

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

Billing Code 4810-AK-P

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Parts 800 and 802

[Docket ID TREAS-DO-2024-0006]

RIN 1505-AC85

Penalty Provisions, Provision of Information, Negotiation of Mitigation Agreements, and Other Procedures Pertaining to Certain Investments in the United States by Foreign Persons and Certain Transactions by Foreign Persons Involving Real Estate in the United States

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

ACTION: Final rule.

SUMMARY: This final rule revises certain provisions of the regulations of the Committee on Foreign Investment in the United States (CFIUS) pertaining to penalties for violations of statutory or regulatory provisions or agreements, conditions, or orders issued pursuant thereto; negotiation of mitigation agreements; requests for information by CFIUS; and certain other procedures.

DATES: This final rule is effective on [INSERT DATE THAT IS 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Meena R. Sharma, Director, Office of Investment Security Policy and International Relations at U.S. Department of the Treasury, 1500

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622-3425; email:

CFIUS.Regulations@treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The regulations at parts 800 and 802 to title 31 of the Code of Federal Regulations (part 800 and part 802, respectively) implement the provisions of section 721 of the Defense Production Act of 1950 (DPA), as amended, which is codified at 50 U.S.C. 4565 (section 721) and which establishes the authorities of the Committee on Foreign Investment in the United States (CFIUS or the Committee). Section 721 authorizes the President or his designee (*i.e.*, CFIUS) to review mergers, acquisitions, and takeovers by or with any foreign person that could result in foreign control of any U.S. business, certain noncontrolling investments by foreign persons in a subset of U.S. businesses, as well as certain real estate transactions involving foreign persons. When in the course of its review CFIUS identifies a national security risk that arises as a result of a transaction within its jurisdiction (referred to in the regulations as a “covered transaction” or “covered real estate transaction” as appropriate), it is authorized to negotiate and enter into agreements with the transaction parties or impose conditions on the transaction parties, including through the issuance of orders, to mitigate the risk. CFIUS is further authorized to enforce those agreements, conditions, and orders, including through assessing a penalty.

On April 15, 2024, the U.S. Department of the Treasury (Treasury Department) published in the *Federal Register* a notice of proposed rulemaking (proposed rule) ([89 FR 26107](#)) that proposed amendments to certain provisions of part 800 and part 802. Specifically, the proposed

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

rule included amendments that would: (1) expand the categories of information that CFIUS may request from transaction parties and other persons; (2) introduce a time frame within which parties would ordinarily be required to respond to a Committee proposal to mitigate identified national security risk (including any revision of such a proposal); (3) expand the instances in which CFIUS may use its subpoena authority; (4) expand the circumstances in which a civil monetary penalty may be imposed; (5) increase the maximum civil monetary penalty available for certain violations of CFIUS's statute or regulations, including as related to mitigation agreements, conditions, or orders; and (6) extend the time frames for a party's submission of a petition for reconsideration of a penalty and the Committee's response to such a petition.

Further explanation of the proposed changes can be found at [89 FR 26107](#). The public was given an opportunity to comment on the proposed rule, and comments were due by May 15, 2024. The Treasury Department received 728 comment submissions, of which 718 were duplicates or near duplicates. Comments are discussed in the following section along with the changes made in this final rule.

II. Summary of Comments and Changes from the Proposed Rule

During the public comment period, the Treasury Department received 728 comment submissions reflecting a range of views. The Treasury Department considered each comment submitted on the proposed rule and made one revision to this final rule in response to the comments. The section-by-section analysis below discusses the comments received, explains the Treasury Department's responses to the comments, and describes changes made in this final rule in light of the comments.

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

A. Requesting Information from Transaction Parties and Other Persons – Sections 800.501, 802.501, 800.801, and 802.801

One commenter expressed the view that the provisions pertaining to requesting information from “other persons” are without any limitation and recommended that the provisions be modified to make clear that such other persons must have a connection to a particular transaction. Additionally, the commenter recommended that the Committee’s evaluation of the adequacy of a non-party’s response to a CFIUS request for information should be based on whether the response sufficiently addressed the specific questions posed, rather than whether the Committee derived any benefit from the response. Finally, the commenter proposed that if such other persons or transaction parties omit information from a response to a CFIUS inquiry about a transaction, a determination of whether that omission constitutes a violation of the statute or regulations should be subject to a “knowledge qualifier” – *i.e.*, the Committee should determine a person’s omission constitutes a violation if the person “knew or should have known,” for example, that the information omitted was responsive to the Committee’s inquiry. Such a qualifier would be warranted, according to the commenter, because persons who are not transaction parties may not be familiar with CFIUS and its authorities.

