that has been notified to CFIUS and on which CFIUS has concluded action under section 721 after determining that there are no unresolved national security concerns, qualifies for safe harbor from further action by the Committee. A commenter noted the rule lacked a safe harbor provision and requested additional

guidance on how to structure a transaction to ensure it is not altered or overturned by the Committee.

In accordance with section 721, the rule provides a safe harbor to parties, under §800.701, and through the incremental acquisition rule discussed above. Neither section 721 nor this rule prescribes transaction structures, allowing parties to structure transactions in the most appropriate manner based on the facts and circumstances of the particular transaction. As described above, section 721(f) of the DPA provides an illustrative list of factors for consideration by the Committee and the President in determining whether a covered transaction poses a national security risk. Additionally, the Treasury Department's previously published Guidance Concerning the National Security Review Conducted by CFIUS, 73 FR 74567 (December 8, 2008), is still in effect.

7. Subpart I – Penalties and Damages

Commenters requested that the Treasury Department promulgate guidelines on when it will assess civil monetary penalties. The Treasury Department is considering whether it can make additional information available to assist the public in understanding the Committee's enforcement priorities. A number of clarifying and technical edits were made to this subpart. Additionally, the rule revises § 800.901(f) to allow tolling of the Committee's deadline to respond to a petition, upon written agreement with the party, to facilitate further negotiations, including for settlement of the potential civil monetary penalty.

8. Subpart J – Foreign National Security Investment Review Regimes

Section 800.1001 – Determinations.

The proposed rule provided for Committee determinations regarding a foreign state's process to review foreign investment for national security in its own country and its cooperation

with the United States with respect to review of foreign investment. Commenters recommended that the Committee, in making these determinations, recognize that differing systems can achieve the same outcomes, and avoid insisting that foreign states adopt procedures that mirror those of CFIUS.

The rule makes no change to § 800.1001 in response to these comments. The Treasury Department will in the near term publish on the Committee's section of its website the factors the Committee will take into consideration when making determinations, which focus on the substance of a foreign state's process and cooperation with the United States to address national security risks arising from foreign investment, and do not prescribe a specific form. Finally, such determinations are relevant only to the status of a foreign state as an excepted foreign state under the rule. They do not imply any broader U.S. Government approval of a foreign state's investment review regime, including aspects of a foreign state's investment review regime that may incorporate factors beyond national security.

9. Other Comments

The Treasury Department also received comments on topics not specifically addressed in the proposed rule. Commenters noted that the proposed rule did not address independent monitors for mitigation agreements, and recommended that the Committee provide additional clarification, including on monitor qualifications or whether monitors may provide additional services without violating the conflict of interest provision in FIRRMA. The rule makes no change in response to these comments. The Treasury Department takes seriously the importance of ensuring the integrity and qualifications of monitors, including avoidance of conflicts of interest. The Committee has extensive experience with the use of monitors for mitigation

agreements and has found that appropriate safeguards can be incorporated into the mitigation agreement itself, which is dependent on facts and circumstances of each transaction.

IV. Rulemaking Requirements

Executive Order 12866

These regulations are not subject to the general requirements of Executive Order 12866, which governs review of regulations by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB), because they relate to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order. In addition, these regulations are 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, and the proposed rule at 84 FR 50214, included provisions that use the term "principal place of business." The Treasury Department received comments on these provisions, including recommendations to add a definition for the term.

In response to these comments, a definition for "principal place of business" has been included. The Treasury Department believes it would benefit the public and the Committee to receive comments from the public on this definition before it is made final. This rule therefore contains an interim rule that implements a definition for the term "principal place of business" that will become effective with the rest of the rule, and the Treasury Department is providing the public 30 days to comment on the new definition of "principal place of business."

It is in the public interest to make the "principal place of business" definition effective on the same date as the rule. Commenters requested greater clarity concerning which parties are subject to the mandatory declaration requirements and to CFIUS jurisdiction more generally. The new definition directly addresses those requests and provides greater transactional certainty. If the definition were not effective with this rule, some parties that, under the new definition, may not need to submit a declaration (or choose to file a notice in lieu of a mandatory declaration) with the Committee would nonetheless have to (or choose to) do so. By clarifying that certain parties need not submit declarations and that certain transactions are not subject to CFIUS jurisdiction, the addition of the definition of "principal place of business" reduces the regulatory burden on the public, allowing some parties to forego the expense, time, and uncertainty involved in submitting a declaration or filing a notice with the Committee. Because of the added clarity and potential reduction in regulatory burden the definition provides to the public, having it become effective immediately is in the public's interest. Nonetheless, the Treasury Department is requesting comments to that definition and will consider them before finalizing the interim rule.

Paperwork Reduction Act

The collections of information contained in this rule were submitted to OMB for review along with the proposed rule, in accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3507(d)). No comments were received to the PRA estimates. However, and as noted above, the Treasury Department has modified some of the information requests associated with notices and on the declarations form. These changes represent clarifications that the Treasury Department identified in its review of the information requirements, as well as changes necessary to implement certain provisions that were modified from the proposed rule. The additional

information requested is not substantially different from the information that was proposed to be collected, and the Treasury Department's estimates of burden hours for completing declarations and notices do not differ from those estimated at the proposed rule stage. These collections have been submitted to OMB under control number 1505-0121.

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

Regulatory Flexibility Act

Regardless of whether the provisions of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq*.), apply to this rulemaking, for reasons noted in the preamble to the proposed rule, the Treasury Department prepared for public comment an Initial Regulatory Flexibility Analysis and determined through that analysis that the proposed rule would most likely not affect a substantial number of small entities. The Treasury Department specifically requested comments on the proposed rule's effect on small entities; no such public comments were received. The Secretary of the Treasury hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities based on the following.

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

There is no single source for information on the number of small U.S. businesses that receive foreign investment (direct or indirect), including those involved with critical

technologies, critical infrastructure, or sensitive personal data, such that they would be directly impacted by this rule. However, the Bureau of Economic Analysis (BEA) within the Department of Commerce collects, on an annual basis, data on new foreign direct investment in the United States through its Survey of New Foreign Direct Investment in the United States (Form BE- 13). While these data are self-reported, and include only direct investments in U.S. businesses in which the foreign person acquires at least 10 percent of the voting shares (and consequently, do not capture investments below 10 percent, which may nevertheless be covered transactions), they nonetheless provide relevant information on a category of U.S. businesses that receive foreign investment, some of which may be covered by the proposed rule.

According to the BEA, in 2018, the most current year for which data is available, foreign persons obtained at least a 10 percent voting share in 832 U.S. businesses. *See* U.S. Bureau of Economic Analysis, "Number of Investments Initiated in 2018, Distribution of Planned Total Expenditures, Size by Type of Investment," https://apps.bea.gov/international/xls/Table15-14-15-16-17-18.xls (last visited January 6, 2020). The BEA only reports the general size of the investment transaction, not the type of the U.S. business involved, nor whether the U.S. business is considered a "small business" by the Small Business Administration (SBA), which defines small businesses based on annual revenue or number of employees. The smallest foreign investment transactions that the BEA reports are those with a dollar value below $50 million. While not all U.S. businesses receiving a foreign investment of less than $50 million are considered "small" for the purposes of the RFA, many might be, and the number of U.S. businesses receiving foreign investments of less than $50 million can serve as a proxy for the number of transactions involving small U.S. businesses that might be subject to CFIUS's jurisdiction.

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

According to the SBA, there are 30.2 million small businesses (defined as "firms employing fewer than 500 employees") in the United States as of 2018. https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-US.pdf (last visited January 6, 2020). If approximately 600 small U.S. businesses will be potentially impacted by this rule, then the rule may potentially impact less than one percent of all small U.S. businesses. Accordingly, the Department of the Treasury does not believe the rule will impact a "substantial number of small entities."

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

Congressional Review Act

This rule has been submitted to OIRA, which has determined that the rule is a "major" rule under the Congressional Review Act. However, the Treasury Department has determined there is good cause under 5 U.S.C. 808(2) to publish the rule notwithstanding the timing requirements for major rules under 5 U.S.C. 801(a)(3) because delaying the effectiveness of this rule beyond 30 days is impracticable, unnecessary, and contrary to the public interest. Under

FIRRMA, the provisions expanding jurisdiction and establishing declarations, among others, will become effective on February 13, 2020, regardless of whether this rule is published and effective. *See* Section 1727(b)(1)(A) of FIRRMA. Without the processes, procedures and definitions provided by the rule as directed by FIRRMA, market participants will face substantial hardship, delay, and expense in complying with the requirements of FIRRMA. Accordingly, the Treasury Department finds good cause that notice and public procedure under 5 U.S.C. 801(a)(3) are impracticable, unnecessary, and contrary to the public interest. This rule will become effective on February 13, 2020, notwithstanding 5 U.S.C. 801(a)(3).

List of Subjects

31 CFR part 800

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

31 CFR part 801

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

For the reasons set forth in the preamble, the Treasury Department amends parts 800 and 801 of title 31 of the Code of Federal Regulations as follows:

1. Revise part 800 to read as follows:

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

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800.221 Foreign government.
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800.802 Confidentiality.

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

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800.1001 Determinations.
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Appendix A to Part 800—Covered Investment Critical Infrastructure and Functions Related to Covered Investment Critical Infrastructure

Appendix B to Part 800—Industries

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

Subpart A—General

§ 800.101 Scope.

(a) Section 721 of title VII of the Defense Production Act of 1950, as amended (50 U.S.C. 4565), authorizes the Committee on Foreign Investment in the United States to review any covered transaction, as defined in § 800.213 of this part, and to mitigate any risk to the national

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

(b) This part implements regulations pertaining to covered transactions. Regulations pertaining to "covered real estate transactions" are addressed in part 802 of this chapter.

§ 800.102 Risk-based analysis.

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

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

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

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

§ 800.103 Effect on other law.

Nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of federal law, including the International Emergency Economic Powers Act, or any other authority of the President or the Congress under the Constitution of the United States.

§ 800.104 Applicability rule.

(a) Except as provided in paragraphs (b) and (c) of this section and otherwise in this part, the regulations in this part apply from February 13, 2020.

(b) Subject to paragraph (c) of this section, for any transaction for which the following has occurred before February 13, 2020, the corresponding provisions of the regulations in this part that were in effect on February 12, 2020, will apply:

(1) The completion date;

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

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

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

(c) For any transaction to which part 801 of this title was applicable from November 10, 2018, through February 12, 2020, the regulations in part 801 in effect during that time will continue to apply.

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

§ 800.105 Rules of construction and interpretation.

(a) The examples included in this part are provided for informational purposes and should not be construed to alter the meaning of the text of the regulations in this part.

(b) As used in this part, the term "including" means "including but not limited to."

Subpart B—Definitions

§ 800.201 Aggregated data.

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

§ 800.202 Anonymized data.

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

§ 800.203 Business day.

The term *business day* means Monday through Friday, except the legal public holidays specified in 5 U.S.C. 6103, any day declared to be a holiday by federal statute or executive order, or any day with respect to which the U.S. Office of Personnel Management has announced that Federal agencies in the Washington, D.C., area are closed. For purposes of calculating any deadline imposed by this part triggered by the submission of a party to a transaction under § 800.401(g)(2) or § 800.501(i), any submissions received after 5 p.m. Eastern Time are deemed to be submitted on the next business day.

NOTE 1 TO § 800.203: See § 800.604 regarding the tolling of deadlines during a lapse in appropriations.

§ 800.204 Certification.

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

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

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

(i) The transaction; and

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

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

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

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

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

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

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

NOTE 1 TO § 800.204: A sample certification may be found at the Committee's section of the Department of the Treasury website.

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

The term *Committee* means the Committee on Foreign Investment in the United States. The *Chairperson of the Committee* is the Secretary of the Treasury. The *Staff Chairperson* of the

Committee is the Department of the Treasury official so designated by the Secretary of the Treasury or by the Secretary's designee.

§ 800.206 Completion date.

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

NOTE 1 TO § 800.206: See § 800.308 regarding the timing rule for a contingent equity interest.

§ 800.207 Contingent equity interest.

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

§ 800.208 Control.

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

or cause decisions regarding the following matters, or any other similarly important matters affecting an entity:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Examples:

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

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

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

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

(5) *Example 5.* Corporation A, a foreign person, acquires a 13 percent interest in the shares of Corporation B, a U.S. business, and the right to appoint one member of Corporation B's seven-member board of directors. Corporation A receives minority shareholder protections listed in paragraph (c) of this section but receives no other positive or negative rights with respect to Corporation B. Assuming no other relevant facts, Corporation A does not control Corporation B.

