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DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 802

RIN 1505-AC63

Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish new regulations to implement the provisions relating to real estate transactions in section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018. This proposed rule sets forth the scope of, and certain processes and procedures relating to, the national security review by the Committee on Foreign Investment in the United States of certain transactions involving the purchase or lease by, or concession to, a foreign person of certain real estate in the United States.

DATES: Written comments must be received by October 17, 2019.

The Department of the Treasury is considering holding during the comment period a teleconference regarding the proposed rule for members of the public. Information about any

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public teleconference, including the date, time, and how to attend, will be published on the Department of the Treasury website at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

ADDRESSES: Written comments on this proposed rule may be submitted through one of two methods:

- *Electronic Submission:* Comments may be submitted electronically through the Federal government eRulemaking portal at <https://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department of the Treasury to make the comments available to the public. Please note that comments submitted through <https://www.regulations.gov> will be public, and can be viewed by 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, NW, Washington, DC 20220.

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

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FOR FURTHER INFORMATION CONTACT: For questions about this proposed rule, contact: Laura Black, Director of Investment Security Policy and International Relations; Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations; or James Harris, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220; telephone: (202) 622-3425; email: CFIUS.FIRRMA@treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Statute

The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII of Public Law 115-232, 132 Stat. 2173, which amends section 721 (section 721) of the Defense Production Act of 1950, as amended (DPA), requires the issuance of regulations implementing its provisions. In Executive Order 13456, 73 FR 4677 (Jan. 23, 2008), the President directs the Secretary of the Treasury to issue regulations implementing section 721. This proposed rule is being issued pursuant to that authority.

FIRRMA was passed by Congress as H.R. 5515 and was enacted on August 13, 2018. Prior to the enactment of FIRRMA, section 721 authorized the President, acting through the Committee on Foreign Investment in the United States (CFIUS or the Committee), to review

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mergers, acquisitions, and takeovers by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States, to determine the effects of such transactions on the national security of the United States. The existing regulations that implement CFIUS's authority with respect to such transactions are found at part 800 of title 31 of the Code of Federal Regulations (part 800).

FIRRMA maintains the Committee's jurisdiction over any transaction which could result in foreign control of any U.S. business, and broadens the authorities of the President and CFIUS under section 721 to address national security concerns arising from certain investments and real estate transactions. Additionally, FIRRMA modernizes CFIUS's processes to better enable timely and effective reviews of transactions falling under its jurisdiction (which FIRRMA describes as "covered transactions"). In enacting FIRRMA, Congress acknowledged the important role of foreign investment in the U.S. economy and reiterated its support of the United States' open investment policy, consistent with the protection of national security. A brief summary of key provisions of FIRRMA, as relevant for this rulemaking, follows.

FIRRMA expands and clarifies the jurisdiction of the Committee by explicitly adding four types of transactions as covered transactions in the DPA: (1) the purchase or lease by, or concession to, a foreign person of certain real estate in the United States; (2) non-controlling "other investments" that afford a foreign person an equity interest in and specified access to information in the possession of, rights in, or involvement in the decisionmaking of certain

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U.S. businesses involved in certain critical technologies, critical infrastructure, or sensitive personal data (which a separate and concurrent rulemaking on part 800 describes as “covered investments”); (3) any change in a foreign person’s rights if such change could result in foreign control of a U.S. business or a covered investment in certain U.S. businesses; and (4) any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721. With respect to the Committee’s expanded jurisdiction over certain real estate transactions and covered investments, FIRRMA instructs the Committee to specify criteria to limit the application of that expansion of jurisdiction to certain categories of foreign persons. The proposed rule addresses only the provisions that are relevant for real estate transactions. Other provisions in FIRRMA requiring implementing regulations are the subject of a separate and concurrent rulemaking.

Prior to FIRRMA, CFIUS could only review an acquisition of real estate if it was part of a transaction which could result in control by a foreign person of an entity engaged in interstate commerce in the United States. FIRRMA expands CFIUS’s jurisdiction to include certain types of real estate transactions involving the purchase or lease by, or a concession to, a foreign person of certain private or public real estate located in the United States. FIRRMA focuses on two general categories of real estate and provides certain exceptions. The first category of real estate is described by its relation to airports and maritime ports. The second category of real estate is described by its relation to U.S. military installations and other facilities or properties of the U.S. Government that are sensitive for national security reasons.

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Importantly, FIRRMA authorizes the Committee to prescribe in regulations other criteria to define the types of real estate transactions under its jurisdiction, so long as those criteria do not expand the categories of real estate beyond those described in FIRRMA.

In addition to expanding the Committee’s jurisdiction, FIRRMA prescribes certain processes that are applicable to real estate transactions under its jurisdiction (described as “covered real estate transactions” in the proposed rule). FIRRMA allows parties to submit an abbreviated filing for any covered real estate transaction through a declaration, as an alternative to CFIUS’s traditional voluntary notice, both of which are discussed below. Declarations will allow parties to submit basic information regarding a transaction in an abbreviated form that should generally not exceed five pages in length. FIRRMA also sets forth an abbreviated timeframe for the Committee to respond to submitted declarations.

Although FIRRMA introduces a mandatory declaration requirement in certain circumstances, the statute does not subject real estate transactions to the mandatory declaration requirement. This means that parties to a covered real estate transaction may decide whether to voluntarily file a notice or submit a declaration to CFIUS. FIRRMA also codifies certain processes related to the Committee’s authority to identify non-notified and non-declared transactions.

FIRRMA permits a party to a transaction to stipulate that a transaction is a covered transaction. A party can make a stipulation in either a notice or a declaration. If a party makes a

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stipulation in a notice, CFIUS must provide comments on or accept the notice no later than 10 business days after the date of the filing.

Additionally, FIRRMA establishes a 45-day review period for transactions filed as notices. In the case of any follow-on investigation, which can last up to 45 additional days, FIRRMA allows the Secretary of the Treasury to grant one 15-day extension in “extraordinary circumstances.” FIRRMA establishes a 30-day review period for transactions submitted as declarations. The notice and declarations processes are discussed in further detail below.

Finally, FIRRMA authorizes the Committee to assess and collect fees with respect to covered transactions for which a written notice is filed, and the Committee is considering how to implement this authority. The proposed rule does not address filing fees. The Department of the Treasury will publish a separate proposed rule regarding fees at a later date.

B. Structure of FIRRMA Rulemaking and this Proposed Rule

Consistent with CFIUS processes generally, the proposed rule reflects extensive consultation with CFIUS member agencies, as well as other relevant agencies. The proposed rule implements the Committee’s authority in a new part 802 of title 31 of the Code of Federal Regulations. The Department of the Treasury determined that the technical and procedural aspects of CFIUS’s review of transactions involving real estate are sufficiently distinct from those related to control transactions and covered investments to warrant separate rulemaking. Nevertheless, the proposed rule incorporates certain basic features and relevant provisions from part 800, which should be familiar to parties that have filed with CFIUS in the past.