The final rule makes no change in response to this comment. As discussed in the proposed rule, CFIUS, acting on behalf of the President, currently has authority pursuant to section 705 of the DPA to obtain information from “any person as may be necessary or appropriate . . . to the enforcement or administration of [section 721 and the regulations thereunder].” Therefore, CFIUS may, if appropriate, request and compel through issuance of a

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

subpoena the production of information not only from transaction parties but also from other persons to aid in the enforcement or administration of the CFIUS statute and regulations. The proposed rule addressed requests for information when such information pertains to a transaction that has been notified or declared to the Committee or, in certain circumstances, a transaction for which no notice or declaration has been submitted (a non-notified transaction). The Committee proposed to be able to seek and compel information to enable it to determine whether a transaction is a covered transaction, whether it may raise national security concerns such that the Committee should review it (if it is a covered transaction), and whether the transaction is of a type for which submission of a declaration was mandatory. Because any request made or subpoena issued must be in furtherance of one of the foregoing purposes, as specified in the proposed rule, the Committee's authority is not "without any limitation whatsoever," as suggested by the commenter. Furthermore, in determining the sufficiency of a party's response to an inquiry, the Committee would assess whether the information provided adequately responded to the question posed, as the commenter suggests. In determining whether to issue a request for information or (as appropriate) subpoena to a person other than the transaction parties, CFIUS will consider the relationship of the other person to the relevant transaction and the information sought and will comply with applicable confidentiality provisions in section 721(c). In addition, as with information submitted by transaction parties, CFIUS will treat information submitted by third parties in accordance with its confidentiality obligations. It would be challenging to specify in regulations an exhaustive list of "other persons" to whom CFIUS may issue requests (or, as appropriate, subpoenas) for information. The identity of such other

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

persons may vary depending on the nature of the transaction and transaction parties as well as the information that CFIUS needs to obtain. The Committee can envision situations in which it would seek information from third persons such as banks, underwriters, or service providers to transaction parties. There may be situations in which relevant information is possessed by other third parties and the Committee would consider it appropriate to seek information from such third parties.

Moreover, the Committee does not consider it appropriate to put in place what the commenter refers to as a “knowledge qualifier” for purposes of determining whether a third party’s omission of information from a submission to CFIUS constitutes a violation of the statute or regulations. (As noted above, while the commenter used the phrase “knowledge qualifier,” CFIUS understood it to be referring to the responding party’s knowledge with respect to whether information is appropriate to include in response to the Committee’s information request.) For CFIUS to impose a penalty on a transaction party or other person for an omission of information, the omission would have to be *material*. That condition appears to address the concern underlying the comment at issue. Further, when CFIUS requests information – whether from a transaction party or a third party – it identifies its authority for doing so, and that enables the respondent to evaluate applicable obligations itself or with legal counsel.

Another commenter addressed the proposal to expand the categories of information that CFIUS can request from parties to non-notified transactions. As noted above, under the proposed rule CFIUS would be able to request not only information relevant to determining whether a transaction is a covered transaction but also information relevant to national security risk (and

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

whether a transaction is subject to the mandatory declaration provisions). The commenter expressed concern that, if adopted, this provision would allow CFIUS to inquire about transactions that are outside its jurisdiction (*i.e.*, transactions that are not covered transactions), and parties to those transactions would be obligated to respond.

The final rule makes no change in response to this comment. Consistent with its statutory obligation to establish a process to identify certain non-notified transactions (section 721(b)(1)(H)) and the current regulations (*see* § 800.501(b), and with respect to covered real estate transactions, *see* § 802.501(b)), CFIUS requests information about non-notified transactions only where the Committee has determined that the transaction “may be a covered transaction and may raise national security considerations.” Before requesting that parties notify their transaction to CFIUS, the Committee assesses jurisdiction and issues a request only if the Committee determines that the transaction is, in fact, a covered transaction and may raise national security considerations. Expanding the information that CFIUS may request from parties to non-notified transactions to include information pertaining to national security risk would not replace the full risk-based assessment that occurs during the formal review of a declaration or notice. Nor would it replace or circumvent the threshold determination made by CFIUS as to whether a transaction is a covered transaction. Engaging in preliminary fact-finding relevant to national security considerations, however, could help the Committee determine whether and when to request a notice from transaction parties. As explained in the proposed rule, this fact-finding should help focus the transactions the Committee requests for filing, benefitting both transaction parties and national security.

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

B. Time Frame for Responding to Proposed Mitigation Terms – Sections 800.504 and 802.504

Several commenters expressed the view that three business days is not enough time for transaction parties to substantively respond to mitigation proposals, and that imposing such a time frame will not improve the mitigation negotiation process. These comments are discussed in more detail below along with the change in the final rule made in response to these comments.

