

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 800

RIN 1505-AC60

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

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

ACTION: Interim rule.

SUMMARY: This interim rule sets forth amendments to the regulations in part 800 of 31 CFR that implement, and make updates consistent with, certain provisions of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). Among other things, this interim rule implements certain provisions of FIRRMA that became immediately effective upon its enactment and provides clarity as to the current process and procedures with respect to the reviews and investigations undertaken by the Committee on Foreign Investment in the United States pursuant to part 800, in light of FIRRMA.

DATES: *Effective date:* These provisions are effective October 11, 2018.

Applicability date: See § 800.103.

Comment date: Written comments must be received by November 10, 2018.

ADDRESSES: Written comments on the interim rule may be submitted through one of two methods:

- *Electronic Submission of Comments:* Interested persons may submit comments 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 Department to make them available to the public. Comments submitted electronically through the <https://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public.
- *Mail:* Send to U.S. Department of the Treasury, Attention: Thomas Feddo, Deputy Assistant Secretary for Investment Security, 1500 Pennsylvania Avenue, N.W., Washington, DC 20220.

In general, Treasury will post all comments to www.regulations.gov without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For questions about this interim rule, contact: Thomas Feddo, Deputy Assistant Secretary for Investment Security; Laura Black, Director of Investment Security Policy and International Relations; Meena Sharma, Senior Policy Advisor; or Juliana Gabrovsky, Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220, telephone: (202) 622-3425, email: CFIUS.FIRRMA@treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 13, 2018, President Trump signed into law the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII of Pub. L. 115-232 (Aug. 13, 2018), which amends section 721 of the Defense Production Act of 1950 (DPA). Pursuant to section 1727 of FIRRMA, a number of provisions of FIRRMA took effect immediately upon enactment of the statute, while the effectiveness of other provisions is delayed. A number of the immediately effective provisions of FIRRMA required revisions to certain provisions of part 800. This interim rule amends part 800 to make such revisions and makes several other updates consistent with FIRRMA.

This interim rule is intended to provide clarity regarding the processes and procedures of the Committee on Foreign Investment in the United States (CFIUS, or the Committee) pending the full implementation of FIRRMA.

II. Waiver of Public Comment Requirement for Temporary Provisions

The interim rule set forth in this document implements certain immediately effective provisions of, and makes updates consistent with, FIRRMA. Section 709(a) of the DPA (50 U.S.C. 4559(a)) provides that regulations issued under the DPA are not subject to the rulemaking requirements of the Administrative Procedure Act (APA). Moreover, to the extent that the rulemaking requirements of the APA were determined to apply to this interim rule, the provisions of the APA requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date (5 U.S.C. 553), as well as the provisions of Executive Order 13771, are inapplicable because this interim rule involves a foreign affairs function of the United States. By its terms, this interim rule regulates the conduct of foreign persons seeking to

acquire certain interests in particular U.S. businesses, precisely because the acquisition of such interests could harm the strategic national security interests of the United States vis-à-vis other nations.

Notwithstanding that the rulemaking requirements of the APA do not apply to this interim rule, section 709(b)(1) of the DPA provides that, except as otherwise provided in section 709, any regulation issued under the DPA must be published in the *Federal Register* and opportunity for public comment must be provided for not less than 30 days, consistent with the requirements of 5 U.S.C. 553(b).

Section 709(b)(2) of the DPA (50 U.S.C. 4559(b)(2)), however, provides that the requirements of section 709(b)(1) may be waived if: (1) the officer authorized to issue the regulation finds that urgent and compelling circumstances make compliance with such requirements impracticable; (2) the regulation is issued on a temporary basis¹; and (3) the publication of such temporary rule is accompanied by the finding made under (1) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days before any regulation becomes final.

The regulatory amendments set forth in this document meet the three requirements of section 709(b)(2) of the DPA for the reasons below, and therefore qualify for waiver of the public comment requirement of section 709(b)(1) of the DPA.

First, as required by section 709(b)(2)(A) of the DPA, and for the reasons described in part III, below, upon the approval of the Secretary of the Treasury, the Assistant Secretary of the Treasury for International Markets finds, and the Committee agrees, that urgent and compelling

¹ Temporary regulations with no specific expiration date are “interim rules” for purposes of *Federal Register* classification.

circumstances make completion of the process for public participation in rulemaking set forth in section 709 of the DPA impracticable prior to the effectiveness of this interim rule.