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The Department of the Treasury recognizes that FIRRMA's expansion of the Committee's jurisdiction over certain real estate transactions may impact parties who have not traditionally had reason to file with CFIUS. The proposed rule seeks to provide clarity to the business and investment communities with respect to the types of real estate transactions that are covered by the new authority under FIRRMA. The Department of the Treasury is considering whether it can make available other tools to help the public understand the scope and, in particular, the geographic coverage of the Committee's jurisdiction over certain real estate transactions by the time the final rule becomes effective. The new real estate jurisdiction, as implemented in this proposed rule, is generally structured around specific sites – certain airports, maritime ports, military installations, and other facilities or properties of the U.S. Government – and specific areas in or around those sites. Given the level of specificity provided in certain provisions of the proposed rule and the evolving national security landscape, the Department of the Treasury anticipates that it will periodically review, and as necessary, make changes to the regulations, consistent with applicable law.

As noted above, the proposed rule focuses on the Committee's expanded jurisdiction over certain real estate transactions. As such, the proposed rule would implement one part of the overall scope of CFIUS's jurisdiction. There are additional provisions in FIRRMA that are the subject of a separate and concurrent rulemaking on part 800. Parties should be aware that certain transactions involving real estate could potentially be covered transactions under part 800; for example, transactions involving certain long-term leases and certain collections of assets. A transaction that could result in control of a U.S. business by a foreign person remains subject to

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the regulations under part 800 (subject to the concurrent rulemaking), and is not a covered real estate transaction under this proposed rule. Additionally, CFIUS's new authority over covered investments in certain U.S. businesses, as provided by FIRRMA, is also outside the scope of this proposed rule (and subject to the concurrent rulemaking). In order to comprehensively understand the transactions that could fall within the scope of this proposed rule, in contrast to the transactions that could fall within the scope of part 800, the public is encouraged to be aware of the separate and concurrent rulemaking on part 800.

Finally, although FIRRMA introduces the term "close proximity" in the context of real estate transactions, CFIUS has and will continue to retain the authority to assess, and if necessary, take action with respect to any covered transaction under part 800 that gives rise to national security concerns on the basis of proximity to sensitive government sites and activities. The Committee's authority under part 800 is not limited in any way by the proposed rule for part 802.

II. Discussion of Proposed Rule

The proposed rule is structured similarly to the regulations at part 800. Parties familiar with the part 800 regulations should find that this proposed rule takes a similar approach in terms of defining key terms, describing transactions that are covered and not covered under the rule, listing the information requirements for a filing to be complete, and setting forth the Committee's procedures, among other things. While there are differences between the proposed rule and the existing part 800 regulations, as well as the separate and concurrent proposed rule

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replacing part 800, the scope and overall approach taken by the Committee to evaluating, concluding action on, or taking action on a transaction is consistent with part 800 and section 721.

The Committee welcomes public comment on the proposed rule, including with respect to the technical details, practical impact, and other costs or considerations.

A. Subpart A – General Provisions

Section 802.101 – Scope. Subpart A to the proposed rule begins by setting forth the scope of the Committee’s authority and standards for exercising that authority pursuant to section 721. This is consistent with the existing regulations at part 800 and the concurrent rulemaking for that part.

Section 802.102 – Risk-based analysis. FIRRMA requires that any determination of the Committee to suspend a covered transaction, to refer a covered transaction to the President, or to negotiate, enter into or impose, or enforce any agreement or condition with respect to a covered transaction, be based on a risk-based analysis, conducted by the Committee, of the effects on the national security of the United States of the covered transaction, which must include an assessment of the threat, vulnerabilities, and consequences to national security related to the transaction. The proposed rule includes definitions of the terms “threat,” “vulnerabilities,” and “consequences to national security” used in risk-based analyses undertaken by the Committee.

Section 802.103 – Effect on other law. The proposed rule makes clear that it does not alter or affect any other federal law or any other authority of the President or the Congress under the Constitution

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Section 802.104 – Applicability rule. This section sets forth the applicability of the proposed rule based on the effective date, which is defined in § 802.213. This section also clarifies that the rule would not apply to transactions that have been completed or where the material terms of the transaction have been agreed by binding written agreement or other binding document prior to the effective date.

B. Subpart B – Definitions

Subpart B sets forth the defined terms for part 802. More than half of the defined terms in the proposed rule are incorporated from the existing regulations at part 800 or the concurrent rulemaking for that part, with conforming changes to apply in the context of real estate transactions. The remainder of the terms are new in part 802.

As an initial matter, the proposed rule uses the term “covered real estate transaction” at § 802.212 to describe the types of real estate transactions that are subject to CFIUS’s jurisdiction. This definition implements the authority provided under FIRRMA to prescribe additional criteria to define the real estate transactions under CFIUS’s jurisdiction. In particular, this definition combines important elements of the proposed rule including the three transaction types specified in FIRRMA (“purchase,” “lease,” and “concession”) through which a “foreign person” is afforded certain “property rights” with respect to “covered real estate.” These and several other key definitions are discussed below.

Section 802.201 – Airport. The proposed rule defines “airport” to capture a subset of airports in the United States, specifically the major passenger and cargo airports in the United States based on volume, as well as “joint use airports” where both military and civilian aircraft

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make shared use of the military airfield. The Federal Aviation Administration publishes information on the specific airports falling within the categories listed in this definition.

Section 802.204 – Close proximity. The proposed rule defines “close proximity” based on the requirements in FIRRMA. It is defined as a specific distance (one mile) from the relevant military installation or other facility or property of the U.S. Government that is sensitive for reasons relating to national security. Close proximity is the defined area measured outward from the boundary of the relevant installation or other facility or property. The close proximity definition applies with respect to most of the military installations described in the proposed rule and in particular, those identified in the list at part 1 and part 2 of appendix A.

Section 802.206 – Completion date. The proposed rule includes a definition for the term “completion date,” which is the earliest date on which the purchase, lease, or concession is made legally effective, or a change in rights that could result in a covered real estate transaction occurs.

Section 802.207 – Concession. The proposed rule provides a definition of “concession,” which is one of the three transaction types specified in FIRRMA. The definition is limited to an arrangement whereby a U.S. public entity grants a right to use real estate for the purpose of developing or operating infrastructure for an airport or maritime port. The Department of the Treasury is considering, and in particular welcomes comment on, whether other types of concessions should be included, such as those relating to certain energy generation and oil and gas activities.

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Section 802.209 – Control. The proposed rule sets forth the definition of control consistent with part 800 and the concurrent rulemaking on that part. This term is included in part 802 for the purpose of defining a “foreign person” in connection with determining whether a transaction is a covered real estate transaction.

Section 802.211 – Covered real estate. The definition of “covered real estate” identifies the types of real estate that may result in a covered real estate transaction. The definition ties specific sites with the relevant geographic coverage in and around those sites. To assist the public in identifying the specific sites that meet the definition of “military installation,” the proposed rule provides the names and locations of the military installations in appendix A. While the structure of the proposed rule provides for coverage around other facilities or properties of the U.S. Government that are sensitive for national security reasons, no such facilities or properties are identified at this time in appendix A to the proposed rule. The Department of the Treasury is considering whether to move this appendix to its website.

Section 802.211(a) – This section implements the provision in FIRRMA’s discussion of real estate transactions that is focused on real estate transactions relating to airports and maritime ports. This section incorporates language from FIRRMA capturing real estate that is an airport or maritime port, real estate that is within an airport or maritime port, and real estate that will function as part of an airport or maritime port.