One commenter expressed the view that mitigation proposals can introduce measures that would significantly impact the efficiency and competitiveness of the U.S. business and can also reflect an imperfect understanding of the U.S. business, including its technology and operations. Under such circumstances, transaction parties may struggle to determine the appropriate response to the Committee, making it a challenge to respond in three days. Another commenter expressed the view that the initial draft of a mitigation agreement, which is often developed by CFIUS, may not reflect a full understanding of the transaction parties' operations, which in turn may necessitate extensive analysis and revision by the transaction parties that often takes more than three business days. The commenter also expressed strong support for earlier engagement between the Committee and transaction parties in the mitigation proposal process and a standardized and transparent process for implementing mitigation agreements for both CFIUS and transaction parties. The commenter suggested the Committee create a standard and transparent process to create a record of how mitigation agreements are to be interpreted and applied post-execution to bring clarity and facilitate compliance, particularly when there is staff turnover or when enforcement personnel are different from the personnel involved in the

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

negotiation of the agreement. A third commenter expressed the view that a three-day deadline could preclude input on mitigation measures from relevant business units. A fourth commenter expressed the view that the majority of transaction parties are incentivized to work collaboratively with the Committee to negotiate mitigation proposals as transactions are often notified to CFIUS prior to their completion, in some cases with CFIUS clearance as a condition for closing the transaction. The commenter noted that the Committee and transaction parties are better served when there is additional time to fully consider how proposed mitigation terms would be implemented. Though the proposed rule included the option for extension requests, the commenter expressed that transaction parties may spend too much time preparing such a request as opposed to preparing a substantive response to the Committee. Another commenter expressed the view that three business days is not enough time for transaction parties to review proposed mitigation measures, analyze the operational considerations of such measures, coordinate internally, reach agreement, and prepare a substantive response to CFIUS. The commenter further expressed that such a time frame is not analogous to the time frame for transaction parties to respond to information requests given the complexity of the issues associated with mitigation agreements. The final commenter on this topic noted that a three-day time frame may result in transaction parties accepting mitigation terms without conducting the requisite analysis and assessment.

Several commenters also proposed alternatives to a standard three-day response time frame. Some of these commenters suggested that CFIUS impose a time frame not as a routine matter but only when, in the discretion of the Staff Chairperson, a fixed deadline is determined to

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

be warranted by relevant circumstances, with extensions available upon request and as needed.

For example, the Staff Chairperson might impose a deadline if prior interaction with the transaction parties has shown them to be insufficiently responsive. Commenters also suggested that the three-day time frame be extended to five business days, and one commenter suggested 10 business days. To help resolve mitigation proposals in the time required by statute, one commenter suggested that a time frame be implemented for the Committee's proposal of mitigation terms. Additionally, commenters expressed the view that rejection of a notice, the remedy for failure to respond in the time frame specified, would not be in the interest of national security, because removing the case from CFIUS review until the transaction parties refile the transaction would delay the implementation of effective mitigation measures. The commenters noted that this is most relevant for closed transactions, where an extant risk may be present and transaction parties are not as incentivized to finalize review of the transaction with CFIUS. One commenter suggested that rejection in this instance should require approval of a Secretary or Deputy Secretary from each CFIUS member agency, akin to the current requirement in CFIUS regulations with respect to a 15-day extension of the statutory investigation period in extraordinary circumstances. The commenters suggested that CFIUS utilize its existing authority to impose interim mitigation measures to address national security risk pending a finalized mitigation agreement.

One commenter expressed the view that interim mitigation measures better address risks to national security that arise from closed transactions, and that such measures are also effective at addressing immediate national security risks that arise from pre-closing transactions. Another

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

commenter further cited to the Committee's authority to *impose* mitigation measures (beyond interim measures) which, in the commenter's view, is a more effective tool to facilitate efficient negotiation of mitigation agreements.

In response to these comments, the final rule does not contain a three-day time frame for responding to mitigation proposals as a default rule in each instance the Committee sends mitigation terms to parties. Instead, it provides that the Staff Chairperson may impose a time frame of no fewer than three business days on a discretionary basis in consideration of certain factors identified in the regulations. As discussed in the preamble to the proposed rule, in CFIUS's experience there have been instances in which transaction parties have been relatively less motivated to respond promptly to a mitigation proposal, and in some of those instances delayed responses have impeded the Committee's ability to address national security risks and fulfill its statutory obligation to complete an investigation in 45 days. Based on that experience, allowing the Staff Chairperson, at their discretion, to impose a time frame for response to a mitigation proposal is warranted. In exercising that discretion, the Staff Chairperson may consider the nature of the transaction, the time remaining in the investigation, and the transaction parties' past responsiveness, among other factors. This change from the proposed rule was made in consideration of the comments articulating specific challenges in negotiating effective mitigation terms that a U.S. business can operationalize within a three-day, broadly applicable time frame. Because CFIUS must coordinate input from subject matter experts and Committee staff across the nine member agencies, a time frame for CFIUS to provide mitigation proposals, as one commenter suggested, is similarly not feasible. The Committee recognizes the importance

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

of allowing sufficient time for consideration and negotiation, and also appreciates that many transaction parties negotiate with the Committee expeditiously. However, there are some instances in which the timeliness of resolution is not a compelling motivation for the transaction parties, and it is in those situations that the Staff Chairperson may determine it appropriate to impose a time frame for a party's response.