Second, this interim rule is limited in duration as the amendments addressed in this rule will be further addressed in the final rule implementing FIRRMA, which is forthcoming and will supersede this interim rule. Thus, these amendments are being issued on a temporary basis pending the full implementation of FIRRMA.

Third, consistent with the requirement of section 709(b)(2)(C) of the DPA, if the Committee intends to make the provisions of this interim rule final, CFIUS will complete the process for public participation in rulemaking set forth in section 709 of the DPA in conjunction with the issuance of a final rule.

III. Urgent and Compelling Circumstances for Interim Rule

Upon enactment of FIRRMA, certain of the Committee's regulations in part 800 were rendered inconsistent with section 721. These inconsistencies could lead to ambiguity regarding the procedural aspects of the national security reviews and investigations undertaken by the Committee. Given that parties involved in cross-border transactions regularly include CFIUS among the regulatory regimes that are assessed in transaction negotiations and planning, urgent and compelling circumstances exist that require immediate and clear guidance. One of the factors that makes the United States an attractive destination for foreign investment is the transparency and clarity of the rules and procedures that govern the national security reviews and investigations carried out by CFIUS. This interim rule seeks to ensure, in a timely manner, that the rules and procedures that the Committee applies to its national security reviews and investigations remain clear to parties actively involved in transaction negotiations and planning.

As a result, the Committee is providing an immediate opportunity for public comment on this interim rule and will consider and address such comments in the process of promulgating any final rule, consistent with section 709(b)(3) of the DPA. This approach appropriately balances the urgency of the interim rule with the need for public participation in the formulation of any final rule.

IV. Discussion of Interim Rule

Overview of key amendments to the regulations at part 800

This interim rule makes amendments to the regulations at part 800 that are largely technical in nature. It implements certain immediately effective provisions of, and makes updates consistent with, FIRRMA. The discussion below summarizes the key changes made by this interim rule.

Section 800.103. This section is amended to provide clarity with respect to the applicability of the amendments to part 800 included in this interim rule. These amendments apply with respect to any covered transaction the review of which is initiated under section 721 on or after October 11, 2018. Certain of the provisions in FIRRMA that are addressed in this interim rule, however, took effect upon enactment of the statute. Most notably for transaction parties, FIRRMA's extension of the CFIUS review period from 30 days to 45 days went into effect immediately, and this interim rule updates part 800 to reflect the current practice of CFIUS. As indicated on the CFIUS Web site of the Department of the Treasury on August 13, 2018, upon the enactment of FIRRMA, CFIUS began applying the 45-day review period with respect to any covered transaction the review of which is initiated under section 721 on or after the date of FIRRMA's enactment.

Section 800.104. FIRRMA expands the definition of “covered transaction” to include transactions, transfers, agreements, or arrangements, the structure of which is designed or intended to evade or circumvent the application of section 721. Therefore, section 800.104, which addressed transactions or devices for avoidance, has been removed.

Section 800.202. The amendment to this section implements section 1720 of FIRRMA and expressly provides for the application of section 1001 of title 18, United States Code, to all information provided to the Committee under section 721 by any party to a covered transaction.

Section 800.207. The revision to the definition of “covered transaction” is consistent with the language in FIRRMA.

Section 800.209. The revision to the definition of “critical technologies” is consistent with the language in FIRRMA, including, and in particular, adding a sixth category as subpart (f) to capture emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018.

Section 800.224. The revision to the definition of “transaction” is consistent with the language in FIRRMA defining a “covered transaction” to include certain changes in rights that a foreign person has with respect to a U.S. business in which the foreign person has an investment, as well as transactions the structure of which is designed or intended to evade or circumvent the application of section 721. Corresponding changes are made to the definition of “party or parties to a transaction” in section 800.220.

Sections 800.301 and 800.302. The revisions to these sections add examples that are intended to illustrate the application of the expanded scope of “covered transactions” to the particular hypothetical situations. The examples are presented for the purpose of aiding the

understanding of readers. They neither limit the definition set forth in subpart B of part 800 nor exhaust the scenarios to which such definition could apply.

Section 800.401. The revisions to this section implement a shift to electronic submissions of voluntary notices, rather than requiring a hardcopy submission, which is consistent with the focus of FIRRMA on ensuring that the procedures of the Committee enable the Committee's efficient operation.