(6) *Example 6.* Corporation A, a foreign person, acquires a 20 percent interest in the shares of Corporation B, a U.S. business. Corporation A has negotiated an irrevocable passivity

agreement that completely precludes it from controlling Corporation B. Corporation A does, however, receive the right to prevent Corporation B from entering into contracts with majority investors or their affiliates and to prevent Corporation B from guaranteeing the obligations of majority investors or their affiliates. Assuming no other relevant facts, Corporation A does not control Corporation B.

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

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

NOTE 1 TO § 800.208: See § 800.302(b) regarding the Committee's treatment of transactions in which a foreign person holds or acquires 10 percent or less of the outstanding voting interest in a U.S. business solely for the purpose of passive investment. See § 800.303 regarding the Committee's treatment of transactions that do not result in control over a U.S. business by a foreign person, but may be covered investments. See § 800.305 regarding the Committee's treatment of a subsequent transaction involving a foreign person that previously acquired control of the U.S. business.

§ 800.209 Conversion.

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

§ 800.210 Covered control transaction.

The term *covered control transaction* means any transaction that is proposed or pending after August 23, 1988, by or with any foreign person that could result in foreign control of any U.S. business, including such a transaction carried out through a joint venture.

§ 800.211 Covered investment.

The term *covered investment* means an investment, direct or indirect, by a foreign person other than an excepted investor, in an unaffiliated TID U.S. business that is proposed or pending on or after February 13, 2020, and that:

(a) Is not a covered control transaction; and

(b) Affords the foreign person:

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

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

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

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

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

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

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

(d) Example: Corporation A, a foreign person that is not an excepted investor, makes a non-controlling investment in Corporation B, a U.S. business, that affords Corporation A the right to nominate one of the directors on Corporation B's board of directors. Corporation B, through its wholly-owned subsidiary Corporation X, designs and manufactures a critical technology. Corporation A's investment in Corporation B is a covered investment.

§ 800.212 Covered investment critical infrastructure.

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

§ 800.213 Covered transaction.

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

(a) A covered control transaction;

(b) A covered investment;

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

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

(e) Examples:

(1) *Example 1*. Corporation A, a foreign person, acquires a 10 percent non-controlling equity interest in Corporation X, a U.S. business. Corporation X subsequently provides Corporation A the right to appoint the Chief Executive Officer and the Chief Technical Officer of Corporation X. Corporation A does not acquire any additional equity interest in Corporation X. Assuming no other relevant facts, the change in rights is a covered transaction.

(2) *Example 2*. Corporation A, a foreign person that is not an excepted investor, acquires a 10 percent non-controlling equity interest in Corporation X, an unaffiliated TID U.S. business, but Corporation A is not afforded any of the access, rights, or involvement specified in § 800.211(b) at the time of its investment. Corporation X later expands its board of directors and

provides Corporation X with the right to appoint a director. Assuming no other relevant facts, the change in rights is a covered transaction.

(3) *Example 3.* Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards circumventing section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a U.S. business. The transaction is a covered transaction.

(4) *Example 4.* Corporation A is organized under the laws of a foreign state, is wholly owned and controlled by a foreign national, and is not an excepted investor. With a view towards circumventing section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, makes a non-controlling minority equity investment in Corporation X, an unaffiliated TID U.S. business that maintains and collects sensitive personal data of U.S. citizens. In connection with the investment, the U.S. citizen is afforded the right to be involved in substantive decisionmaking regarding the release of sensitive personal data of U.S. citizens maintained by Corporation X. The transaction is a covered transaction.

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

§ 800.214 Critical infrastructure.

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

§ 800.215 Critical technologies.

The term *critical technologies* means the following:

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

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

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

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

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

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

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

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

§ 800.216 Encrypted data.

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

§ 800.217 Entity.

The term *entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization (whether or not organized under the laws of any State or foreign state); assets (whether or not organized as a separate legal entity) operated by any one of the foregoing as a business undertaking in a particular location or for particular products or services; and any government (including a foreign national or subnational government, the U.S. Government, a subnational government within the United States, and any of their respective departments, agencies, or instrumentalities). (See examples in § 800.301(g)(5) through (14) and § 800.302(g)(5) through (10).)

§ 800.218 Excepted foreign state.

The term *excepted foreign state* means, until February 13, 2022, a foreign state that meets the criteria in paragraph (a) of this section, and, beginning on February 13, 2022, a foreign state that meets both the criteria in paragraphs (a) and (b) of this section:

(a) Is identified by the Committee as an eligible foreign state, and

(b) Is a foreign state for which the Committee has made a determination under § 800.1001(a).

NOTE 1 TO § 800.218: The name of each foreign state identified by the Committee as an eligible foreign state will be available at the Committee's section of the Department of the Treasury website. See § 800.1001(c) regarding the publication of a notice in the Federal Register of a determination under § 800.1001(a). The list of excepted foreign states will also be available at the Committee's section of the Department of the Treasury website.

§ 800.219 Excepted investor.

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

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

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

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

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

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

(iii) Seventy-five percent or more of the members and 75 percent or more of the observers of the board of directors or equivalent governing body of such entity are:

(A) U.S. nationals; or

(B) Nationals of one or more excepted foreign states who are not also nationals of any foreign state that is not an excepted foreign state;

(iv) Any foreign person that individually, and each foreign person that is part of a group of foreign persons that in the aggregate, holds 10 percent or more of the outstanding voting interest of such entity; holds the right to 10 percent or more of the profits of such entity; holds the right in the event of dissolution to 10 percent or more of the assets of such entity; or otherwise could exercise control over such entity, is:

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

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

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

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

(A) Not a foreign person;

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

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

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

(b) For purposes of paragraph (a)(3)(iv) of this section, foreign persons who are related, have formal or informal arrangements to act in concert, or are agencies or instrumentalities of, or controlled by, the national or subnational governments of a single foreign state are considered part of a group of foreign persons and their individual ownerships are aggregated.

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

(1) In the five years prior to the completion date of the transaction the foreign person, any of its parents, or any entity of which it is a parent:

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

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

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

(iv) Has:

(A) Received a written Finding of Violation or Penalty Notice imposing a civil monetary penalty from the Department of the Treasury, Office of Foreign Assets Control (OFAC); or

(B) Entered into a settlement agreement with OFAC with respect to apparent violations of U.S. sanctions laws administered by OFAC, including the International Emergency Economic Powers Act, the Trading With the Enemy Act, the Foreign Narcotics Kingpin Designation Act, each as amended, or of any executive order, regulation, order, directive, or license issued pursuant thereto;

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

(vi) Has been a respondent or party in a final order, including a settlement order, issued by the Department of Commerce, Bureau of Industry and Security (BIS) regarding violations of U.S. export control laws administered by BIS, including the Export Control Reform Act of 2018 (50 U.S.C. 4801 *et seq.*), the EAR, or of any executive order, regulation, order, directive, or license issued pursuant thereto;

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

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

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

(d) Irrespective of whether the foreign person satisfies the criteria in paragraph (a)(1) or (2), (a)(3)(i) through (iii), or (c)(1)(i) through (iii) of this section as of the completion date, if at any time during the three-year period following the completion date, the foreign person no longer meets all the criteria set forth in paragraph (a)(1) or (2), (a)(3)(i) through (iii), or (c)(1)(i) through (iii) of this section, the foreign person is not an excepted investor with respect to the transaction from the completion date onward. This paragraph does not apply when an excepted investor no longer meets any of the criteria solely due to a rescission of a determination under § 800.1001(b) or if the relevant foreign state otherwise ceases to be an excepted foreign state.

(e) A foreign person may waive its status as an excepted investor with respect to a transaction at any time by submitting a declaration under § 800.403 or filing a notice under § 800.501 regarding the transaction in which it explicitly waives such status. In such case, the

foreign person will be deemed not to be an excepted investor with respect to the transaction and the relevant provisions of subpart D or E will apply.

NOTE 1 TO § 800.219: See § 800.501(c)(2) regarding an agency notice where a foreign person is not an excepted investor solely due to § 800.219(d).

§ 800.220 Foreign entity.

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

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

§ 800.221 Foreign government.

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

§ 800.222 Foreign government-controlled transaction.

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

§ 800.223 Foreign national.

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

§ 800.224 Foreign person.

(a) The term *foreign person* means:

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

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

(b) Any entity over which control is exercised or exercisable by a foreign person is a foreign person.

(c) Examples:

(1) *Example 1*. Corporation A is organized under the laws of a foreign state and is engaged in business only outside the United States. All of its shares are held by Corporation X, which solely controls Corporation A. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Assuming no other relevant facts, Corporation A, although organized and operating only outside the United States, is not a foreign entity due to § 800.220(b) and is not a foreign person.

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

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

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

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

(6) *Example 6.* Same facts as the example in paragraph (c)(5) of this section, except that one of the foreign investors, a foreign national, controls Corporation A. Assuming no other relevant facts, Corporation A is not a foreign entity due to § 800.220(b), but it is a foreign person under paragraph (a)(2) of this section because it is controlled by a foreign national.

§ 800.225 Hold.

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

§ 800.226 Identifiable data.

The term *identifiable data* means data that can be used to distinguish or trace an individual's identity, including through the use of any personal identifier. Aggregated data or anonymized data is identifiable data if any party to the transaction has, or as a result of the transaction will have, the ability to disaggregate or de-anonymize the data, or if the data is otherwise capable of being used to distinguish or trace an individual's identity. Identifiable data does not include encrypted data, unless the U.S. business that maintains or collects the encrypted data has the means to de-encrypt the data so as to distinguish or trace an individual's identity.

§ 800.227 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.

§ 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;

(5) In the case of the acquisition or conversion of contingent equity interests, the issuer and the person holding the contingent equity interests;

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

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

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

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

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

§ 800.237 Person.

The term *person* means any individual or entity.

§ 800.238 Personal identifier.

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

§ 800.239 Principal place of business.

(a) The term *principal place of business* means, subject to paragraph (b) of this section, the primary location where an entity's management directs, controls, or coordinates the entity's activities, or, in the case of an investment fund, where the fund's activities and investments are primarily directed, controlled, or coordinated by or on behalf of the general partner, managing member, or equivalent.

(b) If the location determined under paragraph (a) of this section is in the United States and the entity has represented to the U.S. Government or a subnational government of the United States or any foreign government, in the most recent submission or filing to such government (other than a submission or filing to the Committee) in which the entity has identified its principal place of business, principal office and place of business, address of principal executive offices, address of headquarters, or equivalent, that any of the foregoing is outside the United States, then the location identified in such submission or filing is deemed for purposes of this definition to be the entity's principal place of business unless the entity can demonstrate that such location has changed to the United States since such submission or filing.

§ 800.240 Section 721.

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

§ 800.241 Sensitive personal data.

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

(1) Identifiable data that is:

(i) Maintained or collected by a U.S. business that:

(A) Targets or tailors products or services to any U.S. executive branch agency or military department with intelligence, national security, or homeland security responsibilities, or to personnel and contractors thereof;

(B) Has maintained or collected any identifiable data within one or more categories described in paragraph (a)(1)(ii) of this section on greater than one million individuals at any point over the twelve (12) months preceding the earliest of the completion date, the date of any of the events described in § 800.104(b)(2) through (4) (as applicable), or the date of filing of a written notice or submission of a declaration, unless the U.S. business can demonstrate that at the time of the completion date of the transaction it had or will have neither the capability to maintain nor the capability to collect any identifiable data within one or more categories described in paragraph (a)(1)(ii) of this section on greater than one million individuals; or

(C) Has a demonstrated business objective to maintain or collect any identifiable data within one or more categories described in paragraph (a)(1)(ii) of this section on greater than one million individuals and such data is an integrated part of the U.S. business's primary products or services; and

(ii) Within any of the following categories:

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

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

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

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

(E) Non-public electronic communications, including email, messaging, or chat communications, between or among users of a U.S. business's products or services if a primary purpose of such product or service is to facilitate third-party user communications;

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

(G) Biometric enrollment data including facial, voice, retina/iris, and palm/fingerprint templates;

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

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

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

(2) The results of an individual's genetic tests, including any related genetic sequencing data, whenever such results constitute identifiable data. Such results shall not include data derived from databases maintained by the U.S. Government and routinely provided to private parties for purposes of research. For purposes of this paragraph, "genetic test" shall have the meaning provided in 42 U.S.C. 300gg-91(d)(17).

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

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

(2) Data that is a matter of public record, such as court records or other government records that are generally available to the public.