Additionally, the final rule retains the proposal to allow CFIUS to reject a notice as a remedy for parties' failure to respond to proposed mitigation terms in the time frame specified for two independent reasons. First, rejection is consistent with the Staff Chairperson's existing authority to reject a notice for any of the reasons listed under §§ 800.504(a) and 802.504(a), including for a failure to provide follow-up information within three business days of CFIUS's request. Approval by a Secretary or Deputy Secretary, as suggested by one commenter, would not be consistent with this existing rejection framework. Second, while rejection of the notice may not be an appropriate remedy in every instance of a missed deadline, as the commenters point out, there are circumstances in which rejection due to failure to substantively respond to a mitigation proposal within the specified time frame would be appropriate and in the interest of national security (for instance, where parties have not provided timely responses but are interested in receiving CFIUS approval in a timely manner). Accordingly, to account for the unique circumstances of each transaction, the authority of the Committee, acting through the Staff Chairperson, to reject the notice on this basis would be discretionary.

In response to comments that CFIUS's authority to impose conditions to mitigate national security risk is a better remedy than rejection for failure to respond to mitigation proposals, and

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

that interim mitigation conditions are already an effective tool, the final rule makes no changes. However, when parties fail to respond to such proposals and when otherwise necessary, the Committee may exercise its existing authority under section 721(b)(2)(A) and (l)(3)(A) to impose and enforce any condition with any party to a covered transaction to mitigate any risk to the national security of the United States that arises as a result of a covered transaction. CFIUS has the authority to impose such measures on a final or interim basis at any point during a covered transaction's review or investigation. For example, CFIUS may impose measures on the parties to a covered transaction to address specific national security concerns identified during the review or investigation of a covered transaction until such time that the Committee has concluded action. Pursuant to section 721(l)(1), CFIUS also has the authority to, on an interim basis, suspend a proposed or pending covered transaction that may pose a risk to the national security of the United States for such time as the covered transaction is under review or investigation. Conditions may also be imposed on a final basis for transactions prior to closing, as well as for completed transactions. CFIUS will consider the appropriateness and effectiveness of imposing conditions on an interim or final basis in determining whether to specify a time frame to respond to mitigation proposals. Any condition imposed would be based on a risk-based analysis conducted by the Committee and would be reasonably calculated to be effective, allow for compliance in an appropriately verifiable way, and enable effective monitoring of compliance with and enforcement of the terms of the condition.

C. Civil Monetary Penalties – Sections 800.901 and 802.901

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

One commenter requested that the Treasury Department clarify the rationale for the increase in the maximum civil monetary penalty, and that the maximum not be increased to \$5,000,000 in certain contexts. The commenter suggested that only transactions valued at less than \$5,000,000 should be subject to a penalty up to \$5,000,000 and that for transactions valued at \$5,000,000 or more, where transaction value can serve as the maximum, the penalty maximum should not be revised or revised only modestly. With respect to imposing monetary penalties for breaches of a mitigation agreement, the commenter also expressed the view that most breaches occur due to human error or a lack of understanding of the mitigation terms. Alternatively, several commenters expressed support for increasing the penalty maximum. One commenter expressed support for a penalty up to \$5,000,000, and two commenters suggested that the penalty maximum be higher than \$5,000,000. The final rule makes no changes to the proposed text of §§ 800.901 and 802.901 in response to these comments.

Under the regulations being amended, CFIUS has the authority to impose a maximum civil monetary penalty of \$250,000 for submission of a declaration or notice with a material misstatement or omission, or the making of a false certification. CFIUS also had the authority to impose a maximum civil monetary penalty of the greater of \$250,000 or the value of the transaction for failure to file a mandatory declaration and for violating a material provision of a mitigation agreement, condition, or order. The Committee's statutory penalty authority at section 721(h)(2)(A) provides no maximum dollar amount. The current penalty maximum of \$250,000 was established through regulations issued over 15 years ago and has never been adjusted. CFIUS's experience in reviewing hundreds of transactions annually and monitoring compliance

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

with over 200 national security agreements is that a higher maximum penalty for transactions of any size would be more effective to address the conduct that occurred and to deter future violations. Independent of that experience, as discussed in the proposed rule, some transactions have a low transaction value, which makes the value of the transaction an inadequate cap for an appropriate penalty. In response to the comment that most violations are unintentional, the Treasury Department notes that consistent with current practice, the finding of a violation will not necessarily lead to a monetary penalty. The maximum penalty will serve as an upper limit in cases where a penalty is appropriate; each penalty assessment will continue to be based on the nature of the violation; and CFIUS will continue to take into account the aggravating and mitigating factors surrounding the conduct (*see* the CFIUS Enforcement and Penalty Guidelines at [87 FR 66220](#)).

D. Additional Comments Received

One commenter expressed the view that the proposed rule would deter foreign investment into the United States. The Treasury Department notes that CFIUS operates within the United States' longstanding open investment policy and focuses solely on the national security risks posed by transactions before it. Not all foreign direct investment in the United States is subject to CFIUS's jurisdiction, and this rule does not change that jurisdiction or national security mandate. As such, the final rule makes no change in response to this comment.