Section 800.402. The revisions to section 800.402 modify certain of the requirements regarding the content of voluntary notices based on FIRRMA including, and in particular, adding a provision allowing parties to stipulate that the transaction that is the subject of the voluntary notice is a covered transaction and, as relevant, a foreign government-controlled transaction. The Committee notes that stipulating that a transaction is covered or foreign government-controlled allows the Committee to expend fewer resources in determining whether the transaction meets these criteria, potentially speeding the resolution of a review. Although the parties, by stipulating, are averring that they view the transaction to be covered and/or foreign government-controlled, neither the Committee nor the President is bound by the parties' stipulations.

Section 800.502. The revision to the timing of the review period, extending the period from 30 days to 45 days, is consistent with FIRRMA. This change is reflected in certain other sections of part 800 that are updated by this interim rule.

Section 800.506. The revisions to this section are consistent with FIRRMA and define the "extraordinary circumstances" pursuant to which an investigation period can be extended by one 15-day period.

Section 800.702. The revisions to this section are consistent with FIRRMA, including, and in particular, incorporating additional exceptions with respect to information sharing.

Section 800.801. The revisions to this section are consistent with FIRRMA including, and in particular, removing the language “intentionally or through gross negligence” in the provisions allowing for the imposition of civil penalties. By their terms, the revisions do not apply the new standard to material misstatements, omissions, or certifications made preceding the implementation of this rule, or to violations occurring after the implementation of this rule, in connection with mitigation agreements, material conditions, or orders entered into or imposed prior to the implementation of this rule.

Section 800.802. The addition of this section is consistent with FIRRMA including authorizing the Committee to, in addition to other remedies, negotiate a remediation plan for lack of compliance with a mitigation agreement or condition entered into or imposed under section 721(l), require filings for future covered transactions for five years, or seek injunctive relief.

Executive Order 12866

These regulations are not subject to the requirements of Executive Order 12866 because they relate to a foreign affairs function of the United States.

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned control number 1505-0121. Under the Paperwork Reduction Act, 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 the Office of Management and Budget.

Regulatory Flexibility Act

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 have a significant economic impact on a substantial number of small entities. The RFA applies when an agency is required to publish a general notice of proposed rulemaking under section 553(b) of the APA, or any other law. As set forth below, because regulations issued pursuant to the Defense Production Act of 1950 (50 U.S.C. 4559) are not subject to the APA, or other law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply.

This interim rule implements section 721 of the DPA. Section 709(a) of the DPA provides that the regulations issued under it are not subject to the rulemaking requirements of the APA. Section 709(b)(1) instead provides that any regulation issued under the DPA be published in the *Federal Register* and opportunity for public comment be provided for not less than 30 days. (Notwithstanding the notice requirements of section 709(b)(1), section 709(b)(2) of the DPA waives the DPA's public comment provision for temporary provisions. As discussed in part II above, this interim rule implements, and makes updates consistent with, certain immediately effective provisions of FIRRMA and is issued pursuant to the section 709(b)(2) waiver provision.) Section 709(b)(3) of the DPA also provides that all comments received during the public comment period be considered and the publication of the final regulation contain written responses to such comments. Consistent with the plain text of the DPA, legislative history confirms that Congress intended that regulations under the DPA be exempt from the notice and comment provisions of the APA and instead provided that the agency

include a statement that interested parties were consulted in the formulation of the final regulation. See H.R. Conf. Rep. No. 102–1028, at 42 (1992) and H.R. Rep. No. 102–208 pt. 1, at 28 (1991). The limited public participation procedures described in the DPA do not require a general notice of proposed rulemaking as set forth in the RFA. Further, the mechanisms for publication and public participation are sufficiently different to distinguish the DPA procedures from a rule that requires a general notice of proposed rulemaking. In providing the President with expanded authority to suspend or prohibit the acquisition, merger, or takeover of, or certain other investments in, a domestic firm by a foreign firm if such action would threaten to impair the national security, Congress could not have contemplated that regulations implementing such authority would be subject to RFA analysis. For these reasons, the RFA does not apply to these regulations.

List of Subjects in 31 CFR Part 800

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

Accordingly, for the reasons stated in the preamble, Code of Federal Regulations, Title 31, Subtitle B, Chapter VIII, Part 800 is amended as follows:

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

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

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

2. The heading for part 800 is revised to read as set forth above.

SUBPART A—GENERAL

3. In § 800.101, remove “(50 U.S.C. App. 2170)” after “Defense Production Act of 1950” and add in its place “(50 U.S.C. 4565)”.