(c) Examples:

(1) *Example 1*. Corporation A, a U.S. business, periodically collects geolocation data as described in paragraph (a)(1)(ii)(F) of this section on its customers for marketing and customer experience purposes. Corporation A maintains the geolocation data for a short period, then purges the data from its systems. When Corporation A and a foreign person notify the Committee of a transaction, Corporation A maintains the geolocation data of only 200,000 individuals. However, in the 12 months prior to filing the notification to the Committee,

Corporation A has collected the geolocation data of greater than one million individuals. Because Corporation A collected the geolocation data of greater than one million individuals in the 12 months prior to the filing date of the notice, it meets the criteria in paragraph (a)(1)(i)(B) of this section.

(2) *Example 2*. Corporation A, a U.S. business, collects data relating to physical health conditions as described in paragraph (a)(1)(ii)(D) from new customers, which numbered fewer than one million over the 12 months prior to executing a definitive binding agreement to be acquired by a foreign person. Under its data retention policy, Corporation A maintains the health data for a long period of time. Accordingly, Corporation A maintains the health data from new customers (those from whom the data was collected in the previous 12 months) and older customers (those from whom the data was collected in prior years). In total, Corporation A maintains the health data of three million individuals. Because Corporation A maintains health data of greater than one million individuals, it meets the criteria in paragraph (a)(1)(i)(B) of this section.

(3) *Example 3*. Same facts as the example in paragraph (c)(2) of this section, except that, under its data retention policy, the number of individuals for whom Corporation A maintains the health data fluctuates. Over the 12 months prior to executing a definitive binding agreement to be acquired by a foreign person, Corporation A usually maintained the health data of 900,000 individuals. However, at one point during the prior 12 months, it maintained the health data of 1,100,000 individuals. Corporation A currently maintains the health data of fewer than one million individuals. Because Corporation A maintained the health data of greater than one million individuals during the 12 months prior to executing a definitive binding agreement to be acquired by a foreign person, it meets the criteria in paragraph (a)(1)(i)(B) of this section.

(4) *Example 4*. Corporation A, a U.S. business, maintains data under multiple categories in paragraph (a)(1)(ii) of this section on over one million individuals. Specifically, Corporation A maintains financial data described by paragraph (a)(1)(ii)(A) of this sectionon 400,000 individuals, and health data described by paragraph (a)(1)(ii)(D) of this section on another 700,000 individuals. Because Corporation A maintains the data described in the categories in paragraph (a)(1)(ii) on greater than one million individuals, despite not maintaining or collecting data of greater than one million individuals in any one category, it meets the criteria in paragraph (a)(1)(i)(B) of this section.

(5) *Example 5*. Corporation A, a U.S. business, is a start-up mobile mapping venture that has maintained or collected geolocation data described by paragraph (a)(1)(ii)(F) of this section on substantially fewer than one million individual subscribers over the 12 months prior to completing a transaction with a foreign person. The geolocation data is an integrated part of Corporation A's primary product, mobile mapping services. Corporation A, in connection with attempting to secure an additional round of financing, has prepared and distributed to potential investors pitch materials that include Corporation A's projection that, within the next two years, it will have greater than one million active individual subscribers. Corporation A also has made plans to substantially increase its workforce and enhance its IT infrastructure in anticipation of obtaining the additional subscribers. Corporation A meets the criteria of paragraph (a)(1)(i)(C) of this section of having a demonstrated business objective to maintain or collect data described in paragraphs (a)(1)(ii)(A) through (J) of this section on greater than one million individuals.

§ 800.242 Service.

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

§ 800.243 Solely for the purpose of passive investment.

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

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

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

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

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

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

§ 800.244 Substantial interest.

(a) The term *substantial interest* means, in the context of an acquisition of an interest in a U.S. business by a foreign person, a voting interest, direct or indirect, of 25 percent or more, and, in the context of a foreign person in which the national or subnational governments of a single foreign state have an interest, subject to paragraph (b) of this section, a voting interest, direct or indirect, of 49 percent or more.

(b) In the case of entity with a general partner, managing member, or equivalent, the national or subnational governments of a single foreign state will be considered to have a *substantial interest* in such entity only if they hold 49 percent or more of the interest in the general partner, managing member, or equivalent of the entity.

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

(d) Examples:

(1) *Example 1*. Corporation A, a foreign person, plans to acquire a 30 percent voting interest in Corporation X, an unaffiliated TID U.S. business. Corporation B holds 51 percent of the voting interest in, and is a parent of, Corporation A. A foreign government holds 75 percent of the voting interest in Corporation B, and private, non-government controlled individuals hold the remaining 25 percent. Under paragraph (c) of this section, Corporation B is deemed to have 100 percent of the voting interest in Corporation A because it is Corporation A's parent, and therefore the foreign government's indirect voting interest in Corporation A is imputed to be 75 percent. Corporation A is acquiring a substantial interest in Corporation X, and a foreign government has a substantial interest in Corporation A.

(2) *Example 2.* Same facts as the example in paragraph (d)(1) of this section, except that Corporation B holds only 49 percent of the voting interest in Corporation A and is not Corporation A's parent. Because Corporation B is not a parent of Corporation A, paragraph (c) of this section is not applicable. The foreign government's indirect voting interest in Corporation A for purposes of this section is only 36.75 percent. Corporation A is acquiring a

substantial interest in Corporation X; however, the foreign government does not have a substantial interest in Corporation A.

§ 800.245 Substantive decisionmaking.

(a) The term *substantive decisionmaking* means the process through which decisions regarding significant matters affecting an entity are undertaken, including, as applicable:

(1) Pricing, sales, and specific contracts, including the license, sale, or transfer of sensitive personal data to any third party, including pursuant to a customer, vendor, or joint venture agreement;

(2) Supply arrangements;

(3) Corporate strategy and business development;

(4) Research and development, including location and budget allocation;

(5) Manufacturing locations;

(6) Access to critical technologies, covered investment critical infrastructure, material nonpublic technical information, or sensitive personal data, including pursuant to a customer, vendor, or joint venture agreement;

(7) Physical and cyber security protocols, including the storage and protection of critical technologies, covered investment critical infrastructure, or sensitive personal data;

(8) Practices, policies, and procedures governing the collection, use, or storage of sensitive personal data, including:

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

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

(9) Strategic partnerships.

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

(c) Examples:

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

(2) *Example 2.* Same facts as the example in paragraph (c)(1) of this section, except that instead of customer approval rights, Corporation A has the right to decide whether to claim certain tax credits with respect to Terminal B on its own income tax filing, which prevents Corporation B from claiming such credits. Assuming no other relevant facts, the proposed investment does not afford Corporation A involvement in substantive decisionmaking of

Corporation B regarding the management, operation, manufacture, or supply of covered investment critical infrastructure.

§ 800.246 Supply.

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

§ 800.247 Targets or tailors.

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

(b) Examples:

(1) *Example 1.* Corporation A, a U.S. business, operates facilities throughout the United States that offer healthcare-related products and services. Some of Corporation A's facilities are located within metropolitan areas that also include U.S. military facilities. Assuming no other relevant facts, Corporation A does not target or tailor its products or services for purposes of § 800.241(a)(1)(i)(A).

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

(3) *Example 3.* Corporation A, a U.S. business, offers a discount to all customers that are employed in the public sector broadly, including active duty U.S. military personnel. Assuming no other relevant facts, Corporation A does not target or tailor its products or services for purposes of § 800.241(a)(1)(i)(A).

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

§ 800.248 TID U.S. business.

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

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

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

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

(d) Examples:

(1) *Example 1.* Corporation A, a U.S. business, operates a munitions plant in the United States that produces a variety of military grade explosives. Some of the explosives manufactured by Corporation A are listed on the USML. Corporation A manufactures critical technologies and is therefore a TID U.S. business.

(2) *Example 2.* Corporation A, a U.S. business, produces an item (Item A) by purchasing various components from third-party suppliers and integrating them into Item A. One of these components (Component X) is a critical technology, but Item A is not a critical technology.

Before integrating Component X into Item A, Corporation A merely verifies the fit and form of Component X solely as part of Item A. Assuming no other relevant facts, Corporation A does not test critical technologies and is therefore not a TID U.S. business.

(3) *Example 3*. Corporation A is a U.S. business that owns intellectual property rights and equipment for manufacturing a critical technology and maintains the know-how to manufacture that critical technology. It has been six months since Corporation A manufactured the critical technology. Because Corporation A retains the ability to manufacture the critical technology, Corporation A is a TID U.S. business.

(4) *Example 4.* Facility A is a crude oil storage facility with the capacity to hold 50 million barrels of crude oil. Corporation A is a U.S. business that operates Facility A. Corporation B is a U.S. business that provides third-party physical security to Facility A by guarding the gate to Facility A and patrolling the fence surrounding Facility A. Corporation C produces the fencing used by Facility A. Corporation D produces the commercially available off-the-shelf cyber security software utilized in Facility A. Corporation E provides third-party cyber security to Facility A by running Facility A's cyber security defenses. Facility A is covered investment critical infrastructure as set forth in column 1 of appendix A to this part. Corporation A, Corporation B, and Corporation E each perform one of the functions as set forth in column 2 of appendix A to this part with respect to Facility A, and each is therefore a TID U.S. business. Assuming no other relevant facts, neither Corporation C nor Corporation D performs one of the functions as set forth in column 2 of appendix A to this part with respect to Facility A, and neither is therefore a TID U.S. business.

(5) *Example 5*. Pipeline A is an interstate natural gas pipeline with an outside diameter of 36 inches. Corporation A is a U.S. business that owns Pipeline A. Corporation B is a U.S. business that manufactures the pipe segments with an outside diameter of 36 inches that are used in Pipeline A. Pipeline A is covered investment critical infrastructure as set forth in column 1 of appendix A to this part. Corporation A performs one of the functions as set forth in column 2 of appendix A to this part with respect to Pipeline A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in column 2 of appendix A to this part with respect to Pipeline A and is therefore not a TID U.S. business.

(6) *Example 6*. IXP A is an internet exchange point that supports public peering. Corporation A is a U.S. business that operates IXP A. Corporation B is a U.S. business that maintains the physical premises of IXP A. IXP A is covered investment critical infrastructure as set forth in column 1 of appendix A to this part. Corporation A performs one of the functions as set forth in column 2 of appendix A to this part with respect to IXP A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in column 2 of appendix A to this part with respect to IXP A and is therefore not a TID U.S. business.

(7) *Example 7*. SCADA System A is a supervisory control and data acquisition system utilized by a public water system, as defined in section 1401(4) of the Safe Drinking Water Act, as amended (42 U.S.C. 300f(4)(A)), that regularly serves 15,000 individuals. Corporation A is a U.S. business that produces SCADA System A by building the hardware and integrating all the software. Corporation B is a U.S. business that produces commercially available off-the-shelf software that is sold to Corporation A and used as a component in SCADA System A. SCADA

System A is covered investment critical infrastructure as set forth in column 1 of appendix A to this part. Corporation A, as the manufacturer of SCADA System A, performs one of the functions as set forth in column 2 of appendix A to this part with respect to SCADA System A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in column 2 of appendix A to this part with respect to SCADA System A and is therefore not a TID U.S. business.

(8) *Example 8.* Same facts as the example in paragraph (d)(7) of this section. Corporation B later releases a patch that updates the commercially available off-the-shelf software that is a component of SCADA System A. As the software is only a component of SCADA System A, the software itself is not covered investment critical infrastructure as set forth in column 1 of appendix A to this part. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in column 2 of appendix A to this part with respect to SCADA System A and is therefore not a TID U.S. business.

(9) *Example 9.* Alloy A is a steel alloy containing two percent manganese. Corporation A is a U.S. business that manufactures Alloy A in Facility A by melting the constituent metals. Facility A is in the United States. Corporation B is a U.S. business that purchases Alloy A from Corporation A and resells it to a prime contractor of the Department of Defense. Facility A is covered investment critical infrastructure as set forth in column 1 of appendix A to this part. Corporation A performs one of the functions as set forth in column 2 of appendix A to this part with respect to Alloy A and is therefore a TID U.S. business. Assuming no other relevant facts, Corporation B does not perform one of the functions as set forth in column 2 of appendix A to this part with respect to Alloy A and is therefore not a TID U.S. business.

(10) *Example 10.* Corporation A, a U.S. business, is a credit reporting agency and maintains consumer reports meeting the description under § 800.241(a)(1)(ii)(B) on greater than one million individuals, including U.S. citizens. Corporation A maintains sensitive personal data and is therefore a TID U.S. business.

(11) *Example 11.* Same facts as the example in paragraph (d)(10) of this section, except that Corporation A maintains the sensitive personal data through its wholly-owned subsidiary, Corporation X. Corporation A is a TID U.S. business because it indirectly maintains sensitive personal data. Corporation X is also a TID U.S. business because it directly maintains sensitive personal data.