Additionally, over 700 comment submissions included duplicate or near-duplicate comments that broadly expressed support for CFIUS, including the expansion of CFIUS's investigative capabilities and the Committee's authority to impose penalties. Several of these

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

submissions also included comments expressing views that are outside the scope of CFIUS and the proposed rule. For example, one commenter suggested that foreign investment into residential real estate should be curtailed to alleviate homelessness, and another suggested that large corporations should be broken up to benefit consumers. Two other comment submissions included comments on topics not addressed in the proposed rule. One commenter discussed their views regarding marijuana production in Maine, and another expressed views on the U.S. political system and increases in the cost of certain goods. In addition, one comment submission was a test comment with no other content. The final rule makes no changes in response to these comments.

III. Applicability of Provisions

The amendments published in this final rule will apply from the effective date set forth herein. Many of the provisions in this final rule pertain to CFIUS processes and will apply to all Committee actions after the effective date. For example, parties to a transaction not submitted to CFIUS will be required to provide requested information to enable the Committee to determine whether a transaction may raise national security considerations in connection with any information request the Committee makes pursuant to § 800.501(b)(1) after the effective date. Transaction parties currently subject to a mitigation agreement, condition, or order may be required to provide requested information to enable the Committee to monitor and enforce any agreement pursuant to § 800.801(a)(3) or § 802.801(a)(3) after the effective date.

For transactions already under review or investigation by the Committee at the time of the effective date of this final rule, the amendments to §§ 800.504 and 802.504, which allow the

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

Committee to impose deadlines for responses to proposed national security agreements, will not apply. So that transaction parties have sufficient notice of the new requirements, those sections will apply only to notices accepted by the Committee after the effective date. Similarly, the extended deadlines in §§ 800.901(f) and 802.901(e) will not apply to penalty notices and petitions pending at the time of the effective date. The 20-business-day deadline for responses and the Committee's authority to extend such a time frame under compelling circumstances will apply to parties that receive a notice of penalty issued by CFIUS after the effective date.

For transaction parties subject to a mitigation agreement, condition, or order as of the effective date of this final rule, the penalty provisions for a violation of such agreement, condition, or order in effect at the time of the agreement, condition, or order will continue to apply, as specified in §§ 800.901(c)(1), 800.901(c)(2) and 802.901(b)(1), as amended. However, conduct by such parties that is not governed by an agreement, condition, or order, such as a material misstatement or omission made to the Committee, will be subject to enforcement under the regulations as amended by this final rule after the effective date. CFIUS may impose a maximum civil monetary penalty of \$5,000,000 for any violation of any national security agreement executed after the effective date of the final rule.

IV. Severability

The provisions of this final rule are separate and severable from one another. If any provision of this rule is stayed or determined to be invalid, it is the Treasury Department's intention that the remaining provisions shall continue in effect. Each of the amendments in this rule pertains to a different part of CFIUS's process – including non-notified information

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

requests, mitigation proposals during review and investigation, compliance monitoring, and penalty determinations – and the changes to each of these processes are not dependent on one another.

V. Rulemaking Requirements

Executive Order 12866

This rule is not subject to the general requirements of Executive Order 12866, as amended, which covers review of regulations by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), because it relates to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order. In addition, this rule is not subject to review under section 6(b) of Executive Order 12866 pursuant to section 1(d) of the June 9, 2023, 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.

Paperwork Reduction Act

The collection of information contained in this rule has been previously submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and approved under OMB Control Number 1505-0121. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

Regulatory Flexibility Act

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfi.us.gov. The document published in the Federal Register is the official document.

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

The final rule makes amendments to the regulations implementing section 721 of the DPA ([85 FR 3112](#) and [85 FR 3158](#)), which the Treasury Department previously determined would not significantly impact a substantial number of small entities. The amendments in this final rule do not change that analysis or determination. The Treasury Department also invited public comment on how the proposed rule would affect small entities and did not receive any specific comments on this topic.

Congressional Review Act

This final rule has been submitted to the OMB's Office of Information and Regulatory Affairs, which has determined that the rule is not a "major" rule under the Congressional Review Act.

List of Subjects

31 CFR Part 800

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfi.us.gov. The document published in the Federal Register is the official document.

Foreign investments in the U.S., Investment companies, Investments, Penalties, Reporting and recordkeeping requirements.

31 CFR Part 802

Foreign investments in the U.S., Investment companies, Investments, Land sales, National defense, Penalties, Public lands, Real property acquisition, Reporting and recordkeeping requirements.

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

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

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

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

2. Amend § 800.104 by:

- a. Revising paragraph (a); and
- b. Adding paragraph (f).

The revisions read as follows:

§ 800.104 Applicability rule.

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

* * * * *

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfi.us.gov. The document published in the Federal Register is the official document.

(f) Notwithstanding paragraphs (b) through (d) of this section, the amendments to this part published in the Federal Register on [INSERT DATE OF PUBLICATION] apply from [INSERT EFFECTIVE DATE OF FINAL RULE].

* * * * *

3. Amend § 800.501 by revising paragraph (b) to read as follows:

§ 800.501 Procedures for notices.