Section 802.211(b)(1) through (b)(4) – These sections implement the provisions of FIRRMA regarding real estate associated with a military installation or another facility or property of the U.S. Government that is sensitive for reasons related to national security. Section 802.211(b)(1) focuses on real estate that is in close proximity (one mile) of such a U.S.

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Government site. Section 802.211(b)(2) focuses on real estate that is between one and 100 miles from the relevant U.S. Government site, which is defined as the “extended range” in § 802.218. Section 802.211(b)(3) focuses on real estate that is within certain listed counties identified in appendix A in connection with the relevant military installations. Finally, § 802.211(b)(4) focuses on off-shore ranges and includes within CFIUS jurisdiction those portions of the off-shore ranges that are within 12 nautical miles seaward of the coastline of the United States.

As noted above, the Department of the Treasury is considering whether it can make available by the time the final rule becomes effective other tools to assist the public in determining the geographical locations that are covered in the rule, and in particular, this definition. The Department of the Treasury is seeking comments, in particular, on the approach taken in this definition.

Section 802.212 – Covered real estate transaction. As discussed above, the definition of “covered real estate transaction” is central to the proposed rule and is constructed using other defined terms. In particular, it incorporates the relevant types of transactions—purchases, leases, and concessions—and requires that the foreign person be afforded at least three “property rights” (defined in § 802.233) in covered real estate through the relevant transaction. This definition includes, per FIRRMA, transactions that are designed or intended to evade or circumvent CFIUS jurisdiction. This definition also includes a change in rights that a foreign person has with respect to covered real estate and carves out “excepted real estate transactions” (defined in § 802.217) from CFIUS’s purview under part 802.

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Section 802.217 – Excepted real estate transaction. The proposed rule defines exceptions to the general coverage described above, some of which are mandated by FIRRMA. The proposed definition of “excepted real estate transaction” enumerates specific types of transactions that are not covered real estate transactions, as well as examples. The proposed rule defines certain key terms to clarify the exceptions. In particular, the definitions of “excepted real estate investor,” “housing unit,” “urbanized area,” and “urban cluster” (§ 802.216, § 802.224, § 802.239, and § 802.238, respectively) are relevant for purposes of the exceptions. These terms are further discussed below in Section II.C.

Section 802.218 – Extended range. FIRRMA authorizes the Committee to review real estate transactions beyond those in “close proximity” to particular U.S. Government sites, including those that could reasonably provide a foreign person the ability to collect intelligence or could otherwise expose national security activities to the risk of foreign surveillance. This term applies to a defined subset of the military installations that also are subject to the close proximity one-mile range (as listed in part 2 of appendix A). The proposed rule defines the extended range as the area that extends 99 miles outward from the outer boundary of close proximity. Where any portion of the “extended range” falls offshore, the rule proposes that it will only be considered as within the “extended range” for up to 12 nautical miles from the coastline.

Section 802.222 – Foreign person. The proposed rule defines “foreign person” consistent with part 800. This definition includes any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity. A subset of foreign persons (defined as “excepted real estate investors” in § 802.216) will be excepted from

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CFIUS's jurisdiction over covered real estate transactions, as further discussed below. The proposed rule includes a series of examples under this definition.

Section 802.226 – Lease. The proposed rule defines “lease” consistent with common usage of the term. Under the proposed rule, CFIUS will consider leases in terms of their substance rather than form, including within the Committee’s jurisdiction what is typically thought of as a lease, but not transactions that, in substance, are merely licenses, permits, or other non-possessory interests. This term includes a sublease.

Section 802.227 – Maritime port. The proposed rule defines “maritime port” to capture a subset of maritime ports in the United States. The definition covers the top 25 tonnage, container, and dry bulk ports as well as strategic seaports. The Department of Transportation publishes information on the specific ports falling within the categories listed in this definition.

Section 802.228 – Military installation. The proposed rule identifies a subset of military installations around which certain real estate transactions are covered. The specific military installations are listed in appendix A by name and location, and the categories under which they fit are described in the proposed rule at § 802.228. As noted above, the Department of the Treasury is considering whether to move appendix A to its website.

Section 802.233 – Property right. The proposed rule includes as an element of a covered real estate transaction that certain “property rights” be afforded to the foreign person through the purchase, lease, or concession of covered real estate. The proposed definition of property right includes fundamental rights with respect to real property: the right to physically access, exclude, improve or develop, and attach structures or objects. In order to constitute a

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covered real estate transaction, a foreign person must be afforded at least three of these property rights. The Department of the Treasury is seeking comments, in particular, on the impact of this approach.

Section 802.234 – Purchase. The proposed rule defines “purchase” as the conveyance of an ownership interest in exchange for consideration. Consideration can take different forms, as the example illustrates.

Section 802.235 – Real estate. The proposed rule defines “real estate” to include land and any structure attached to land. The definition clarifies that the term land is not merely limited to the surface area, but also includes subsurface and submerged land.

Section 802.242 – U.S. public entity. The proposed rule defines “U.S. public entity” inclusive of the U.S. Government, a subnational government of the United States, and any other body exercising governmental functions for the United States, including airport and maritime port authorities. Because FIRREA expressly applies to private and public real estate, the definition is used in the proposed rule where a public entity is the counterparty in a transaction involving covered real estate and has relevance in terms of the notification procedures, as discussed below.

C. Excepted Real Estate Transactions

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1. Section 802.217(a) – Country specification for real estate transactions

FIRRMA requires CFIUS to specify criteria to limit the application of FIRRMA’s expanded jurisdiction over covered real estate transactions to certain categories of foreign persons. The proposed rule addresses FIRRMA’s requirement through three defined terms, “excepted real estate investor,” “excepted real estate foreign state,” and “minimum excepted ownership,” which operate together to exclude from CFIUS’s jurisdiction covered real estate transactions by certain foreign persons who meet certain criteria establishing sufficiently close ties to certain foreign states. Sections 802.216, 802.215, and 802.229 define excepted real estate investor, excepted real estate foreign state, and minimum excepted ownership, respectively. The definition of excepted real estate transaction at § 802.217(a) carves out from coverage under the proposed rule a purchase or lease by, or concession to, an excepted real estate investor of covered real estate, or a change in rights of an excepted real estate investor with respect to covered real estate.

Section 802.216 – Excepted real estate investor. The proposed rule sets forth a narrow definition of excepted real estate investor in the interest of protecting national security, in light of increasingly complex ownership structures, and to prevent foreign persons from circumventing CFIUS’s jurisdiction. Thus, the criteria specified in § 802.216 require that a foreign person have a substantial connection (*e.g.*, nationality of ultimate beneficial owners and place of incorporation) to one or more particular foreign states in order to be deemed an excepted real estate investor. Note that foreign persons who have violated, or whose parents or subsidiaries have violated, certain U.S. laws, executive orders, regulations, orders, directives,

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or licenses, or who have submitted a material misstatement or omission in a CFIUS notice or declaration or violated a material provision of a mitigation agreement, among other things, will not be considered excepted real estate investors. Additionally, note that a foreign person who is an excepted real estate investor at the time of the transaction, but, who, for up to three years after the completion date, fails to meet certain criteria, is deemed not to be an excepted real estate investor and the transaction is thus subject to CFIUS jurisdiction as a covered investment. Any member of the Committee may file an agency notice of the transaction for up to one year (and the Chairperson of the Committee for up to three years in extraordinary circumstances).