(12) *Example 12.* Corporation A, a U.S. business, manufactures and sells specialty medical devices to patients with various health conditions. Corporation A solicits certain patient medical information on its five million customers, including U.S. citizens, which is sensitive personal data under § 800.241(a)(1)(ii)(D), for R&D, marketing, and quality assurance purposes. However, Corporation A does not directly maintain or collect this information, but instead outsources this function to a third party, Corporation X, which collects the data according to Corporation A's instructions and maintains the data on Corporation X's corporate servers for Corporation A to access. Corporation A is a TID U.S. business because it indirectly maintains and collects sensitive personal data, and Corporation X is a TID U.S. business because it directly maintains and collects sensitive personal data.

§ 800.249 Transaction.

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

(a) A merger, acquisition, or takeover, including:

(1) The acquisition of an ownership interest in an entity;

(2) The acquisition of proxies from holders of a voting interest in an entity;

(3) A merger or consolidation;

(4) The formation of a joint venture; or

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

(b) An investment; or

(c) The conversion of a contingent equity interest.

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

NOTE 1 TO § 800.249: See § 800.308 regarding factors the Committee will consider in determining whether to include the access, rights, or involvement to be acquired by a foreign

person upon the conversion of contingent equity interests as part of the Committee's analysis of whether a transaction that involves such interests is a covered transaction.

§ 800.250 Unaffiliated TID U.S. business.

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

§ 800.251 United States.

The term *United States* or *U.S.* means the United States of America, the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States, or any subdivision of the foregoing, and includes the territorial sea of the United States. For purposes of these regulations and their examples in this part, an entity organized under the laws of the United States of America, one of the States, the District of Columbia, or a commonwealth, territory, dependency, or possession of the United States is an entity organized "in the United States."

§ 800.252 U.S. business.

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

(b) Examples:

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

(2) *Example 2.* Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. Corporation A does not have a branch office, subsidiary, or fixed place of business in the United States. It exports and licenses technology to an unrelated company in the United States. It also provides remote technical support services to customers that are in the United States, but does not have any assets or personnel located in the United States. Assuming no other relevant facts, Corporation A is not a U.S. business.

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

§ 800.253 U.S. national.

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

§ 800.254 Voting interest.

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

Subpart C—Coverage

§ 800.301 Transactions that are covered control transactions.

Transactions that are covered control transactions include:

(a) A transaction which, irrespective of the actual arrangements for control provided for in the terms of the transaction, results or could result in control of a U.S. business by a foreign person. (See the examples in paragraphs (e)(1), (2), and (3) of this section.)

(b) A transaction in which a foreign person conveys its control of a U.S. business to another foreign person. (See the example in paragraph (e)(4) of this section.)

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

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

(e) Examples:

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

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

(3) *Example 3.* Corporation A, a foreign person, proposes to purchase 50 percent of the voting shares in Corporation X, a U.S. business, from Corporation B, also a U.S. business. The governance documents of Corporation X provide that important decisions require the affirmative vote of more than half of the votes cast. Corporation B would retain the other 50 percent of the shares in Corporation X, and Corporation A and Corporation B would contractually agree that Corporation A would not exercise its voting and other rights for 10 years. The proposed transaction is a covered control transaction.

(4) *Example 4.* Corporation X is a U.S. business, but is wholly owned and controlled by Corporation Y, a foreign person. Corporation Z, also a foreign person, but not related to Corporation Y, seeks to acquire Corporation X from Corporation Y. The proposed transaction is

a covered control transaction because it could result in control of Corporation X, a U.S. business, by another foreign person, Corporation Z.

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

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

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

(8) *Example 8.* Corporation A, a foreign person, intends to make an early-stage investment in a start-up company in the United States. Prior to the investment by the foreign person, the start-up has engaged in interstate commerce, including incorporating, establishing a domain name, hiring personnel, developing business plans, seeking financing, and renting office space,

without the involvement of the foreign person. As a result of the investment, Corporation A could control the U.S. business. Corporation A is acquiring a U.S. business and the proposed transaction is a covered control transaction.

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

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

(11) *Example 11.* Same facts as the example in paragraph (e)(10) of this section, except that, in addition to the proposed acquisition of Corporation A's warehouse facility, Corporation X would acquire the personnel, customer list, equipment, and inventory management software used

to operate the facility. Under these facts, Corporation X is acquiring a U.S. business, and the proposed acquisition is a covered control transaction.

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

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

(14) *Example 14.* Same facts as the example in paragraph (e)(13) of this section, except that, in addition to the proposed acquisition of Corporation X's proprietary software, Corporation A would acquire Corporation X's customer lists, advertising and promotional material, branding, trademarks, domain names, and Internet presence. Under these facts, Corporation A is acquiring a U.S. business, and the proposed acquisition is a covered control transaction.

(15) *Example 15.* Corporation A, a foreign person, and Corporation X, a U.S. business, form a separate corporation, JV Corporation, to which Corporation A contributes only cash and Corporation X contributes a U.S. business. Each owns 50 percent of the shares of JV Corporation

and, under the Articles of Incorporation of JV Corporation, both Corporation A and Corporation X have veto power over matters affecting JV Corporation identified under § 800.208, giving them both control over JV Corporation. The place of incorporation of JV Corporation is not relevant to the determination of whether the transaction is a covered control transaction. The formation of JV Corporation is a covered control transaction.

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

(17) *Example 17.* Same facts as the example in paragraph (e)(16) of this section, except that, in addition to contributing certain land and equipment, Corporation X also contributes intellectual property, other proprietary information, and other intangible assets, that together with the land and equipment constitute a U.S. business, to JV Corporation. Under these facts, Corporation X has contributed a U.S. business, and the formation of JV Corporation is a covered control transaction.

§ 800.302 Transactions that are not covered control transactions.

Transactions that are not covered control transactions include:

(a) A stock split or pro rata stock dividend that does not involve a change in control. See the example in paragraph (f)(1) of this section.

(b) A transaction that results in a foreign person holding 10 percent or less of the outstanding voting interest in a U.S. business (regardless of the dollar value of the interest so acquired), but only if the transaction is solely for the purpose of passive investment. (See § 800.243 and the examples in paragraphs (f)(2) through (4) of this section.)

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

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

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

(f) Examples:

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

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

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

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

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

(6) *Example 6.* Corporation X, a U.S. business, produces armored personnel carriers in the United States. Corporation A, a foreign person, seeks to acquire the annual production of those carriers from Corporation X under a long-term contract. Assuming no other relevant facts, this transaction is not a covered control transaction.

(7) *Example 7.* Same facts as the example in paragraph (f)(6) of this section, except that Corporation X, a U.S. business, has developed important technology in connection with the production of armored personnel carriers. Corporation A seeks to negotiate an agreement under which it would be licensed to manufacture using that technology. Assuming no other relevant facts, neither the proposed acquisition of technology pursuant to that license agreement, nor the actual acquisition, is a covered control transaction.

(8) *Example 8.* Same facts as the example in paragraph (f)(6) of this section, except that Corporation A enters into a contractual arrangement to acquire the entire armored personnel carrier business operations of Corporation X, including production facilities, customer lists, technology, and staff, which together constitute a U.S. business. This transaction is a covered control transaction.

(9) *Example 9.* Same facts as the example in paragraph (f)(6) of this section, except that Corporation X suspended all activities of its armored personnel carrier business a year ago and currently is in bankruptcy proceedings. Existing equipment provided by Corporation X is being serviced by another company, which purchased the service contracts from Corporation X. The business's production facilities are idle but still in working condition, some of its key former employees have agreed to return if the business is resuscitated, and its technology and customer

and vendor lists are still current. Corporation X's personnel carrier business constitutes a U.S. business, and its purchase by Corporation A is a covered control transaction.

(10) *Example 10*. Same facts as the example in paragraph (f)(6) of this section, except that Corporation A and Corporation X establish a joint venture that will be controlled by Corporation A to manufacture armored personnel carriers outside the United States, and Corporation X contributes assets constituting a U.S. business, including intellectual property and other intangible assets required to manufacture the armored personnel carriers, to the joint venture. Corporation X has contributed a U.S. business to the joint venture, and the establishment of the joint venture is a covered control transaction.

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

§ 800.303 Transactions that are covered investments.

Transactions that are covered investments include:

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

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

(c) A transaction that meets the requirements of § 800.211, irrespective of the fact that the critical technology produced, designed, tested, manufactured, fabricated, or developed by the TID U.S. business became controlled under section 1758 of the Export Control Reform Act of 2018 after February 13, 2020, unless any of the criteria set forth in § 800.104(b) are satisfied with respect to the transaction prior to the critical technology becoming controlled. (See the example in paragraph (d)(5) of this section.)

(d) 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, an entity in which Corporation A has no voting interests or any rights. Corporation B is a U.S. business that manufactures a critical technology. Corporation B is therefore an unaffiliated TID U.S. business. Pursuant to the terms of the investment, a designee of Corporation A will have the right to observe the meetings of the board of directors of Corporation B. The proposed transaction is a covered investment.

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

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

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

covered investment because the transaction involves both an acquisition of an equity interest in an unaffiliated TID U.S. business and a new right under § 800.211.

(5) *Example 5.* Corporation A, a foreign person that is not an excepted investor, has executed a binding written agreement establishing the material terms of a proposed non-controlling investment in Corporation B, an unaffiliated TID U.S. business. The proposed investment will afford Corporation A access to material nonpublic technical information in the possession of Corporation B. The only controlled technology produced, designed, tested, manufactured, fabricated, or developed by Corporation B became controlled under section 1758 of the Export Control Reform Act of 2018 after February 13, 2020, but prior to the date upon which the binding written agreement establishing the material terms of the investment was executed. The proposed transaction is a covered investment.

§ 800.304 Transactions that are not covered investments.

Transactions that are not covered investments include:

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

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

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

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

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

(f) Examples:

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

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

(3) *Example 3.* Corporation A, a foreign person who is an excepted investor, proposes to acquire a four percent, non-controlling equity interest in Corporation B, an unaffiliated TID U.S.

business. Pursuant to the terms of the investment, a designee of Corporation A will have the right to observe the meetings of the board of directors of Corporation B. Assuming no other relevant facts, the proposed transaction is not a covered investment.

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

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

§ 800.305 Incremental acquisitions.

(a) Any transaction in which a foreign person acquires an additional interest in, or for which a change in rights of the foreign person occurs with respect to, a U.S. business over which the

same foreign person, or any entity that it wholly owns directly or indirectly, previously acquired direct control as a result of a covered control transaction for which the Committee concluded all action under section 721 shall be deemed not to be a covered transaction. If, however, a foreign person that did not acquire control of the U.S. business in the prior transaction is a party to the later transaction, the later transaction may be a covered transaction.

(b) Examples:

(1) *Example 1*. Corporation A, a foreign person, directly acquires a 40 percent voting interest and important rights with respect to Corporation B, a U.S. business. The documentation pertaining to the transaction gives no indication that Corporation A's interest in Corporation B may increase at a later date. Corporation A and Corporation B file a voluntary notice of the transaction with the Committee. Following its review of the transaction, the Committee informs the parties that the notified transaction is a covered control transaction, and concludes action under section 721. Three years later, Corporation A acquires the remainder of the voting interest in Corporation B. Assuming no other relevant facts, because the Committee concluded all action with respect to Corporation A's earlier direct acquisition of control in the same U.S. business, and because no other foreign person is a party to this subsequent transaction, this subsequent transaction is not a covered transaction.

(2) *Example 2*. Corporation A, a foreign person that is not an excepted investor, makes a covered investment in Corporation B, an unaffiliated U.S. TID business, pursuant to which Corporation A acquires a five percent non-controlling equity interest in Corporation B that affords it access to material nonpublic technical information of Corporation B. Following its review of the transaction, the Committee informs the parties that the notified transaction is a

covered investment, and concludes action under section 721. Two years later, Corporation A, in a subsequent investment, acquires an additional five percent non-controlling equity interest in Corporation B, which affords Corporation A the right to appoint one board member of Corporation A. The subsequent investment is a covered investment.

(3) *Example 3*. Same facts as the example in paragraph (b)(1) of this section, except that instead of Corporation A acquiring the remainder of the voting interest in Corporation B three years after the initial acquisition, the remaining 60 percent voting interest is acquired by Corporation X. Corporation X is wholly owned by Corporation Y. Corporation Y also owns 100 percent of Corporation A. The subsequent transaction may be a covered transaction because, while Corporation A and Corporation X are both under common ownership of Corporation Y, Corporation A (the direct acquirer in the initial transaction) does not wholly own Corporation X.

§ 800.306 Lending transactions.

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

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

access, rights, or involvement specified in § 800.211(b) over a TID U.S. business, as a result of the default or other condition.