* * * * *

(b)(1) If the Committee determines that a transaction for which no voluntary notice or declaration has been submitted 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 or other persons to provide to the Committee information necessary to determine whether the transaction is a covered transaction, whether the transaction may raise national security considerations, or, as appropriate, whether the transaction is a transaction for which a submission is or was required under § 800.401.

(2) If the Committee determines that a transaction referred to under paragraph (b)(1) of this section is a covered transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to file a notice of such covered transaction under paragraph (a) of this section.

* * * * *

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfi.us.gov. The document published in the Federal Register is the official document.

4. Amend § 800.504 by:

- a. In paragraph (a)(3), removing the period at the end of the section and adding a semicolon in its place;
- b. In paragraph (a)(4), removing “or” at the end of the paragraph;
- c. In paragraph (a)(5), removing the period at the end of the paragraph and adding “; or” in its place;
- d. Redesignating paragraph (d) as paragraph (e); and
- e. Adding paragraphs (a)(6) and (d).

The additions read as follows:

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

(a) ***

(6) Reject any voluntary notice at any time after the notice has been accepted, and so inform the parties promptly in writing, if the Committee has proposed risk mitigation terms, including revisions to such terms, and if the Staff Chairperson has imposed a time frame for responding to such terms as set forth in paragraph (d), to the party or parties that submitted the notice, and the party or parties have failed to substantively respond to such terms within the time frame specified.

* * * * *

(d) The Staff Chairperson may impose a time frame of no fewer than three business days for the party or parties to provide a substantive response to proposed risk mitigation terms, including revisions to such terms. The time frame may be extended if the parties so request in

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfi.us.gov. The document published in the Federal Register is the official document.

writing and the Staff Chairperson grants that request in writing. In determining whether to impose such a time frame, the Staff Chairperson may consider:

- (1) The statutory deadline for completing an investigation under section 721(b)(2)(C)(i);
- (2) The risk to the national security of the United States arising from the transaction;
- (3) The party's or parties' responsiveness to the Committee;
- (4) The nature of the transaction;
- (5) The appropriateness of suspending, or imposing conditions on, the transaction under section 721(l); and
- (6) Other such factors the Staff Chairperson may determine to be appropriate in connection with a specific transaction.

* * * * *

5. Amend § 800.801 by revising paragraph (a) to read as follows:

§ 800.801 Obligation of parties or other persons to provide information.

(a) This paragraph (a) sets forth requirements for parties to a transaction or other persons to provide information to the Staff Chairperson or requesting lead agency in the circumstances specified in paragraphs (a)(1) through (6) of this section.

(1) Parties to a transaction that is notified or declared under subpart D or E of this part shall provide information to the Staff Chairperson that will enable the Committee to conduct a full assessment, review, and/or investigation of the transaction.

(2) For a transaction for which no voluntary notice or declaration has been submitted and for which the Staff Chairperson has requested information as provided for in § 800.501(b),

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

parties to the transaction or other persons shall provide information to the Staff Chairperson that will enable the Committee to determine:

- (i) Whether the transaction is a covered transaction;
- (ii) Whether the transaction may raise national security considerations; or
- (iii) As appropriate, whether the transaction is a transaction for which a submission is or was required under § 800.401.

(3) Independent of any obligations under an agreement, condition, or order authorized under section 721(I), parties shall provide information to the Staff Chairperson or the requesting lead agency so as to enable the Committee to assess compliance with section 721 and the regulations in this part or to monitor compliance with, enforce or modify the terms of, or decide to terminate any agreement entered into, condition imposed, or order issued.

(4) Any person that has submitted information to the Committee shall respond to requests from the Staff Chairperson for information to enable the Committee to determine whether the person made any material misstatement or omitted material information from any such submission.

(5) Parties to a transaction that have filed information with the Committee shall promptly advise the Staff Chairperson of any material changes to such information.

(6) If deemed appropriate by the Committee, the Staff Chairperson may obtain information from parties to a transaction or other persons through subpoena or otherwise, under the Defense Production Act, as amended (50 U.S.C. 4555(a)).

* * * * *

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfi.us.gov. The document published in the Federal Register is the official document.

6. Amend § 800.901 by:

- a. Revising paragraph (a);
- b. In paragraph (b), removing “\$250,000” and adding in its place “\$5,000,000”; and
- c. Revising paragraphs (c) and (f).

The revisions read as follows:

§ 800.901 Penalties and damages.

(a)(1) 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 \$5,000,000 per violation.

(2) Any person who, in response to a request from the Staff Chairperson or a lead agency, submits to the Committee any information pursuant to § 800.801(a)(2), (3), or (4) or (c) with a material misstatement or omission may be liable to the United States for a civil penalty not to exceed \$5,000,000 per violation. This paragraph (a)(2) shall apply only with respect to responses to requests that were made in writing, specified a time frame for response, and indicated the applicability of this paragraph (a).

(3) The amount of the penalty imposed for a violation as provided for in this paragraph (a) shall be based on the nature of the violation.