Section 802.215 – Excepted real estate foreign state. The rule proposes that the excepted real estate foreign state definition operate as a two-factor conjunctive test. First, the foreign state must be included in a defined group of eligible foreign states, which will be separately published on the Department of the Treasury website. As this is a new concept with potentially significant implications for the national security of the United States, CFIUS initially intends to designate a limited number of eligible foreign states. CFIUS plans to review this group in the future and potentially expand the number of eligible foreign states.

Second, in furtherance of CFIUS's efforts to encourage partner countries to implement robust processes to review foreign investment in their countries and to increase cooperation with the United States, the Secretary of the Treasury, with the agreement of a super-majority of Committee member agencies, will also make a determination, as described in subpart J, for each eligible foreign state as to whether such foreign state has established and is effectively utilizing a robust process to assess foreign investments for national security risks and to

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facilitate coordination with the United States on matters relating to investment security. In making these determinations, CFIUS will consider factors that will be made available on the Department of the Treasury website. The Committee is considering delaying the effectiveness of this requirement in order to provide the eligible foreign states time to enhance their foreign investment review processes and bilateral cooperation. Any such determinations identifying a foreign state as an excepted real estate foreign state will be published in the Federal Register and incorporated into the Committee's list of excepted real estate foreign states, which will be made available on the Department of the Treasury website.

2. Section 802.217(b)-(g) – Other excepted real estate transactions

As noted in the definition of excepted real estate transaction above, the proposed rule specifically excepts from its coverage certain types of transactions as summarized below.

Section 802.217(b) – Part 800 transaction. The proposed rule clarifies that a covered transaction as defined by part 800 that includes the purchase, lease, or concession of covered real estate is not a “covered real estate transaction.” If a transaction is subject to part 800, the parties should analyze whether to notify CFIUS of a transaction under part 800. Such a transaction should not be filed under part 802, even if it includes real estate. If the transaction is not subject to part 800, parties should review part 802 and analyze whether to notify CFIUS of the transaction under part 802.

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Sections 802.217(c) and 802.239 – Urbanized area. FIRRMA requires that real estate in “urbanized areas,” as defined by the Census Bureau in the most recent U.S. census, be excluded from CFIUS’s real estate jurisdiction except as otherwise prescribed by the Committee in regulations in consultation with the Secretary of Defense. The proposed rule was developed through consultation with the Department of Defense, including the approach to urbanized areas. The proposed rule includes the Census Bureau definition and generally excludes transactions involving covered real estate located in urbanized areas. The urbanized area exclusion applies to covered real estate everywhere except where it is in “close proximity” to a military installation or another sensitive facility or property of the U.S. Government as listed in appendix A, or is, is within, or will function as part of, an airport or maritime port.

Sections 802.217(c) and 802.238 – Urban cluster. The proposed rule also applies the exception for covered real estate in an urbanized area to real estate in an “urban cluster,” as that term is defined by the Census Bureau. Similar to urbanized areas, the urban cluster exclusion applies to covered real estate everywhere except where it is in “close proximity” or is, is within, or will function as part of, an airport or maritime port.

Sections 802.217(d) and 802.224 – Housing unit. FIRRMA requires an exception for a real estate purchase, lease, or concession of a single “housing unit,” as defined by the Census Bureau. An important element of the Census Bureau definition is that the housing unit is or is intended for occupancy as a separate living quarters. This means that the resident/occupant lives apart from other residents and has access to the outside. An example is an apartment unit in an apartment building. The Census Bureau definition is focused on the housing structure

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itself, and does not discuss fixtures or land adjacent to the housing unit. Given that many single housing units are conveyed with adjoining land, the proposed rule includes within the exception any fixtures and adjacent land that is incidental to the intended use of the real estate as a housing unit. Fixtures and land will be considered incidental if the size and nature of such is common for similar single housing units in the locality in which the unit is located. If the fixtures and adjacent land are not common for other similar housing units in the locality, the exception would apply only to the housing unit itself.

Section 802.217(e) – Retail trade and certain other establishments. The proposed rule provides an exception related to real estate transactions in the context of airport and maritime port leases and concessions, where the terms of the lease or concession restrict use to retail trade, accommodation, or food service sector establishments. The Department of the Treasury is considering, and in particular welcomes comment on, whether there are other categories of real estate transactions, outside of the ports context, where the standard terms of the underlying arrangement limit use to these types of establishments.

Section 802.217(f) – Commercial office space. The proposed rule provides an exception for purchases, leases, and concessions of commercial office space, based on the amount of space occupied by the foreign person and ratio of the foreign person to the total number of tenants in the building. The Department of the Treasury is considering, and in particular welcomes comment on, the approach in this exception as well as its impact and whether there is other similarly situated real estate.

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Section 802.217(g) – American Indian and Alaska Native lands. The proposed rule provides an exception for transactions where the covered real estate is owned by certain Alaska Native entities or held in trust by the United States for American Indians, Indian tribes, Alaska Natives and Alaska Native entities.

D. Subpart C – Coverage

Subpart C of the proposed rule includes provisions and examples that describe with particularity the transactions that are, or are not, covered real estate transactions (see § 802.301 and § 802.302).

Subpart C also discusses lending transactions at § 802.303. This would include commercial mortgages. While a lending transaction generally shall not, by itself, constitute a covered real estate transaction, subpart C discusses factors that CFIUS will consider in determining whether the lending transaction is a covered real estate transaction. Among other factors, the Committee will consider whether a default under the lending transaction would afford the foreign person the property rights defined in the proposed rule. In determining whether to accept a declaration or notice, the Committee also will consider the immediacy or occurrence of the default or other condition.

Finally, the proposed rule discusses the timing rule for contingent equity interests at § 802.304. This section sets forth the factors that CFIUS will take into account in determining whether the purchase of contingent equity interests, rather than the conversion or satisfaction of

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conditions, would potentially be a covered real estate transaction. Among other factors, the Committee would consider whether the interests and rights that would be conveyed are reasonably determined at the time of the purchase of the contingent equity.

E. Subpart D – Declarations

FIRRMA allows parties to inform the Committee of covered real estate transactions by submitting a declaration or filing a notice, which the proposed rule implements in Subparts D and E, respectively.

Declarations differ from notices in three key ways. First, declarations are shorter in length, generally not exceeding five pages. To facilitate the submission of declarations under the proposed rule, CFIUS intends to make available a standard fillable form. Parties will be able to use the form to submit declarations to the Committee.

Second, the timeline for the Committee to take action on declarations is shorter than for notices. FIRRMA provides CFIUS up to 30 days to respond to a declaration. This differs from the timeline for notices, which is 45 days for a review and an additional 45 days for an investigation, with a possibility of a 15-day extension in “extraordinary circumstances.”

Third, FIRRMA provides CFIUS with several potential responses to a declaration, and CFIUS need not make a final determination with respect to action under section 721 on the basis of a declaration.

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Section 802.401 – Procedures for declarations. The proposed rule outlines the process under which parties may submit a declaration. In order to submit a declaration, the parties need to provide the information required by § 802.402, including certifications. The rule does not permit parties to submit a declaration regarding a transaction that is also the subject of a notice without written approval from the Staff Chairperson. Conversely, parties may not file a notice regarding a transaction that is the subject of a declaration until such time as the Committee’s assessment of the declaration has been completed (see § 802.501(j)).