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

(b) Notwithstanding paragraph (a) of this section, a loan or a similar financing arrangement through which a foreign person acquires an interest in profits of a U.S. business, the right to appoint members of the board of directors of the U.S. business, or other comparable financial or governance rights characteristic of an equity investment but not of a typical loan may constitute a covered transaction.

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

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

(2) Does not have a lead role in the syndicate, and is subject to a provision in the loan or financing documents limiting its ability to:

(i) Control the debtor such that control for purposes of § 800.208 could not be acquired; and

(ii) Exercise any access, rights, or involvement specified in § 800.211(b).

(d) Examples:

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

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

(3) *Example 3.* Corporation A, a foreign bank, makes a loan to Corporation B, a U.S. business. The loan documentation provides Corporation A the right to appoint a majority of the

board of directors of Corporation B and the right to be paid dividends by Corporation B. These rights are characteristic of an equity interest but not of a typical loan. Also, as a result of the transaction, under the terms of the loan documentation, Corporation A has the power to determine, direct, or decide important matters affecting Corporation B. This loan is a covered control transaction.

(4) *Example 4.* Corporation A, a foreign bank that is not an excepted investor, makes a loan to Corporation B, an unaffiliated TID U.S. business. The loan documentation provides Corporation A the right to appoint one out of fifteen seats on Corporation B's board of directors and the right to be paid dividends by Corporation B. These rights are characteristic of an equity interest but not of a typical loan. However, assuming no other relevant facts under the terms of the loan documentation, Corporation A does not have the power to determine, direct, or decide important matters affecting Corporation B. This loan is a covered investment.

§ 800.307 Specific clarification for investment funds.

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

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

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

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

(b) For the purposes of paragraphs (a)(3) and (4) of this section, and except as provided in paragraph (c) of this section, a waiver of a potential conflict of interest, a waiver of an allocation limitation, or a similar activity, applicable to a transaction pursuant to the terms of an agreement

governing an investment fund shall not be considered to constitute control of investment decisions of the investment fund or decisions relating to entities in which the investment fund is invested.

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

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

§ 800.308 Timing rule for a contingent equity interest.

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

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

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

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

(b) When the Committee, applying paragraph (a) of this section, determines that the rights that the holder will acquire upon conversion or satisfaction of contingent condition will not be included in the Committee's analysis of whether a notified or submitted transaction is a covered transaction, the Committee will disregard the contingent equity interest for purposes of that transaction except to the extent that they convey immediate rights to the holder with respect to the entity that issued the interest.

(c) Examples:

(1) *Example 1*. Corporation A, a foreign person, notifies the Committee that it intends to buy common stock and debentures of Corporation X, a U.S. business. By their terms, the debentures are convertible into common stock only upon the occurrence of an event the timing of which is not in the control of Corporation A, and the number of common shares that would be

acquired upon conversion cannot now be determined. Assuming no other relevant facts, the Committee will disregard the debentures in the course of its covered transaction analysis at the time that Corporation A acquires the debentures. In the event that it determines that the acquisition of the common stock is not a covered transaction, the Committee will so inform the parties. Once the conversion of the instruments becomes imminent, it may be appropriate for the Committee to consider the rights that would result from the conversion and whether the conversion is a covered transaction. The conversion of those debentures into common stock could be a covered transaction, depending on what percentage of Corporation X's voting securities Corporation A would receive and what powers those securities would confer on Corporation A.

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

Subpart D—Declarations

§ 800.401 Mandatory declarations.

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

(b) A covered transaction that results in the acquisition of a substantial interest in a TID U.S. business by a foreign person in which the national or subnational governments of a single foreign state (other than an excepted foreign state) have a substantial interest.

(c) A covered transaction that is a covered investment in, or that could result in foreign control of, a TID U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies:

(1) Utilized in connection with the TID U.S. business's activity in one or more industries identified in appendix B to this part by reference to the North American Industry Classification System (NAICS); or

(2) Designed by the TID U.S. business specifically for use in one or more industries identified in appendix B to this part by reference to the NAICS, regardless of whether the critical technology also has application for other industries. (See the example in paragraph (j)(1) of this section.)

(d) The submission of a declaration shall not be required under paragraph (b) of this section with respect to:

(1) A covered transaction by an investment fund if:

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

(ii) The general partner, managing member, or equivalent is not a foreign person; and

(iii) The investment fund satisfies, with respect to any foreign person with membership as a limited partner on an advisory board or a committee of the fund, the criteria specified in § 800.307(a)(3) and (4) (See the examples in paragraphs (j)(2) and (3) of this section); or

(2) A covered control transaction involving an air carrier, as defined in 49 U.S.C. 40102(a)(2), that holds a certificate issued under 49 U.S.C. 41102.

(e) The submission of a declaration shall not be required under paragraph (c) of this section with respect to:

(1) A covered control transaction by an excepted investor;

(2) A covered transaction in which the foreign person's indirect investment in the TID U.S. business is held solely and directly via an entity that as of the completion date is:

(i) Subject to a security control agreement, special security agreement, voting trust agreement, or proxy agreement approved by a cognizant security agency to offset foreign ownership, control, or influence pursuant to the National Industrial Security Program regulations (32 CFR part 2004); and

(ii) Operating under a valid facility security clearance pursuant to the National Industrial Security Program regulations (32 CFR part 2004);

(3) A covered transaction by an investment fund if:

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

(ii) The general partner, managing member, or equivalent is:

(A) Ultimately controlled exclusively by U.S. nationals; or

(B) Not a foreign person; and

(iii) The investment fund satisfies, with respect to any foreign person with membership as a limited partner on an advisory board or a committee of the fund, the criteria specified in § 800.307(a)(3) and (4) (See the examples in paragraphs (j)(2) and (3) of this section);

(4) An investment that is a covered investment solely due to the application of § 800.219(d); or

(5) A covered control transaction involving an air carrier, as defined in 49 U.S.C. 40102(a)(2), that holds a certificate issued under 49 U.S.C. 41102.

(6) A covered transaction that is a covered investment in, or that could result in foreign control of, a U.S. business that is a TID U.S. business solely because such TID U.S. business produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies that is-eligible for export, reexport, or transfer (in country) pursuant to License Exception ENC of the EAR (15 CFR 740.17);

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

(g) Parties shall submit to the Committee the declaration required under paragraph (a) of this section, or a written notice under paragraph (f) of this section, no later than:

(1) February 13, 2020, or promptly thereafter, if the completion date of the transaction is between February 13, 2020 and March 14, 2020; or

(2) Thirty days before the completion date of the transaction, if the completion date of the transaction is after March 14, 2020.

(h) Notwithstanding paragraph (g) of this section, the parties to a covered transaction may complete a transaction subject to a mandatory declaration or notice under this section at any time after having been informed in writing by the Committee that the Committee has concluded all action under section 721 or that the Committee is not able to complete action under § 800.407(a)(2).

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

(j) Examples:

(1) *Example 1*. Corporation A, a foreign person that is not an excepted investor and in which no foreign government has a substantial interest, proposes to acquire a four percent, non-controlling equity interest in Corporation B, an unaffiliated TID U.S. business that manufactures a critical technology. Under 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 manufactures the critical technology for commercial off-the-shelf use by businesses in various industries, including some identified in appendix B to this part. Assuming no other relevant facts, the proposed transaction is a covered investment, but is not subject to a mandatory declaration or notice under § 800.401 because Corporation B does not produce, design, test, manufacture, fabricate, or develop the critical technology specifically for use in one or more industries identified in appendix B to this part.

(2) *Example 2.* Investment Fund A, a foreign person that is not an excepted investor, acquires a 10 percent equity interest in Corporation A, an unaffiliated TID U.S. business, and the right to appoint one member of Corporation A's board of directors. Corporation A is manufacturing critical technologies utilized in Corporation A's activity in one or more industries identified in appendix B to this part. Investment Fund A satisfies the requirements under paragraph (e)(3) of this section. Investment Fund A's investment in Corporation A is a covered investment, but the transaction is not subject to the mandatory declaration requirement.

(3) *Example 3.* Same facts as the example in paragraph (j)(2) of this section, except that in connection with Investment Fund A's transaction, Limited Partner X, a limited partner of Investment Fund A and a foreign national that is not an excepted investor, receives access to the material non-public technical information of Corporation A. Limited Partner X's indirect investment in Corporation A is a covered investment. While Investment Fund A's direct investment is not subject to a mandatory declaration, Limited Partner X's indirect investment in Corporation A is subject to a mandatory declaration.

§ 800.402 Voluntary declarations.

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

§ 800.403 Procedures for declarations.

(a) A party or parties submitting a declaration of a transaction under § 800.401 or § 800.402 shall submit electronically the information set out in § 800.404, including the certifications

required thereunder, to the Staff Chairperson in accordance with the submission instructions on the Committee's section of the Department of the Treasury website.

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

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

(e) Parties to a transaction that have filed with the Committee a written notice regarding a transaction under § 800.501 or § 802.501 or a declaration under § 802.401 may not submit to the Committee a declaration regarding the same transaction or a substantially similar transaction without the written approval of the Staff Chairperson.

§ 800.404 Contents of declarations.

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

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

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

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

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

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

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

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

(iv) Whether the U.S. business has multiple classes of ownership, and if so, the pre- and post- transaction share ownership of the foreign person(s) in the U.S. business broken out by class;

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

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

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

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

(3) The following:

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

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

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

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

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

(iii) Any involvement, other than through voting of shares, in substantive decisionmaking of the U.S. business regarding covered investment critical infrastructure, critical technologies, or sensitive personal data as set forth in § 800.211(b)(3), and if any, a statement as to the involvement in such substantive decisionmaking; or

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

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

(i) Website address;

(ii) Principal place of business;

(iii) Place of incorporation or organization; and

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

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

Defense, and any applicable Dun and Bradstreet identification (DUNS) numbers assigned to the U.S. business, and an explanation of how the entity is engaged in interstate commerce in the United States, where applicable.

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

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

(9) A statement as to whether the U.S. business directly or indirectly maintains or collects sensitive personal data of U.S. citizens, directly or indirectly has collected or maintained sensitive personal data in the 12 months prior to any of the applicable events specified in § 800.241(a)(1)(i)(B), or has a demonstrated business objective to collect such data in the future.

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

(11) A statement as to whether the U.S. business has any contracts (including any subcontracts, if known) that are currently in effect or were in effect within the past five years involving information, technology, or data that is classified under Executive Order 12958, as amended.

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

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

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

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

(16) The address of the foreign person and its ultimate parent.

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

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

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

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

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

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

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

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

(21) A statement (including relevant jurisdiction and criminal case law number or legal citation) as to whether the U.S. business, the foreign person, any parent of the foreign person, or any person of which the foreign person is a parent has been convicted in the last 10 years of a crime in any jurisdiction.

(22) If applicable, a description (which may group similar items into general product categories) of any critical technology that the U.S. business produces, designs, tests, manufactures, fabricates, or develops, and a list of any relevant Export Control Classification Numbers (ECCNs) under the EAR and the USML categories under the ITAR, and, if applicable,

identify whether there 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.

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

(24) If applicable:

(i) The category or categories of data, as specified at § 800.241, that the U.S. business directly or indirectly maintains or collects;

(ii) For each applicable category of data specified in § 800.241, individually and in the aggregate, the approximate number of total unique persons from whom:

(A) The data is currently maintained, and

(B) The data has been maintained or collected at any point during the 12 months prior to any of the applicable events specified in § 800.241(a)(1)(i)(B);

(iii) Whether the U.S. business has a demonstrated business objective to maintain or collect data described in § 800.241(a)(1)(ii) of greater than one million individuals and such data is an integrated part of the U.S. business's primary products or services.

(iv) Whether the U.S. business targets or tailors products or services to any U.S. executive branch agency or military department with intelligence, national security, or homeland security responsibilities, or to personnel or contractors thereof.

(d) Each party submitting a declaration shall provide a certification of the information contained in the declaration consistent with § 800.204. A sample certification may be found on the Committee's section of the Department of the Treasury website.

(e) A party that offers a stipulation under paragraph (c)(3) of this section acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered investment, a covered control transaction, or a foreign government-controlled transaction for the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered transaction.

§ 800.405 Beginning of 30-day assessment period.

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

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

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

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

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

(d) If the Committee notifies the parties to a transaction that have submitted a declaration under § 800.403 that the Committee intends to conclude all action under section 721 with respect to that transaction, each party that has submitted additional information subsequent to the original declaration shall file a certification as described in § 800.204. A sample certification may be found on the Committee's section of the Department of the Treasury website.

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

§ 800.406 Rejection, disposition, or withdrawal of declarations.