* * * * *

(c)(1) 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

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfi.us.gov. The document published in the Federal Register is the official document.

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 sentence, 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.

(2) Any person who violates a material provision of a mitigation agreement entered into on or after October 11, 2018, and before [INSERT EFFECTIVE DATE OF FINAL RULE], with, a material condition imposed on or after October 11, 2018, and before [INSERT EFFECTIVE DATE OF FINAL RULE], by, or an order issued on or after October 11, 2018, and before [INSERT EFFECTIVE DATE OF FINAL RULE], by, the United States under section 721(l) may be liable to the United States for a civil penalty per violation not to exceed \$250,000 or the value of the transaction, whichever is greater. For clarification, under the previous sentence, 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.

(3)(i) Any person who violates a material provision of a mitigation agreement entered into on or after [INSERT EFFECTIVE DATE OF FINAL RULE], with, a material condition imposed on or after [INSERT EFFECTIVE DATE OF FINAL RULE], by, or an order issued on or after [INSERT EFFECTIVE DATE OF FINAL RULE], by, the United States under section 721(l) may be liable to the United States for a civil penalty per violation not to exceed the greatest of:

(A) \$5,000,000;

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfi.us.gov. The document published in the Federal Register is the official document.

(B) The value of the person's interest in the U.S. business (or, as applicable, the parent of the U.S. business) at the time of the transaction;

(C) The value of the person's interest in the U.S. business (or, as applicable, the parent of the U.S. business) at the time of the violation in question or the most proximate time to the violation for which assessing such value is practicable; or

(D) The value of the transaction filed with the Committee.

(ii) For clarification, under paragraphs (c)(3)(i)(A) through (D) of this section, whichever penalty amount is greatest may be imposed per violation, and the amount of the penalty imposed for a violation shall be based on the nature of the violation.

* * * * *

(f) Upon receiving notice of a penalty to be imposed under any of paragraphs (a) through (c) of this section, the subject person may, within 20 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 20 business days of receipt of the petition. The Staff Chairperson and the subject person may extend either such period through written agreement or, where there is a compelling circumstance and it is deemed appropriate by the Committee, the Staff Chairperson may extend either period by notifying the subject person in writing of the extended time frame. 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.

* * * * *

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfi.us.gov. The document published in the Federal Register is the official document.

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

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

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

8. Amend § 800.104 by:

- a. Revising paragraph (a); and
- b. Adding paragraph (c).

The revisions read as follows:

§ 802.104 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.

* * * * *

(c) Notwithstanding paragraph (b) of this section, the amendments to this part published in the Federal Register on [INSERT DATE OF PUBLICATION] apply from [INSERT EFFECTIVE DATE OF FINAL RULE].

* * * * *

9. Amend § 802.501 by revising paragraph (b) to read as follows:

§ 802.501 Procedures for notices.

* * * * *

(b)(1) If the Committee determines that a transaction for which no voluntary notice or declaration has been submitted under this part, and with respect to which the Committee has not

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

informed the parties in writing that the Committee has concluded all action under section 721, may be a covered real estate transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction or other persons to provide to the Committee information necessary to determine whether the transaction is a covered real estate transaction or whether the transaction may raise national security considerations.

(2) If the Committee determines that a transaction referred to under paragraph (b)(1) of this section is a covered real estate transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to file a notice of such covered real estate transaction under paragraph (a) of this section.

* * * * *

10. Amend § 802.504 by:

- a. In paragraph (a)(3), removing the period at the end of the section and adding a semicolon in its place;
- b. In paragraph (a)(4), removing “or” at the end of the paragraph;
- c. In paragraph (a)(5), removing the period and adding “; or” in its place;
- d. Redesignating paragraph (d) as paragraph (e); and
- d. Adding paragraphs (a)(6) and (d).

The additions read as follows:

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

(a) ***

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfi.us.gov. The document published in the Federal Register is the official document.

(6) Reject any voluntary notice at any time after the notice has been accepted, and so inform the parties promptly in writing, if the Committee has proposed risk mitigation terms, including revisions to such terms, and if the Staff Chairperson has imposed a time frame for responding to such terms as set forth in paragraph (d), to the party or parties that submitted the notice and the party or parties have failed to substantively respond to such terms within the time frame specified.

(d) The Staff Chairperson may impose a time frame of no fewer than three business days for the party or parties to provide a substantive response to proposed risk mitigation terms, including revisions to such terms. The time frame may be extended if the parties so request in writing and the Staff Chairperson grants that request in writing. In determining whether to impose such a time frame, the Staff Chairperson may consider:

- (1) The statutory deadline for completing an investigation under section 721(b)(2)(C)(i);
- (2) The risk to the national security of the United States arising from the transaction;
- (3) The party's or parties' responsiveness to the Committee;
- (4) The nature of the transaction;
- (5) The appropriateness of suspending, or imposing conditions on, the transaction under section 721(l); and
- (6) Other such factors the Staff Chairperson may determine to be appropriate in connection with a specific transaction.