Section 802.402 – Contents of declarations. The proposed rule sets forth the information that is required in a declaration, consistent with FIRRMA’s requirement that CFIUS establish declarations as “abbreviated notices that would not generally exceed five pages in length.” As part of a declaration, parties may voluntarily stipulate that the transaction is a covered real estate transaction.

Section 802.403 – Beginning of 30-day assessment period. The proposed rule requires that the Committee take action on a declaration within 30 days of the Committee’s receipt of the declaration from the Staff Chairperson. The proposed rule explicitly provides that the Staff Chairperson may invite parties to a declaration to attend a meeting with Committee Staff to discuss and clarify issues pertaining to the transaction that is the subject of the declaration.

Section 802.404 – Rejection, disposition, or withdrawal of declarations. The proposed rule provides that the Committee may reject a declaration if it is incomplete, there is a material change in the transaction that has been notified, information comes to light that contradicts material information provided by the parties in the declaration, or parties to a submitted

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declaration fail to provide information requested by the Committee within two business days of the request (unless such timeframe is extended by the Staff Chairperson). The proposed rule also establishes procedures for parties to withdraw a declaration and makes clear that parties may not submit more than one declaration for the same or substantially similar transaction without approval from the Staff Chairperson.

Section 802.405 – Committee actions. The proposed rule implements FIRRMA’s mandate that the Committee take one of four actions in response to a declaration: (1) request that the parties file a notice; (2) inform the parties that CFIUS cannot conclude action under section 721 on the basis of the declaration, and that they may file a notice to seek written notification from the Committee that the Committee has concluded all action under section 721 with respect to the transaction; (3) initiate a unilateral review of the transaction through an agency notice; or (4) notify the parties that CFIUS has concluded all action under section 721.

F. Subpart E – Notices

Subpart E implements the process for parties to submit a written notice to CFIUS regarding a covered real estate transaction. As noted above, a notice differs from a declaration in several respects, notably that the proposed rule requires parties to provide a more detailed set of information in a notice. Based on that more detailed set of information, the Committee must ultimately resolve a written notice by either concluding all action under section 721 with respect to the transaction (*i.e.*, “clearing the transaction”), with or without mitigation, or sending a report to the President requesting the President’s decision with respect to the transaction. The proposed rule sets forth the required contents of a written notice, the

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timeframe in which the Committee is required to act upon it, and actions that the Committee can take upon the submission of a complete notice. For members of the public familiar with existing CFIUS regulations, the process set forth in this part is substantially similar to the process outlined under subpart E of part 800 regarding covered transactions, as modified in the concurrent rulemaking regarding that part.

Section 802.501 – Procedures for notice. The proposed rule outlines the process through which parties can file a notice. In order for a filed notice to be considered complete, the party or parties filing the notice must provide the information specified in § 802.502, including certifications. The proposed rule includes a provision allowing and encouraging parties to provide a draft notice to the Committee for review and consultation. Pursuant to § 802.502, parties may include a stipulation that the transaction is a covered real estate transaction. If parties include such a stipulation and accompanying description of the basis for the stipulation, the Committee must provide comments or accept a formal written notice within 10 business days after the submission of the draft or formal written notice. Parties may not file a notice regarding a transaction that is the subject of a declaration until such time as the Committee's assessment of the declaration has been completed.

Section 802.502 – Contents of voluntary notice. The proposed rule sets forth the information parties must include in a written notice for it to be considered complete. The information requirements include the submission of information necessary to analyze whether the transaction is a covered real estate transaction. As noted, FIRRMA allows parties to stipulate

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that the transaction is a covered real estate transaction. In making a stipulation, parties acknowledge that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered real estate transaction, and parties making a stipulation waive 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 real estate transaction.

Section 802.503 – Beginning of 45-day review period. The proposed rule implements FIRRMA’s 45-day timeframe for CFIUS’s review of a real estate transaction filed as a notice.

Section 802.504 – Deferral, rejection, or disposition of certain voluntary notices. Among other things, the proposed rule provides that the Committee may reject a notice filed under part 802 in several circumstances, including if the notice is incomplete, there is a material change in the transaction that has been notified, information comes to light that contradicts material information provided by the parties in the notice, or parties to a filed notice fail to provide information requested by the Committee within three business days of the request (unless such timeframe is extended by the Staff Chairperson).

Sections 802.505 through 802.508 – Investigations. The proposed rule implements FIRRMA’s authority for the Committee to undertake an investigation of a covered real estate transaction following the review period. An investigation will be undertaken in identified

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circumstances, including upon the Committee’s acceptance of a recommendation of the lead agency that an investigation be undertaken. The investigation period commences no later than the end of the review period and must be completed within 45 days, unless extended in “extraordinary circumstances.”

Section 802.509 – Withdrawal of notices. The proposed rule allows parties to withdraw notices filed with the Committee where the request to withdraw the notice is granted by the Committee.

G. Subpart F – Committee Procedures

Subpart F implements various provisions of the DPA, including the Committee’s consideration of specified national security factors (§ 802.601), providing a role for the Secretary of Labor with respect to mitigation agreements (§ 802.602), describing the materiality of certain information (§ 802.603), and clarifying the tolling of deadlines during a lapse in appropriations (§ 802.604).

H. Subpart G – Finality of Action

Subpart G of the proposed rule is similar to the existing regulations at part 800 with respect to finality of action. A covered real estate transaction that has been notified to CFIUS as a notice or declaration, and on which CFIUS has concluded action under section 721 after

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determining that there are no unresolved national security concerns, qualifies for a “safe harbor” as described in § 802.701. This means that, unless a party to a transaction submitted false or misleading material information or omitted material information, and subject to compliance with the terms of any mitigation agreement entered into with or conditions imposed by CFIUS, the transaction can proceed without the possibility of subsequent suspension or prohibition under section 721. A covered real estate transaction on which CFIUS has not concluded action does not qualify for the safe harbor, and CFIUS has the authority to initiate review of the transaction on its own, even after the transaction has been completed, which CFIUS may choose to do if it believes the transaction presents national security considerations.

I. Subpart H – Provision and Handling of Information

Subpart H discusses various requirements with respect to providing information to the Committee as well as the Committee’s handling of such information, consistent with the existing regulations at part 800. Under the DPA, each notifying party is required to certify in writing that the information it provides to CFIUS is complete and accurate as it relates to itself and the transaction. This requirement pertains both to the information in the notice or declaration and to follow-up information.

Section 802.802 discusses confidentiality requirements, which are fundamental to the CFIUS process and addressed in the DPA.

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J. Subpart I – Penalties and Damages

Subpart I of the proposed rule implements CFIUS’s authority, consistent with FIRRMA, to impose penalties for certain actions or omissions by parties relating to a real estate transaction. This is similar to the existing regulations at part 800 and the concurrent rulemaking for that part.

Section 802.901 – Penalties and damages. The proposed rule allows for the imposition of civil penalties for material misstatements, omissions, or certifications made by a party under part 802 and for violations of a material provision of a mitigation agreement or material conditions of an order entered into or imposed after the effective date. The proposed rule also authorizes the Committee to include a liquidated damages clause in a mitigation agreement under part 802 and notes the applicability of section 1001 of title 18, United States Code, regarding criminal liability for false statements, to any information provided to the Committee under section 721.