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

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

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

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

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

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

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

(c) Parties to a transaction that have submitted a declaration under § 800.403 may request in writing, at any time prior to the Committee taking action under § 800.407, that such declaration be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made and state whether the transaction that is the subject of the

declaration is being fully and permanently abandoned. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

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

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

NOTE 1 TO § 800.406: See § 800.403(e) regarding the prohibition on submitting a declaration regarding the same transaction or a substantially similar transaction for which a written notice has been filed without the approval of the Staff Chairperson.

§ 800.407 Committee actions.

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

(1) If the Committee has reason to believe that the transaction may raise national security considerations, request that the parties to the transaction file a written notice under subpart E;

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

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

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

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

Subpart E—Notices

§ 800.501 Procedures for notices.

(a) Except as otherwise prohibited under paragraph (j) of this section, a party or parties to a proposed or completed transaction may file a voluntary notice of the transaction with the Committee. Voluntary notice to the Committee is filed by sending an electronic copy of the notice that includes, in English, the information set out in § 800.502, including the certification required under paragraph (l) of that section. For electronic submission instructions, see the Committee's section of the Department of the Treasury website.

(b) If the Committee determines that a transaction for which no voluntary notice has been filed under this part, and with respect to which the Committee has not informed the parties in writing that the Committee has concluded all action under section 721, may be a covered transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction to provide to the Committee the information necessary to determine whether the transaction is a covered transaction, and if the Committee determines that the transaction is a covered transaction, to file a notice of such covered transaction under paragraph (a) of this section.

(c) With respect to any transaction:

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

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

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

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

(ii) The transaction is a covered transaction and:

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

(B) Either:

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

material information, including material documents, from information submitted to the Committee; or

(*2*) A party to or the entity resulting from consummation of such transaction materially breaches (or, if the review or investigation of such transaction was initiated under section 721 before August 13, 2018, intentionally materially breaches) a mitigation agreement or condition described in section 721(l)(3)(A), such breach is certified to the Committee by the lead department or agency monitoring and enforcing such agreement or condition as a material breach (or, if the review or investigation of such transaction was initiated under section 721 before August 13, 2018, an intentional material breach), and the Committee determines that there are no other adequate and appropriate remedies or enforcement tools available to address such breach.

(2)(i) That is an investment where a foreign person is not an excepted investor due to the application of § 800.219(d), any member of the Committee, or his or her designee at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding such investment if:

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

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

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

(ii) No notice filed under this paragraph (c)(2) shall be made with respect to a transaction more than one year after the completion date of the transaction, unless the Chairperson of the Committee determines, in consultation with other members of the Committee, that because the foreign person no longer meets all the criteria set forth in § 800.219(a)(1) or (2), (a)(3)(i) through (iii), or (c)(1)(i) through (iii), the transaction may threaten to impair the national security of the United States, and in no event shall an agency notice under this paragraph be made with respect to such a transaction more than three years after the completion date of the transaction.

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

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

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

(g) Parties to a transaction are encouraged to consult with the Committee in advance of filing a notice and, in appropriate cases, to file with the Committee a draft notice or other appropriate documents to aid the Committee's understanding of the transaction and to provide an opportunity for the Committee to request additional information to be included in the notice. Any

such pre-notice consultation should take place, or any draft notice should be provided, at least five business days before the filing of a voluntary notice. All information and documentary material made available to the Committee under this paragraph shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 800.802.

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

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

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

§ 800.502 Contents of voluntary notices.

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

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

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

(1) The following information regarding the transaction in question:

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

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

(iii) The name, United States address (if any), website address (if any), nationality (for individuals) or place of incorporation or other legal organization (for entities), and address of the principal place of business of each foreign person that is a party to the transaction;

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

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

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

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

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

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

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

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

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

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

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

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

(B) Membership, observer rights, or nomination rights as set forth in § 800.211(b)(2), and if so, a description of such rights and a statement as to the composition of the board or other body both before and after the completion date of the transaction, as well as a copy of the document(s) setting forth the post-acquisition governance provisions (*e.g.*, quorum requirements, special rights) for the board of directors or other body;

(C) Any involvement, other than through voting of shares, in substantive decisionmaking of the U.S. business regarding covered investment critical infrastructure, critical technologies, or sensitive personal data as set forth in § 800.211(b)(3), and if so, a brief explanation of the nature and extent of involvement;

(2) With respect to a transaction structured as an acquisition of assets of a U.S. business, a detailed description of the assets of the U.S. business being acquired, including the approximate value of those assets in U.S. dollars;

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

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

an explanation of how the entity is engaged in interstate commerce in the United States, where applicable;

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

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

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

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

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

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

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

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

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

(vii) For the prior three years—

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

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

(viii) A description and copy of the cyber security plan, if any, that will be used to protect against cyber attacks on the operation, design, and development of the U.S. business's services,

networks, systems, data storage (including the collection or maintenance of sensitive personal data), and facilities;

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

(x)(A) A description of whether the U.S. business produces, designs, tests, manufactures, fabricates, or develops one or more:

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

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

(*3*) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 CFR part 810;

(*4*) Nuclear facilities, equipment, and material covered by 10 CFR part 110;

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

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

(B) A description of whether the U.S. business otherwise trades in any item described in paragraphs (c)(3)(x)(A)(*1*) through (*6*) of this section, to the extent not addressed in the voluntary notice in response to paragraph (c)(3)(x)(A) of this section; and

(C) For any item described in paragraphs (c)(3)(x)(A)(*1*) through (*6*) of this section for which there is no completed Commodity Classification Automated Tracking System or Commodity Jurisdiction determination, the voluntary notice shall include a brief statement as to how the parties evaluated the item (*e.g.*, self-classification by individuals with technical knowledge at the U.S. business, classification information provided by the manufacturer, classification provided by outside counsel or third party consultant, *etc.*);

(xi) A description of whether the U.S. business directly or indirectly maintains or collects sensitive personal data of U.S. citizens, directly or indirectly has collected or maintained sensitive personal data in the 12 months prior to any of the applicable events specified in § 800.241(a)(1)(i)(B), or has a demonstrated business objective to maintain or collect such data in the future including:

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

(B) For each applicable category of data specified in § 800.241, individually and in the aggregate, the approximate number of total unique persons from whom:

(*1*) The data is currently maintained; and

(*2*) The data has been maintained or collected at any point during the 12 months prior to any of the applicable events specified in § 800.241(a)(1)(i)(B);

(C) Whether the U.S. business has a demonstrated business objective to maintain or collect data described in § 800.241(a)(1)(ii) of greater than one million individuals and such data is an integrated part of the U.S. business's primary products or services, and if so, please provide a brief explanation;

(D) A description of how the U.S. business targets or tailors its products or services to any U.S. executive branch agency or military department with intelligence, national security, or homeland security responsibilities, or personnel or contractors thereof;

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

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

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

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

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

(i) Possesses any licenses, permits, or other authorizations other than those under the regulatory authorities listed in this paragraph (c)(4) that have been granted by an agency of the U.S. Government (if applicable, identification of the relevant licenses shall be provided); or

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

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

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

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

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

(B) Changing product quality;

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

(D) Consolidating or selling product lines or technology;

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

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

(iii) Whether the foreign person is controlled by or acting on behalf of a foreign government, including as an agent or representative, or in some similar capacity, and if so, the identity of the foreign government;

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

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

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

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

(D) Has any other affirmative or negative rights or powers that could be relevant to the Committee's determination of whether the notified transaction is a foreign government-controlled transaction, and if there are any such rights or powers, their source (for example, a

"golden share," shareholders agreement, contract, statute, or regulation) and the mechanics of their operation;

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

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

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

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

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

(*2*) All other names and aliases used;

(*3*) Business address;

(*4*) Country and city of residence;

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

(*6*) Place of birth;

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

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

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

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

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

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

(B) Business address;

(C) Business phone number, website address, and e-mail address; and

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

(d)(1) The voluntary notice shall list any filings with, or reports to, agencies of the U.S. Government that have been or will be made with respect to the transaction prior to its completion, indicating the agencies concerned, the nature of the filing or report, the date on which it was filed or the estimated date by which it will be filed, and a relevant contact point and/or telephone number within the agency, if known.

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

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

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

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

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

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

(j) Persons filing a voluntary notice shall include:

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

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

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

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

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

(2) The opinion of the person regarding whether:

(i) It is a foreign person;

(ii) It is controlled by a foreign government;

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

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

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

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

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

(l) Each party filing a voluntary notice shall provide a certification of the notice consistent with § 800.204. A sample certification may be found on the Committee's section of the Department of the Treasury website.

(m) At the conclusion of a review or investigation, each party that has filed additional information subsequent to the original notice shall file a final certification. (See § 800.204.) A sample certification may be found at the Committee's section of the Department of the Treasury website.

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

(o) A party filing a voluntary notice may stipulate that the transaction is a covered transaction and, if the party stipulates that the transaction is a covered transaction, that the transaction is a foreign government-controlled transaction. A stipulation offered by any party under this section must be accompanied by a detailed description of the basis for the stipulation. The required description of the basis shall include, but is not limited to, discussion of all relevant information responsive to paragraphs (c)(6)(iii) through (v) of this section. A party that offers such a stipulation acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered transaction, a foreign government-controlled transaction, and/or subject to mandatory declaration or notice for the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor

does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered transaction.

§ 800.503 Beginning of 45-day review period.

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

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

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

(b) A 45-day period for review of a transaction shall commence on the date on which the voluntary notice has been accepted, agency notice has been received by the Staff Chairperson, or the Chairperson of the Committee has requested a notice under § 800.501(b). Such review shall end no later than the forty-fifth day after it has commenced, or if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

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

(1) The acceptance of the notice;

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

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

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

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

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

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

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

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

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

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

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

of the request, or within a longer time frame if the parties so request in writing and the Staff Chairperson grants that request in writing; or

(4) Reject any voluntary notice before the conclusion of a review or investigation, and so inform the parties promptly in writing, if one of the parties submitting the voluntary notice has not submitted the final certification required by § 800.502(m).

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

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

(d) Examples:

(1) *Example 1.* The Staff Chairperson receives a joint notice from Corporation A, a foreign person, and Corporation X, a company that is owned and controlled by U.S. nationals, with respect to Corporation A's intent to purchase all of the shares of Corporation X. The joint notice does not contain any information described under § 800.502 concerning classified materials and

products or services supplied to the U.S. military services. The Staff Chairperson may reject the notice or defer the start of the review period until the parties have supplied the omitted information.

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

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

(4) *Example 4.* The Staff Chairperson receives a voluntary notice involving the acquisition by Company A, a foreign person, of the entire interest in Company X, a U.S. business. The notice mentions the involvement of a second foreign person in the transaction, Company B, but states that Company B is merely a passive investor in the transaction. During the course of the review, the parties provide information that clarifies that Company B has the right to appoint two members of Company X's board of directors. This information contradicts the material assertion

in the notice that Company B is a passive investor. The Committee may reject this notice without concluding review under section 721.

§ 800.505 Determination of whether to undertake an investigation.

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

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

(2) The lead agency recommends, and the Committee concurs, that an investigation be undertaken.

(b) The Committee shall also undertake, after a review of a covered transaction under § 800.503, an investigation to determine the effects on national security of any covered transaction that:

(1) Is a foreign government-controlled transaction; or

(2) Would result in control by a foreign person of critical infrastructure of or within the United States, if the Committee determines that the transaction could impair national security and such impairment has not been mitigated.

(c) The Committee shall undertake an investigation as described in paragraph (b) of this section unless the Chairperson of the Committee (or the Deputy Secretary of the Treasury) and the head of any lead agency (or his or her delegee at the deputy level or equivalent) designated by the Chairperson determine on the basis of the review that the covered transaction will not impair the national security of the United States.

§ 800.506 Determination not to undertake an investigation.

If the Committee determines, during the review period described in § 800.503, not to undertake an investigation of a notified covered transaction, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly inform the parties to a covered transaction in writing of a determination of the Committee not to undertake an investigation and to conclude action under section 721.

§ 800.507 Commencement of investigation.

(a) If it is determined that an investigation should be undertaken, such investigation shall commence no later than the end of the review period described in § 800.503.

(b) An official of the Department of the Treasury shall promptly inform the parties to a covered transaction in writing of the commencement of an investigation.

§ 800.508 Completion or termination of investigation and report to the President.

(a) Subject to paragraph (e) of this section, the Committee shall complete an investigation no later than the forty-fifth day after the date the investigation commences, or, if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(b) Upon completion or termination of any investigation, the Committee shall send a report to the President requesting the President's decision if:

(1) The Committee recommends that the President suspend or prohibit the transaction;

(2) The Committee is unable to reach a decision on whether to recommend that the President suspend or prohibit the transaction; or

(3) The Committee requests that the President make a determination with regard to the transaction.