4. Amend § 800.103 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 800.103 Applicability rule; prospective application of certain provisions.

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

* * * * *

(c) The amendments to this part published in the Federal Register on October 11, 2018, apply with respect to any covered transaction the review of which is initiated under section 721 on or after October 11, 2018.

§ 800.104 [REMOVED]

5. Remove § 800.104.

SUBPART B—DEFINITIONS

6. Amend § 800.202 as follows:

- a. In paragraph (a) add “under the penalties provided in section 1001 of title 18, United States Code” after the word “certifying”; and
- b. In the Note to § 800.202, remove “at <http://www.treasury.gov/offices/international-affairs/cfius/index.shtml>” and add in its place “, currently available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>” after “Web site”.

7. Revise § 800.207 to read as follows:

§ 800.207 Covered transaction.

The term *covered 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.

8. Revise § 800.209 to read as follows:

§ 800.209 Critical technologies.

The term *critical technologies* means the following:

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

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

(1) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear 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.

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

9. Amend § 800.220 as follows:

- a. In paragraph (e), remove the second “and”;
- b. Redesignate paragraph (f) as paragraph (h);
- c. Add paragraphs (f) and (g);

- d. In redesignated paragraph (h), remove “paragraphs (a) through (e)” and add in its place “paragraphs (a) through (g)” after “described in”.

The additions read as follows:

§ 800.220 Party or parties to a transaction.

* * * * *

(f) 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;

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

* * * * *

10. Amend § 800.222 by removing “50 U.S.C. App. 2170” after “Defense Production Act of 1950,” and adding in its place “50 U.S.C. 4565”.

11. Revise § 800.224 to read as follows:

§ 800.224 Transaction.

The term *transaction* means:

- (a) A proposed or completed merger, acquisition, or takeover, including without limitation:

- (1) The acquisition of an ownership interest in an entity;
 - (2) The acquisition or conversion of convertible voting instruments of an entity;
 - (3) The acquisition of proxies from holders of a voting interest in an entity;
 - (4) A merger or consolidation;
 - (5) The formation of a joint venture; and
 - (6) A long-term lease under which a lessee makes substantially all business decisions concerning the operation of a leased entity, as if it were the owner;
- (b) Any change in rights that a person has with respect to an entity in which that person has an investment; and
- (c) Any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721.

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 to § 800.224: See § 800.304 regarding factors the Committee will consider in determining whether to include the rights to be acquired by a foreign person upon the conversion of convertible voting instruments as part of the Committee's assessment of whether a transaction that involves such instruments is a covered transaction.

SUBPART C—COVERAGE

12. Amend § 800.301 by adding paragraphs (e) and (f) to read as follows:

§ 800.301 Transactions that are covered transactions.

* * * * *

(e) 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 foreign control of the U.S. business.

Example. 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 will provide consulting and other advisory services to Corporation X in exchange for the right to appoint the Chief Executive Officer and the Chief Technical Officer of Corporation X. Corporation A does not acquire any additional ownership interest in Corporation X pursuant to the contractual arrangement. The transaction is a covered transaction.

(f) A transaction the structure of which is designed to evade or circumvent the application of section 721.

Example. 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.

13. Amend § 800.302 by adding paragraph (f) to read as follows:

§ 800.302 Transactions that are not covered transactions.

* * * * *

(f) A change in the rights that a foreign person has with respect to a U.S. business in which that foreign person has an investment, if that change could not result in foreign control of the U.S. business.

Example. 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 transaction.

SUBPART D—NOTICE

14. Revise § 800.401(a) and (e) to read as follows:

§ 800.401 Procedures for notice.

(a) 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 one electronic copy of the notice that includes, in English, the information set out in § 800.402,

including the certification required under paragraph (l) of that section. See the Committee's section of the Department of the Treasury Web site, currently available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>, for electronic submission instructions.

* * * * *

(e) Upon receipt of the electronic copy of a notice filed under paragraph (a) of this section, including the certification required by § 800.402(l), the Staff Chairperson shall promptly inspect such notice for completeness.

* * * * *

15. Amend § 800.402 as follows:

- a. In paragraph (c)(1)(viii), remove “and”;
- b. In paragraph (c)(1)(ix), add “and” after “transaction;”
- c. Add paragraph (c)(1)(x);
- d. In paragraph (l), remove “available at <http://www.treas.gov/offices/international-affairs/cfius/index.shtml>” and add in its place “currently available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>” after “Web site”; and
- e. Add paragraph (n).