Section 802.902 – Effect of lack of compliance. The proposed rule includes a provision authorizing the Committee to 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, in addition to other available remedies.

III. Rulemaking Requirements

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Executive Order 12866

These regulations are not subject to the general requirements of Executive Order 12866, which covers review of regulations by the Office of Information and Regulatory Affairs in the Office of Management and Budget, because they relate to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, or via email to OIRA_Submission@omb.eop.gov, with copies to Thomas Feddo, Deputy Assistant Secretary for Investment Security, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Comments on the collection of information should be received by November 16, 2019.

In accordance with 5 CFR 1320.8(d)(1), the Department of the Treasury is soliciting comments from members of the public concerning this collection of information to:

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(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology.

The burden of the information collections in this proposed rule is estimated as follows:

For Notices:

Estimated total annual reporting and/or recordkeeping burden: 17,400 hours.

Estimated average annual burden per respondent: 116 hours.

Estimated number of respondents: 150 per year.

Estimated annual frequency of responses: Not applicable.

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For Declarations:

Estimated total annual reporting and/or recordkeeping burden: 3,000 hours.

Estimated average annual burden per respondent: 15 hours.

Estimated number of respondents: 200 per year.

Estimated annual frequency of responses: Not applicable.

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

Initial Regulatory Flexibility Analysis

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 APA, or other law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply.

The proposed 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.

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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.

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 certain real estate transactions involving foreign persons if such a transaction would threaten to impair the national security of the United States, 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.

Notwithstanding the inapplicability of the RFA, the Committee has undertaken an analysis of the proposed rule’s potential impact on small businesses in the United States. As discussed above, the proposed rule expands the jurisdiction of the Committee to review the purchase or lease by, or concession to, a foreign person of certain real estate in the United States.

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Accordingly, the proposed rule may impact any U.S. business, including a small U.S. business, that engages in a covered real estate transaction.

The Department of the Treasury does not have a source for information on the number of small U.S. businesses that would be involved in some way in the purchase, lease, or concession of real estate to a foreign person that could be covered under this proposed rule. While the Committee believes that the proposed rule likely would not have a “significant economic impact on a substantial number of small entities” (5 U.S.C. 605(b)), the Committee does not have complete data at this time to make this determination. Accordingly, the Department of the Treasury invites the public to provide information and comments on the types and number of small entities potentially impacted by the proposed rule. If necessary, the Department of the Treasury will undertake a final regulatory flexibility analysis in the final rule.

List of Subjects in 31 CFR Part 802

Foreign investments in the United States, Federal buildings and facilities, Government property, Investigations, Investments, Investment companies, Land sales, National defense, Public lands, Real property acquisition, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, the Department of the Treasury proposes to add part 802 to title 31 of the Code of Federal Regulations, to read as follows:

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

Subpart A—General

Sec.

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- 802.101 Scope.
- 802.102 Risk-based analysis.
- 802.103 Effect on other law.
- 802.104 Applicability rule.

Subpart B—Definitions

- 802.201 Airport.
- 802.202 Business day.
- 802.203 Certification.
- 802.204 Close proximity.
- 802.205 Committee; Chairperson of the Committee; Staff Chairperson.
- 802.206 Completion date.
- 802.207 Concession.
- 802.208 Contingent equity interest.
- 802.209 Control.
- 802.210 Conversion.
- 802.211 Covered real estate.
- 802.212 Covered real estate transaction.
- 802.213 Effective date.
- 802.214 Entity.
- 802.215 Excepted real estate foreign state.
- 802.216 Excepted real estate investor.
- 802.217 Excepted real estate transaction.
- 802.218 Extended range.
- 802.219 Foreign entity.
- 802.220 Foreign government.
- 802.221 Foreign national.
- 802.222 Foreign person.
- 802.223 Hold.
- 802.224 Housing unit.
- 802.225 Lead agency.
- 802.226 Lease.
- 802.227 Maritime port.
- 802.228 Military installation.
- 802.229 Minimum excepted ownership.
- 802.230 Parent.
- 802.231 Party to a transaction.
- 802.232 Person.
- 802.233 Property right.
- 802.234 Purchase.
- 802.235 Real estate.
- 802.236 Section 721.
- 802.237 United States.

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- 802.238 Urban cluster.
- 802.239 Urbanized area.
- 802.240 U.S. business.
- 802.241 U.S. national.
- 802.242 U.S. public entity.
- 802.243 Voting interest.

Subpart C—Coverage

- 802.301 Transactions that are covered real estate transactions.
- 802.302 Transactions that are not covered real estate transactions.
- 802.303 Lending transactions.
- 802.304 Timing rule for a contingent equity interest.

Subpart D—Declarations

- 802.401 Procedures for declarations.
- 802.402 Contents of declarations.
- 802.403 Beginning of 30-day assessment period.
- 802.404 Rejection, disposition, or withdrawal of declarations.
- 802.405 Committee actions.

Subpart E—Notices

- 802.501 Procedures for notices.
- 802.502 Contents of voluntary notices.
- 802.503 Beginning of 45-day review period.
- 802.504 Deferral, rejection, or disposition of certain voluntary notices.
- 802.505 Determination of whether to undertake an investigation.
- 802.506 Determination not to undertake an investigation.
- 802.507 Commencement of investigation.
- 802.508 Completion or termination of investigation and report to the President.
- 802.509 Withdrawal of notices.

Subpart F—Committee Procedures

- 802.601 General.
- 802.602 Role of the Secretary of Labor.
- 802.603 Materiality.
- 802.604 Tolling of deadlines during lapse in appropriations.

Subpart G—Finality of Action

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802.701 Finality of actions under section 721.

Subpart H—Provision and Handling of Information

802.801 Obligation of parties to provide information.

802.802 Confidentiality.

Subpart I—Penalties and Damages

802.901 Penalties and damages.

802.902 Effect of lack of compliance.

Subpart J—Foreign National Security Investment Review Regimes

802.1001 Determinations.

802.1002 Effect of determinations.

Appendix A to Part 802 - List of Military Installations

Authority: 50 USC 4565; E.O. 11858, as amended, 73 FR 4677.

Subpart A—General

§ 802.101 Scope.

(a) Section 721 of title VII of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended, authorizes the President to suspend or prohibit transactions involving real estate that meet specified criteria, which are referred to in this part as “covered real estate transactions,” when, in the President’s judgment, there is credible evidence that leads the President to believe that the foreign person engaging in a covered real estate transaction might take action that threatens to impair the national security of the United States, and when provisions of law other than section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701-1706), do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security in the matter before the President. Section 721 also

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authorizes the Committee to review covered real estate transactions and to mitigate any risk to the national security of the United States that arises as a result of such transactions.

(b) This part implements regulations pertaining to covered real estate transactions as defined in § 802.212 of this part. Regulations pertaining to covered transactions are addressed in part 800 of this title.

§ 802.102 Risk-based analysis.

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

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

(b) The *vulnerabilities*, which are the extent to which the nature of the covered real estate presents susceptibility to impairment of national security; and

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

§ 802.103 Effect on other law.

Nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of federal law, including without limitation the International Emergency Economic Powers Act, or any other authority of the President or the Congress under the Constitution of the United States.

§ 802.104 Applicability rule.