(c) In circumstances when the Committee sends a report to the President requesting the President's decision with respect to a covered transaction, such report shall include information relevant to sections 721(d)(4)(A) and (B), and shall present the Committee's recommendation. If the Committee is unable to reach a decision to present a single recommendation to the President, the Chairperson of the Committee shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for decision.

(d) Upon completion or termination of an investigation, if the Committee determines to conclude all deliberative action under section 721 with regard to a notified covered transaction without sending a report to the President, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly advise the parties to such a transaction in writing of a determination to conclude action.

(e) In extraordinary circumstances, the Chairperson may, upon a written request signed by the head of a lead agency, extend an investigation for one 15-day period. A request to extend an

investigation must describe, with particularity, the extraordinary circumstances that warrant the Chairperson extending the investigation. The authority of the head of a lead agency to request the extension of an investigation may not be delegated to any person other than the deputy head (or equivalent thereof) of the lead agency. If the Chairperson extends an investigation under this paragraph with respect to a covered transaction, the Committee shall promptly notify the parties to the transaction of the extension.

(f) For purposes of paragraph (e) of this section, the term *extraordinary circumstances* means circumstances for which extending an investigation is necessary and the appropriate course of action, in the Chairperson's discretion, due to a force majeure event or to protect the national security of the United States.

§ 800.509 Withdrawal of notices.

(a) A party (or parties) to a transaction that has filed notice under § 800.501(a) may request in writing, at any time prior to conclusion of all action under section 721, that such notice be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made. Such requests will ordinarily be granted, unless otherwise determined by the Committee. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(b) Any request to withdraw an agency notice by the agency that filed it shall be in writing and shall be effective only upon approval by the Committee. An official of the Department of the Treasury shall advise the parties to the transaction in writing of the Committee's decision to approve the withdrawal request within two business days of the Committee's decision.

(c) In any case where a request to withdraw a notice is granted under paragraph (a) of this section:

(1) The Staff Chairperson, in consultation with the Committee, shall establish, as appropriate:

(i) A process for tracking actions that may be taken by any party to the covered transaction before a notice is refiled under § 800.501; and

(ii) Interim protections to address specific national security concerns with the covered transaction identified during the review or investigation of the covered transaction.

(2) The Staff Chairperson shall specify a time frame, as appropriate, for the parties to resubmit a notice and shall advise the parties of that time frame in writing.

(d) A notice of a transaction that is submitted under paragraph (c)(2) of this section shall be deemed a new notice for purposes of the regulations in this part, including § 800.701.

Subpart F—Committee Procedures

§ 800.601 General.

(a) In any assessment, review, or investigation of a covered transaction, the Committee should consider the factors specified in section 721(f) and, as appropriate, require the parties to provide to the Committee the information necessary to consider such factors. The Committee's assessment, review, or investigation (if necessary) shall examine, as appropriate, whether:

(1) The transaction is a covered transaction;

(2) There is credible evidence to support a belief that any foreign person party to a covered transaction might take action that threatens to impair the national security of the United States; and

(3) Provisions of law, other than section 721 and the International Emergency Economic Powers Act, provide adequate and appropriate authority to protect the national security of the United States.

(b) During an assessment, review, or investigation, the Staff Chairperson may invite the parties to a notified transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction. During an investigation, a party to the transaction under investigation may request a meeting with the Committee staff; such a request ordinarily will be granted.

(c) The Staff Chairperson shall be the point of contact for receiving material filed with the Committee, including notices and declarations.

(d) Where more than one lead agency is designated, communications on material matters between a party to the transaction and a lead agency shall include all lead agencies designated with regard to those matters.

(e) The parties' description of a transaction in a declaration or notice does not limit the ability of the Committee to, as appropriate, assess, review, or investigate, or exercise any other authorities available under section 721 with respect to any covered transaction that the Committee identifies as having been notified to the Committee based upon the facts set forth in

the declaration or notice, any additional information provided to the Committee subsequent to the original declaration or notice, or any other information available to the Committee.

§ 800.602 Role of the Secretary of Labor.

In response to a request from the Chairperson of the Committee, the Secretary of Labor shall identify for the Committee any risk mitigation provisions proposed to or by the Committee that would violate U.S. employment laws or require a party to violate U.S. employment laws. The Secretary of Labor shall serve no policy role on the Committee.

§ 800.603 Materiality.

The Committee generally will not consider as material minor inaccuracies, omissions, or changes relating to financial or commercial factors not having a bearing on national security.

§ 800.604 Tolling of deadlines during lapse in appropriations.

Any deadline or time limitation under subpart D or E imposed on the Committee shall be tolled during a lapse in appropriations.

Subpart G—Finality of Action

§ 800.701 Finality of actions under section 721.

(a) All authority available to the President or the Committee under section 721(d), including divestment authority, shall remain available at the discretion of the President with respect to:

(1) Covered control transactions proposed or pending on or after August 23, 1988;

(2) Transactions that, between November 10, 2018, and February 12, 2020, fell within the scope of part 801 of this title; and

(3) Covered investments proposed or pending after February 13, 2020.

(b) Subject to § 800.501(c)(1)(ii), such authority shall not be exercised if:

(1) Subject to § 800.219(d), the Committee, through its Staff Chairperson, has advised a party (or the parties) in writing that a particular transaction with respect to which a voluntary notice or a declaration has been filed is not a covered transaction;

(2) The parties to the transaction have been advised in writing under § 800.407(a)(4), § 800.506, or § 800.508(d) that the Committee has concluded all action under section 721 with respect to the covered transaction; or

(3) The President has previously announced, under section 721(d), his or her decision not to exercise his or her authority under section 721 with respect to the covered transaction.

(c) Divestment or other relief under section 721 shall not be available with respect to transactions that were completed prior to August 23, 1988.

Subpart H—Provision and Handling of Information

§ 800.801 Obligation of parties to provide information.

(a) Parties to a transaction that is notified or declared under subparts D or E, or a transaction for which no notice or declaration has been submitted and for which the Staff Chairperson has requested information to assess whether the transaction is a covered transaction, shall provide

information to the Staff Chairperson that will enable the Committee to conduct a full assessment, review, and/or investigation of the transaction. Parties to a transaction that have filed information with the Committee shall promptly advise the Staff Chairperson of any material changes to such information. If deemed necessary by the Committee, information may be obtained from parties to a transaction or other persons through subpoena or otherwise, under the Defense Production Act Reauthorization of 2003, as amended (50 U.S.C. 4555(a)).

(b) Documentary materials or information required or requested to be filed with the Committee under this part shall be submitted in English. Supplementary materials, such as annual reports, written in a foreign language shall be submitted in certified English translation.

(c) Any information filed with the Committee in connection with any action for which a report is required under section 721(l)(6)(B) with respect to the implementation of a mitigation agreement or condition described in section 721(l)(3)(A) shall be accompanied by a certification that complies with the requirements of section 721(n) and § 800.204. A sample certification may be found at the Committee's section of the Department of the Treasury website.

§ 800.802 Confidentiality.

(a) Except as provided in paragraph (b) of this section, any information or documentary material submitted or filed with the Committee under this part, including information or documentary material filed under § 800.501(g), shall be exempt from disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552 *et seq.*), and no such information or documentary material may be made public.

(b) Paragraph (a) of this section shall not prohibit disclosure of the following:

(1) Information relevant to any administrative or judicial action or proceeding;

(2) Information to Congress or to any duly authorized committee or subcommittee of Congress;

(3) Information important to the national security analysis or actions of the Committee to any domestic governmental entity, or to any foreign governmental entity of a United States ally or partner, under the exclusive direction and authorization of the Chairperson, only to the extent necessary for national security purposes, and subject to appropriate confidentiality and classification requirements; or

(4) Information that the parties have consented to be disclosed to third parties.

(c) This section shall continue to apply with respect to information and documentary material submitted or filed with the Committee in any case where:

(1) Action has concluded under section 721 concerning a notified transaction;

(2) A request to withdraw a notice or a declaration is granted under § 800.509 or § 800.406(c), respectively, or where a notice or a declaration has been rejected under § 800.504(a) or § 800.406(a), respectively;

(3) The Committee determines that a notified or declared transaction is not a covered transaction; or

(4) Such information or documentary material was filed under subpart D and the parties do not subsequently file a notice under subpart E.

(d) Nothing in paragraph (a) of this section shall be interpreted to prohibit the public disclosure by a party of documentary material or information that it has submitted or filed with the Committee. Any such documentary material or information so disclosed may subsequently be reflected in the public statements of the Chairperson, who is authorized to communicate with the public and the Congress on behalf of the Committee, or of the Chairperson's designee.

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

Subpart I—Penalties and Damages

§ 800.901 Penalties and damages.

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

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

(c) Any person who, after December 22, 2008, violates, intentionally or through gross negligence, a material provision of a mitigation agreement entered into before October 11, 2018, with, a material condition imposed before October 11, 2018, by, or an order issued before

October 11, 2018, by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed $250,000 per violation or the value of the transaction, whichever is greater. Any person who violates a material provision of a mitigation agreement entered into on or after October 11, 2018, with, a material condition imposed on or after October 11, 2018, by, or an order issued on or after October 11, 2018, by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed $250,000 per violation or the value of the transaction, whichever is greater. For clarification, under the previous two sentences, whichever penalty amount is greater may be imposed per violation, and the amount of the penalty imposed for a violation shall be based on the nature of the violation.

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

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

service. For the purposes of this section, the term *subject person* means the person or persons who may be liable to the United States for a civil penalty.

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

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

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

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

(j) The imposition of a civil monetary penalty or damages under these regulations creates a debt due to the U.S. Government. The Department of the Treasury may take action to collect the penalty or damages assessed if not paid within the time prescribed by the Committee and notified

to the applicable party or parties. In addition or instead, the matter may be referred to the Department of Justice for appropriate action to recover the penalty or damages.

§ 800.902 Effect of lack of compliance.

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

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

(b) Require that the party or parties submit a written notice or declaration under clause (i) of section 721(b)(1)(C) with respect to a covered transaction initiated after the date of the determination of noncompliance and before the date that is five years after the date of the determination to the Committee to initiate a review of the transaction under section 721(b); or

(c) Seek injunctive relief.

Subpart J—Foreign National Security Investment Review Regimes

§ 800.1001 Determinations.

(a) The Committee may determine at any time that a foreign state has established and is effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

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

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

§ 800.1002 Effect of determinations.

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

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

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

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

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

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

(i) The parties to the transaction have executed a binding written agreement, or other binding document, establishing the material terms of the transaction that is ultimately consummated;

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

(iii) A shareholder has solicited proxies in connection with an election of the board of directors of a U.S. business or has requested the conversion of convertible voting securities.

Appendix A to Part 800—Covered Investment Critical Infrastructure and Functions Related to Covered Investment Critical Infrastructure

Column 1 – Covered investment critical infrastructure	**Column 2 – Functions related to covered investment critical infrastructure**
(i) Any: (a) internet protocol network that has access to every other internet protocol network solely via settlement-free peering; or (b) telecommunications service or information service, each as defined in section 3(a)(2) of the Communications Act of 1934, as amended (47 U.S.C. 153), or fiber optic cable, in each case that directly serves any military installation identified in § 802.227.	(i) Own or operate any: (a) internet protocol network that has access to every other internet protocol network solely via settlement-free peering; or (b) telecommunications service or information service, each as defined in section 3(a)(2) of the Communications Act of 1934, as amended (47 U.S.C. 153), or fiber optic cable, in each case that directly serves any military installation identified in § 802.227.