* * * * *

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfi.us.gov. The document published in the Federal Register is the official document.

11. Amend § 802.801 by revising the section heading and paragraph (a) to read as follows:

§ 802.801 Obligation of parties or other persons to provide information.

(a) This paragraph (a) sets forth requirements for parties to a transaction or other persons to provide information to the Staff Chairperson or requesting lead agency in the circumstances specified in paragraphs (a)(1) through (6) of this section.

(1) Parties to a transaction that is notified or declared under subpart D or E of this part shall provide information to the Staff Chairperson that will enable the Committee to conduct a full assessment, review, and/or investigation of the transaction.

(2) For a transaction for which no voluntary notice or declaration has been submitted and for which the Staff Chairperson has requested information as provided for in § 802.501(b), parties to the transaction or other persons shall provide information to the Staff Chairperson that will enable the Committee to determine whether the transaction is a covered real estate transaction or whether the transaction may raise national security considerations.

(3) Independent of any obligations under an agreement, condition, or order authorized under section 721(I), parties shall provide information to the Staff Chairperson or the requesting lead agency so as to enable the Committee to assess compliance with section 721 and the regulations in this part or to monitor compliance with, enforce or modify the terms of, or decide to terminate any agreement entered into, condition imposed, or order issued.

(4) Any person that has submitted information to the Committee shall respond to requests from the Staff Chairperson for information to enable the Committee to determine whether the

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfi.us.gov. The document published in the Federal Register is the official document.

party made any material misstatement or omitted material information from any such submission.

(5) Parties to a transaction that have filed information with the Committee shall promptly advise the Staff Chairperson of any material changes to such information.

(6) If deemed appropriate by the Committee, the Staff Chairperson may obtain information from parties to a transaction or other persons through subpoena or otherwise, under the Defense Production Act, as amended (50 U.S.C. 4555(a)).

* * * * *

12. Amend § 802.901 by revising paragraphs (a), (b), and (e) to read as follows:

§ 802.901 Penalties and damages.

(a)(1) Any person who submits a declaration or notice with a material misstatement or omission or makes a false certification under § 802.402, § 802.403, or § 802.502 may be liable to the United States for a civil penalty not to exceed \$5,000,000 per violation.

(2) Any person who, in response to a request from the Staff Chairperson or a lead agency, submits to the Committee any information pursuant to § 802.801(a)(2), (3), or (4) or (c), with a material misstatement or omission may be liable to the United States for a civil penalty not to exceed \$5,000,000 per violation. This paragraph (a)(2) shall apply only with respect to responses to requests that were made in writing, specified a time frame for response, and indicated the applicability of this paragraph (a).

(3) The amount of the penalty imposed for a violation as provided for in this paragraph (a) shall be based on the nature of the violation.

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfius.gov. The document published in the Federal Register is the official document.

(b)(1) Any person who violates a material provision of a mitigation agreement entered into on or after February 13, 2020, and before [INSERT EFFECTIVE DATE OF FINAL RULE], with, a material condition imposed on or after February 13, 2020, and before [INSERT EFFECTIVE DATE OF FINAL RULE], by, or an order issued on or after February 13, 2020, and before [INSERT EFFECTIVE DATE OF FINAL RULE], by, the United States under section 721(l) may be liable to the United States for a civil penalty per violation not to exceed \$250,000 or the value of the transaction, whichever is greater. For clarification, under the previous sentence, 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.

(2)(i) Any person who violates a material provision of a mitigation agreement entered into on or after [INSERT EFFECTIVE DATE OF FINAL RULE], with, a material condition imposed on or after [INSERT EFFECTIVE DATE OF FINAL RULE], by, or an order issued on or after [INSERT EFFECTIVE DATE OF FINAL RULE], by, the United States under section 721(l) may be liable to the United States for a civil penalty per violation not to exceed the greatest of:

(A) \$5,000,000;

(B) The value of the person's interest in the covered real estate (or, as applicable, the owner of the covered real estate) at the time of the transaction;

(C) The value of the person's interest in the covered real estate (or, as applicable, the owner of the covered real estate) at the time of the violation in question or the most proximate time to the violation for which assessing such value is practicable; or

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.cfi.us.gov. The document published in the Federal Register is the official document.

(D) The value of the transaction filed with the Committee.

(ii) For clarification, under paragraphs (b)(2)(i)(A) through (D) of this section, whichever penalty amount is greatest may be imposed per violation, and the amount of the penalty imposed for a violation shall be based on the nature of the violation.

* * * * *

(e) Upon receiving notice of a penalty to be imposed under any of paragraphs (a) through (c) of this section, the subject person may, within 20 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 20 business days of receipt of the petition. The Staff Chairperson and the subject person may extend either such period through written agreement or, where there is a compelling circumstance and if it is deemed appropriate by the Committee, the Staff Chairperson may extend either period by notifying the subject person in writing of the extended time frame. 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.

Paul M. Rosen,

Assistant Secretary for Investment Security.