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

(b) The regulations in this part do not apply to any transaction for which:

(1) The completion date is prior to the effective date; or

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

Subpart B—Definitions

§ 802.201 Airport.

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The term *airport* means:

(a) The following, in each case based on the most recent annual data reported by the Federal Aviation Administration from the Air Carrier Activity Information System:

- (1) Any “large hub airport,” as that term is defined in 49 U.S.C. 40102; or
- (2) Any airport with annual aggregate all-cargo landed weight greater than 1.24 billion pounds; or

(b) Any “joint use airport,” as that term is defined in 49 U.S.C. 47175.

§ 802.202 Business day.

The term *business day* means Monday through Friday, except the legal public holidays specified in 5 U.S.C. 6103, any day declared to be a holiday by federal statute or executive order, or any day with respect to which the U.S. Office of Personnel Management has announced that Federal agencies in the Washington, D.C. area are closed to the public. For purposes of calculating any deadline imposed by this part triggered by the submission of a party to a transaction under § 802.501(i), any submissions received after 5 p.m. Eastern Time are deemed to be submitted on the next business day.

NOTE 1 TO § 802.202: See § 802.604 regarding the tolling of deadlines during a lapse in appropriations.

§ 802.203 Certification.

(a) The term *certification* means a written statement signed by the chief executive officer or other duly authorized designee of a party filing a notice, declaration, or information, certifying

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under the penalties provided in the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001) that the notice, declaration, or information filed:

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

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

(i) The transaction, and

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

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

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

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

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

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

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

NOTE 1 TO § 802.203: A sample certification may be found at the Committee's section of the Department of the Treasury website, currently available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

NOTE 2 TO § 802.203: See § 802.402(f) and § 802.502(l) regarding filing procedures in transactions in which a U.S. public entity is a party to the transaction.

§ 802.204 Close proximity.

The term *close proximity* means, with respect to a military installation or another facility or property of the U.S. Government, the area that extends outward one mile from the boundary of such military installation, facility, or property.

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

The term *Committee* means the Committee on Foreign Investment in the United States. The *Chairperson of the Committee* is the Secretary of the Treasury. The *Staff Chairperson* of the Committee is the Department of the Treasury official so designated by the Secretary of the Treasury or by the Secretary's designee.

§ 802.206 Completion date.

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The term *completion date* means, with respect to a covered real estate transaction, the earliest date upon which the purchase, lease, or concession is made legally effective, or a change in rights that could result in a covered real estate transaction occurs.

NOTE 1 TO § 802.206: See § 802.304 regarding the timing rule for a contingent equity interest.

§ 802.207 Concession.

The term *concession* means an arrangement, other than a purchase or lease, whereby a U.S. public entity grants a right to use real estate for the purpose of developing or operating infrastructure for an airport or maritime port. This term includes assignment of a concession by the party who is not the U.S. public entity.

§ 802.208 Contingent equity interest.

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

§ 802.209 Control.

(a) The term *control* means the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important

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matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the following matters, or any other similarly important matters affecting an entity:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTE 1 TO § 802.209: This definition is included herein for the purpose of determining whether a foreign person has control of a U.S. business that may be involved in a covered real estate transaction. For additional information, see the examples provided at § 800.208, as relevant.

§ 802.210 Conversion.

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

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§ 802.211 Covered real estate.

The term *covered real estate* means real estate that:

(a) Is, is located within, or will function as part of, an airport or maritime port; or

(b) Is located within:

(1) Close proximity of any military installation described in § 802.228(b) to (o), or another facility or property of the U.S. Government, in each case as identified in the list at part 1 or part 2 of Appendix A to this part;

(2) The extended range of any military installation described in § 802.228(h), (k), or (m), as identified in the list at part 2 of Appendix A to this part;

(3) Any county or other geographic area identified in connection with any military installation described in § 802.228(a), as identified in the list at part 3 of Appendix A to this part;
or

(4) Any part of a military installation described in § 802.228(p), as identified in the list at part 4 of Appendix A to this part, that is located within 12 nautical miles seaward of the coastline of the United States.

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§ 802.212 Covered real estate transaction.

The term *covered real estate transaction* means:

(a) Other than an excepted real estate transaction, any purchase or lease by, or concession to, a foreign person of covered real estate, that affords the foreign person at least three of the property rights listed in § 802.233;

(b) Other than an excepted real estate transaction, a change in the rights that a foreign person has with respect to covered real estate in which the foreign person has an ownership or leasehold interest or concession arrangement if that change could result in the foreign person having at least three of the property rights listed in § 802.233; or

(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 as it relates to real estate.

NOTE 1 TO § 802.212: Any transaction described in (a) through (c) of this section that arises pursuant to a bankruptcy proceeding or other form of default on debt is a covered real estate transaction. See also § 802.303 for the treatment of certain lending transactions.

§ 802.213 Effective date.

The term *effective date* means [EFFECTIVE DATE OF FINAL RULE].

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§ 802.214 Entity.

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

§ 802.215 Excepted real estate foreign state.

The term *excepted real estate foreign state* means each foreign state from time to time identified by the Chairperson of the Committee, with the agreement of two-thirds of the voting members of the Committee, and, beginning on [TWO YEARS AFTER EFFECTIVE DATE OF FINAL RULE], with respect to which the Chairperson of the Committee has made a determination pursuant to § 802.1001(a).

NOTE 1 TO § 802.215: The name of each foreign state identified by the Chairperson of the Committee as an excepted real estate foreign state will be published in a notice in the Federal Register and incorporated into the Committee's list of excepted real estate foreign states.

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§ 802.216 Excepted real estate investor.

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

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

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

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

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

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

(iii) Each member or observer of the board of directors or similar body of such entity is a U.S. national or, if a foreign national, is a national of one or more excepted real estate foreign states and is not also a national of any foreign state that is not an excepted real estate foreign state;

(iv) Any foreign person that individually holds, or each foreign person that is part of a group of foreign persons that, in the aggregate, holds, five percent or more of the outstanding

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voting interest of such entity; holds the right to five percent or more of the profits of such entity; holds the right in the event of dissolution to five percent or more of the assets of such entity; or could exercise control over such entity, is:

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

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

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

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

(A) Not a foreign person;

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

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

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

(b) When more than one person holds an ownership interest in an entity, in determining whether the ownership interests of such persons should be aggregated for purposes of paragraph (a)(3)(iv) of this section, consideration will be given to factors such as whether the persons holding the ownership interests are related or have formal or informal arrangements to act in concert, whether they are agencies or instrumentalities of the national or subnational governments of a single foreign state, and whether a given foreign person and another foreign person that has an ownership interest in the entity are both controlled by any of the national or subnational governments of a single foreign state.