The additions read as follows:

§ 800.402 Contents of voluntary notice.

* * * * *

(c) * * *

(1) * * *

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

* * * * *

(n) 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 pursuant to this section must be accompanied by a 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)(iv) through (c)(6)(vi) 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 and/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.

16. Amend § 800.403 as follows:

- a. In paragraph (b), remove “thirty-day” and add “specified by § 800.502” after “review period”;

- b. In Example 1, remove “thirty-day”; and
- c. In Example 2, remove “25th” and add in its place “40th” and remove “30” and add in its place “45”.

SUBPART E—COMMITTEE PROCEDURES: REVIEW AND INVESTIGATION

17. Amend § 800.501 as follows:

- a. In paragraph (a) introductory text, add a new sentence before the existing sentence; and
- b. In paragraph (b) remove “thirty-day”.

The addition reads as follows:

§800.501 General.

(a) In any review or investigation of a covered transaction, the Committee should consider the factors specified in section 721(f) and, as appropriate, require parties to provide to the Committee the information necessary to consider such factors. * * *

* * * * *

18. Amend § 800.502 by revising the section heading and paragraph (b) to read as follows:

§ 800.502 Beginning of forty-five day review period.

* * * * *

(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 of

the Committee, or the Chairperson of the Committee has requested a review pursuant to § 800.401(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.

* * * * *

19. Amend § 800.505(a) by removing “thirty-day”.

20. Amend § 800.506 as follows:

- a. In paragraph (a), remove “The Committee” and add in its place “Subject to paragraph (e) of this section, the Committee” before “shall”; and
- b. Add paragraphs (e) and (f) to read as follows:

§ 800.506 Completion or termination of investigation and report to the President.

* * * * *

(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 pursuant to this paragraph (e) 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, “extraordinary circumstances” means circumstances for which extending an investigation is necessary and the appropriate course of action due to a force majeure event or to protect the national security of the United States.”

21. Add § 800.510 to subpart E to read as follows:

§ 800.510 Tolling of deadlines during lapse in appropriations.

Any deadline or time limitation under this subpart E shall be tolled during a lapse in appropriations.

SUBPART G—PROVISION AND HANDLING OF INFORMATION

22. Amend § 800.701 as follows:

- a. In paragraph (a) remove “50 U.S.C. App. 2155(a)” after “pursuant to” and add in its place “50 U.S.C. 4555(a)”;
- b. In paragraph (c) remove “at *http://www.treas.gov/offices/international-affairs/cfius/index.shtml*” and add in its place “, currently available at *https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius*” after “Web site”; and
- c. In paragraph (d), remove “at *http://www.treas.gov/offices/international-affairs/cfius/index.shtml*” and add in its place “, currently available at

https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius” after “Web site”.

23. Amend § 800.702 as follows:

- a. Revise paragraph (a).
- b. Redesignate paragraphs (b), (c) and (d) as paragraphs (c), (d), and (e).
- c. Add new paragraph (b).
- d. In redesignated paragraph (e), remove “50 U.S.C. App. 2155(d)” after “The provisions of” and add in its place “50 U.S.C. 4555(d)”.

The revision and addition read as follows:

§ 800.702 Confidentiality.

(a) Except as provided in paragraph (b) of this section, any information or documentary material filed with the Committee pursuant to this part, including information or documentary material filed pursuant to § 800.401(f), shall be exempt from disclosure under 5 U.S.C. 552, 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.”; and

* * * * *

SUBPART H—PENALTIES

24. Amend § 800.801 as follows:

- a. In paragraph (a) remove “, after the effective date, intentionally or through gross negligence,”;
- b. Revise paragraph (b);
- c. Redesignate paragraph (g) as paragraph (h); and
- d. Add a new paragraph (g).

The revision and addition read as follows:

§ 800.801 Penalties.

* * * * *

(b) Any person who, after the effective date, 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.”;

* * * * *

(g) Section 1001 of title 18, United States Code, shall apply to all information provided to the Committee under section 721 by any party to a covered transaction.

* * * * *

25. Add § 800.802 to subpart H to read as follows:

§ 800.802 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 lead agency, 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 lead agency may, in addition to the authority of the Committee to impose penalties pursuant to section 721(h) and to unilaterally initiate a review of any covered transaction pursuant to 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 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.

Dated: October 4, 2018.

Heath Tarbert

Assistant Secretary for International Markets