(ii) Any internet exchange point that supports public peering.	(ii) Own or operate any internet exchange point that supports public peering.
(iii) Any submarine cable system requiring a license under section 1 of the Cable Landing License Act of 1921 (47 U.S.C. 34), which includes any associated submarine cable, submarine cable landing facilities, and any facility that performs network management, monitoring, maintenance, or other operational functions for such submarine cable system.	(iii) Own or operate any submarine cable system requiring a license under section 1 of the Cable Landing License Act of 1921 (47 U.S.C. 34), which includes any associated submarine cable, submarine cable landing facilities, and any facility that performs network management, monitoring, maintenance, or other operational functions for such submarine cable system.
(iv) Any submarine cable, landing facility, or facility that performs network management, monitoring, maintenance, or other operational function that is part of a submarine cable system described above in item (iii) of column 1 of this appendix A.	(iv) Supply or service any submarine cable, landing facility, or facility that performs network management, monitoring, maintenance, or other operational function that is part of a submarine cable system described above in item (iii) of column 1 of this appendix A.
(v) Any data center that is collocated at a submarine cable landing point, landing station, or termination station.	(v) Own or operate any data center that is collocated at a submarine cable landing point, landing station, or termination station.
(vi) Any satellite or satellite system providing services directly to the Department of Defense or any component thereof.	(vi) Own or operate any satellite or satellite system providing services directly to the Department of Defense or any component thereof.
(vii) Any industrial resource other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996, as amended (41 U.S.C. 104), that is manufactured or operated for a Major Defense Acquisition Program, as defined in section 7(b)(2)(A) of the Defense Technical Corrections Act of 1987, as amended (10 U.S.C. 2430), or a Major System, as defined in 10 U.S.C. 2302d, as amended, and: (a) the U.S. business is a “single source,” “sole source,” or “strategic multisource,” to the extent the U.S. business has been notified of such status; or (b) the industrial resource: (1) requires 12 months or more to manufacture; or	(vii) As applicable, manufacture any industrial resource other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996, as amended (41 U.S.C. 104), or operate any industrial resource that is a facility, in each case, for a Major Defense Acquisition Program, as defined in section 7(b)(2)(A) of the Defense Technical Corrections Act of 1987, as amended (10 U.S.C. 2430), or a Major System, as defined in 10 U.S.C. 2302d, as amended, and: (a) the U.S. business is a “single source,” “sole source,” or “strategic multisource,” to the extent the U.S. business has been notified of such status; or (b) the industrial resource:

(2) is a "long lead" item, to the extent the U.S. business has been notified that such industrial resource is a "long lead" item.	(1) requires 12 months or more to manufacture; or (2) is a "long lead" item, to the extent the U.S. business has been notified that such industrial resource is a "long lead" item.
(viii) Any industrial resource, other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996, as amended (41 U.S.C. 104), that is manufactured under a "DX" priority rated contract or order under the Defense Priorities and Allocations System regulation (15 CFR part 700, as amended) in the preceding 24 months.	(viii) Manufacture any industrial resource, other than commercially available off-the-shelf items, as defined in section 4203(a) of the National Defense Authorization Act for Fiscal Year 1996, as amended (41 U.S.C. 104), under a "DX" priority rated contract or order under the Defense Priorities and Allocations System regulation (15 CFR part 700, as amended) within 24 months of the transaction in question.
(ix) Any facility in the United States that manufactures: (a) specialty metal, as defined in section 842(a)(1)(i) of the John Warner National Defense Authorization Act for Fiscal Year 2007, as amended (10 U.S.C. 2533b); (b) covered material, as defined in 10 U.S.C. 2533c, as amended; (c) chemical weapons antidote contained in automatic injectors, as described in 10 U.S.C. 2534, as amended; or (d) carbon, alloy, and armor steel plate that is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.	(ix) Manufacture any of the following in the United States: (a) specialty metal, as defined in section 842(a)(1)(i) of the John Warner National Defense Authorization Act for Fiscal Year 2007, as amended (10 U.S.C. 2533b); (b) covered material, as defined in 10 U.S.C. 2533c, as amended; (c) chemical weapons antidote contained in automatic injectors, as described in 10 U.S.C. 2534, as amended; or (d) carbon, alloy, and armor steel plate that is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.
(x) Any industrial resource other than commercially available off-the-shelf items, as defined in 41 U.S.C. 104, as amended, that has been funded, in whole or in part, by any of the following sources in the last 60 months: (a) Defense Production Act of 1950 Title III program, as amended (50 U.S.C 4501 *et seq.*); (b) Industrial Base Fund under section	(x) As applicable, manufacture any industrial resource other than commercially available off-the-shelf items, as defined in 41 U.S.C. 104, as amended, or operate any industrial resource that is a facility, in each case, that has been funded, in whole or in part, by any of the following sources within 60 months of the transaction in question: (a) Defense Production Act of 1950 Title III

896(b)(1) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as amended (10 U.S.C. 2508); (c) Rapid Innovation Fund under section 1073 of Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as amended (10 U.S.C. 2359a); (d) Manufacturing Technology Program under 10 U.S.C. 2521, as amended; (e) Defense Logistics Agency Warstopper Program, as described in DLA Instruction 1212, Industrial Capabilities Program – Manage the WarStopper Program; or (f) Defense Logistics Agency Surge and Sustainment contract, as described in Subpart 17.93 of the Defense Logistics Acquisition Directive.	program, as amended (50 U.S.C. 4501 *et seq*.); (b) Industrial Base Fund under section 896(b)(1) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as amended (10 U.S.C. 2508); (c) Rapid Innovation Fund under section 1073 of Ike Skelton National Defense Authorization Act for Fiscal Year 2011, as amended (10 U.S.C. 2359a); (d) Manufacturing Technology Program under 10 U.S.C. 2521, as amended; (e) Defense Logistics Agency Warstopper Program, as described in DLA Instruction 1212, Industrial Capabilities Program – Manage the WarStopper Program; or (f) Defense Logistics Agency Surge and Sustainment contract, as described in Subpart 17.93 of the Defense Logistics Acquisition Directive.
(xi) Any system, including facilities, for the generation, transmission, distribution, or storage of electric energy comprising the bulk-power system, as defined in section 215(a)(1) of the Federal Power Act, as amended (16 U.S.C. 824o(a)(1)).	(xi) Own or operate any system, including facilities, for the generation, transmission, distribution, or storage of electric energy comprising the bulk-power system, as defined in section 215(a)(1) of the Federal Power Act, as amended (16 U.S.C. 824o(a)(1)).
(xii) Any electric storage resource, as defined in 18 CFR 35.28(b)(9), as amended, that is physically connected to the bulk-power system.	(xii) Own or operate any electric storage resource, as defined in 18 CFR 35.28(b)(9), as amended, that is physically connected to the bulk-power system.
(xiii) Any facility that provides electric power generation, transmission, distribution, or storage directly to or located on any military installation identified in § 802.227.	(xiii) Own or operate any facility that provides electric power generation, transmission, distribution, or storage directly to or located on any military installation identified in § 802.227.
(xiv) Any industrial control system utilized by: (a) system comprising the bulk-power system as described above in item (xi) of column 1 of this appendix A; or	(xiv) Manufacture or service any industrial control system utilized by: (a) system comprising the bulk-power system as described above in item (xi) of column 1 of this appendix A; or

(b) a facility directly serving any military installation as described above in item (xiii) of column 1 of this appendix A.	(b) a facility directly serving any military installation as described above in item (xiii) of column 1 of this appendix A.
(xv) Any: (a) any individual refinery with the capacity to produce 300,000 or more barrels per day (or equivalent) of refined oil or gas products; or (b) collection of one or more refineries owned or operated by a single U.S. business with the capacity to produce, in the aggregate, 500,000 or more barrels per day (or equivalent) of refined oil or gas products.	(xv) Own or operate: (a) any individual refinery with the capacity to produce 300,000 or more barrels per day (or equivalent) of refined oil or gas products; or (b) one or more refineries with the capacity to produce, in the aggregate, 500,000 or more barrels per day (or equivalent) of refined oil or gas products.
(xvi) Any crude oil storage facility with the capacity to hold 30 million barrels or more of crude oil.	(xvi) Own or operate any crude oil storage facility with the capacity to hold 30 million barrels or more of crude oil.
(xvii) Any: (a) liquefied natural gas (LNG) import or export terminal requiring: (1) approval under section 3(e) of the Natural Gas Act, as amended (15 U.S.C. 717b(e)), or (2) a license under section 4 of the Deepwater Port Act of 1974, as amended (33 U.S.C. 1503); or (b) natural gas underground storage facility or LNG peak-shaving facility requiring a certificate of public convenience and necessity under section 7 of the Natural Gas Act, as amended (15 U.S.C. 717f).	(xvii) Own or operate any: (a) liquefied natural gas (LNG) import or export terminal requiring: (1) approval under section 3(e) of the Natural Gas Act, as amended (15 U.S.C. 717b(e)), or (2) a license under section 4 of the Deepwater Port Act of 1974, as amended (33 U.S.C. 1503); or (b) natural gas underground storage facility or LNG peak-shaving facility requiring a certificate of public convenience and necessity under section 7 of the Natural Gas Act, as amended (15 U.S.C. 717f).
(xviii) Any financial market utility that the Financial Stability Oversight Council has designated as systemically important under section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (12 U.S.C. 5463).	(xviii) Own or operate any financial market utility that the Financial Stability Oversight Council has designated as systemically important under section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (12 U.S.C. 5463).
(xix) Any exchange registered under section 6 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78f), that facilitates trading in any national market system	(xix) Own or operate any exchange registered under section 6 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78f), that facilitates trading in any national market

security, as defined in 17 CFR § 242.600, as amended, and which exchange during at least four of the preceding six calendar months had: (a) with respect to all national market system securities that are not options, 10 percent or more of the average daily dollar volume reported by applicable transaction reporting plans; or (b) with respect to all listed options, 15 percent or more of the average daily dollar volume reported by applicable national market system plans for reporting transactions in listed options.	system security, as defined in 17 CFR § 242.600, as amended, and which exchange during at least four of the preceding six calendar months had: (a) with respect to all national market system securities that are not options, 10 percent or more of the average daily dollar volume reported by applicable transaction reporting plans; or (b) with respect to all listed options, 15 percent or more of the average daily dollar volume reported by applicable national market system plans for reporting transactions in listed options.
(xx) Any technology service provider in the Significant Service Provider Program of the Federal Financial Institutions Examination Council that provides core processing services.	(xx) Own or operate any technology service provider in the Significant Service Provider Program of the Federal Financial Institutions Examination Council that provides core processing services.
(xxi) Any rail line and associated connector line designated as part of the Department of Defense's Strategic Rail Corridor Network.	(xxi) Own or operate any rail line and associated connector line designated as part of the Department of Defense's Strategic Rail Corridor Network.
(xxii) Any interstate oil pipeline that: (a) has the capacity to transport: (1) 500,000 barrels per day or more of crude oil, or (2) 90 million gallons per day or more of refined petroleum product; or (b) directly serves the strategic petroleum reserve, as defined in section 152 of the Energy Policy and Conservation Act, as amended (42 U.S.C. 6232).	(xxii) Own or operate any interstate oil pipeline that: (a) has the capacity to transport: (1) 500,000 barrels per day or more of crude oil, or (2) 90 million gallons per day or more of refined petroleum product; or (b) directly serves the strategic petroleum reserve, as defined in section 152 of the Energy Policy and Conservation Act, as amended (42 U.S.C. 6232).
(xxiii) Any interstate natural gas pipeline with an outside diameter of 20 or more inches.	(xxiii) Own or operate any interstate natural gas pipeline with an outside diameter of 20 or more inches.
(xxiv) Any industrial control system utilized by:	(xxiv) Manufacture or service any industrial control system utilized by:

(a) an interstate oil pipeline as described above in item (xxii) of column 1 of this appendix A; or (b) an interstate natural gas pipeline as described above in item (xxiii) of column 1 of this appendix A.	(a) an interstate oil pipeline as described above in item (xxii) of column 1 of this appendix A; or (b) an interstate natural gas pipeline as described above in item (xxiii) of column 1 of this appendix A.
(xxv) Any airport identified in § 802.210(a)(1) through (3).	(xxv) Own or operate any airport identified in § 802.210(a)(1) through (3).
(xxvi) Any: (a) maritime port identified in § 802.210(a)(4) or (5); or (b) any individual terminal at such maritime ports.	(xxvi) Own or operate any: (a) maritime port identified in § 802.210(a)(4) or (5); or (b) any individual terminal at such maritime ports.
(xxvii) Any public water system, as defined in section 1401(4) of the Safe Drinking Water Act, 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: (a) regularly serves 10,000 individuals or more, or (b) directly serves any military installation identified in § 802.227.	(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: (a) regularly serves 10,000 individuals or more, or (b) directly serves any military installation identified in § 802.227.
(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.	(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.

Appendix B to part 800—Industries

Industry	**NAICS Code**
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	*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*
Petrochemical Manufacturing 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*

PART 801-- PILOT PROGRAM TO REVIEW CERTAIN TRANSACTIONS

INVOLVING FOREIGN PERSONS AND CRITICAL TECHNOLOGIES

2. The authority citation for part 801 continues to read as follows:

50 U.S.C. 4565; Pub. L. 115-232

3. Revise section 801.103 to read as follows:

§ 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.

§ 801.302 [Amended]

4. Amend § 801.302 in paragraph (c) by removing "(b)(2)(i) through (b)(2)(iii)" after "criteria set forth in paragraphs" and adding in its place "(b) through (d)".

Dated: January 6, 2020.

Thomas Feddo,
Assistant Secretary for Investment Security.
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