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

(1) In the five years prior to the completion date of the transaction the foreign person or any of its parents or subsidiaries:

(i) Has received written notice from the Committee that it has submitted a material misstatement or omission in a notice or declaration or made a false certification under this part or parts 800 or 801 of this title;

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

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

(iv) Has:

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

(B) Entered into a settlement agreement with OFAC with respect to apparent violations of U.S. sanctions laws administered by OFAC, including without limitation the International Emergency Economic Powers Act, the Trading With the Enemy Act, the Foreign Narcotics Kingpin Designation Act, each as amended, or of any executive order, regulation, order, directive, or license issued pursuant thereto;

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

(vi) Has been a respondent or party in a final order, including a settlement order, issued by the Department of Commerce Bureau of Industry and Security (BIS) regarding violations of U.S. export control laws administered by BIS, including without limitation the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115-232, 132 Stat. 2208,

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50 U.S.C. 4801, et seq.), the Export Administration Regulations (15 CFR Parts 730 – 774), or of any executive order, regulation, order, directive, or license issued pursuant thereto;

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

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

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

(d) Irrespective of whether the foreign person satisfies the criteria in paragraphs (a)(1), (2), or (3)(i) through (iii) of this section as of the completion date, if at any time during the three-year period following the completion date the foreign person no longer meets all the criteria set forth in paragraphs (a)(1), (2), or (3)(i) through (iii) of this section, the foreign person is not an excepted real estate investor with respect to the transaction from the completion date onward. This paragraph does not apply when an excepted real estate investor no longer meets any of the criteria solely due to a rescission of a determination under § 802.1001(b) or if a particular foreign state otherwise ceases to be an excepted real estate foreign state.

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(e) A foreign person may waive its status as an excepted real estate investor with respect to a transaction at any time by submitting a declaration pursuant to § 802.401 or filing a notice pursuant to § 802.501 regarding the transaction in which it explicitly waives such status. In such case, the foreign person will be deemed not to be an excepted real estate investor and the provisions of Subpart D or E, as applicable, will apply.

NOTE 1 TO § 802.216: See § 802.501(c)(2) regarding an agency notice where a foreign person is not an excepted real estate investor solely due to § 802.216(d).

§ 802.217 Excepted real estate transaction.

The term *excepted real estate transaction* means the following:

(a) A purchase or lease by, or concession to, an excepted real estate investor of covered real estate, or a change in rights of an excepted real estate investor with respect to covered real estate.

(b) A covered transaction as defined by part 800 of this title that includes the purchase, lease, or concession of covered real estate.

(c) The purchase, lease, or concession of covered real estate that is within an urbanized area or urban cluster, except for real estate that is subject to paragraph (a) or (b)(1) of § 802.211.

(d) The purchase, lease, or concession of covered real estate that is a single housing unit, including fixtures and adjacent land as long as the land is incidental to the use of the real estate as a single housing unit.

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(e) The lease by or a concession to a foreign person of covered real estate pursuant to paragraph (a) of § 802.211 that, according to the terms of the concession or lease, may be used only as a retail trade, accommodation, or food service sector establishment, as described in the North American Industry Classification System Manual Sector 44-45 and 72.

(f) The purchase or lease by, or concession to, a foreign person of commercial office space within a multi-unit commercial office building, if, upon the completion of the transaction,

(1) The foreign person and its affiliates do not, in the aggregate, hold, lease, or have a concession with respect to commercial office space in such building that exceeds 10 percent of the total square footage of the commercial office space of such building and

(2) The foreign person and its affiliates (each counted separately) do not represent more than 10 percent of the total number of tenants in the building.

(g) The purchase, lease, or concession of land either:

(1) Owned by an Alaska Native village, Native group, or Native Corporation as those terms are defined in the Alaska Native Claims Settlement Act at 43 U.S.C. 1602; or

(2) Held in trust by the United States for American Indians, Indian tribes, Alaska Natives, or any of the entities set forth in paragraph (g)(1) of this section.

(h) Examples:

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(1) *Example 1.* Corporation A, a foreign person, proposes to purchase all of the shares of Corporation X, which is a U.S. business. Corporation X is in the business of owning and leasing real estate including real estate that is in close proximity to a military installation identified in part 1 or part 2 of Appendix A to this part. As the sole owner, Corporation A will have control over Corporation X. The proposed transaction is not a covered real estate transaction but is a covered transaction under part 800 of this title.

(2) *Example 2.* Same facts as Example 1 of this section, except that Corporation X, after the transaction with Corporation A is completed, leases a tract of land from another person that is in close proximity to a military installation identified in part 1 or part 2 of Appendix A to this part. Assuming no other relevant facts, the proposed transaction is a covered real estate transaction but only with respect to the new lease.

(3) *Example 3.* Corporation A, a foreign person, seeks to purchase from Corporation X, a U.S. business, an empty warehouse located in the United States that is in close proximity to a military installation identified in part 1 or part 2 of Appendix A to this part. Assuming no other relevant facts, Corporation A has not acquired a U.S. business, and the purchase of the covered real estate is not a covered transaction subject to part 800 of this title.

(4) *Example 4.* Same facts as Example 3 of this section, except that, in addition to the proposed purchase of Corporation X's empty warehouse, Corporation A would acquire the personnel, customer list, equipment, and inventory management software used to operate the

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warehouse. Under these facts, Corporation A is acquiring a U.S. business, and the proposed transaction is a covered transaction subject to part 800 of this title and therefore not a covered real estate transaction.

(5) *Example 5.* Corporation A, a foreign person, purchases covered real estate that is undeveloped. Corporation A, through a newly incorporated U.S. subsidiary, intends to use the covered real estate to set up a manufacturing facility. Assuming no other relevant facts, Corporation A has not acquired a U.S. business, and the purchase of the covered real estate is not a covered transaction subject to part 800 of this title. Corporation A's purchase of the covered real estate is, however, a covered real estate transaction.

(6) *Example 6.* A foreign person purchases real estate. The nearest military installation is one that is identified in part 2 of Appendix A to this part and is 40 miles away (*i.e.*, in the extended range) from the real estate. The real estate is located in a statistical geographic area with a population of 125,000 individuals. Assuming no other relevant facts, the real estate purchase is not a covered real estate transaction because the real estate is located in an urbanized area.

(7) *Example 7.* Same facts as Example 6 of this section, except that the covered real estate is not located in an urbanized area or an urban cluster. Assuming no other relevant facts, the real estate transaction is a covered real estate transaction.

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(8) *Example 8.* A foreign person purchases real estate that is 0.25 miles from a military installation identified in part 1 of Appendix A to this part. The real estate is located in an urbanized area. Assuming no other relevant facts, the real estate transaction is a covered real estate transaction because it is in close proximity to a military installation listed in part 1 of Appendix A to this part.

(9) *Example 9.* A foreign person purchases a single housing unit including the one acre of land surrounding it, within 0.5 miles from a military installation. Each home in the neighborhood sits on a separate lot, each of which is approximately one acre in size. The acre of land surrounding the housing unit is incidental to use of the land as a single housing unit, and the real estate transaction therefore is not a covered real estate transaction.

(10) *Example 10.* Same facts as Example 9 of this section, except that the foreign person also purchases an adjacent five-acre undeveloped tract of land a year later. Assuming no other relevant facts, the purchase of the adjacent tract of land is a covered real estate transaction.

NOTE 1 TO § 802.217: With respect to paragraph (d) of this section, for purposes herein, fixtures and land shall be considered incidental if the size and nature of such is common for similar single housing units in the locality in which the unit is located.

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§ 802.218 Extended range.

The term *extended range* means, with respect to any military installation identified in § 802.228(h), (k), or (m), as listed in part 2 of Appendix A to this part, the area that extends 99 miles outward from the outer boundary of close proximity to such military installation, but, where applicable, no more than 12 nautical miles seaward of the coastline of the United States.

§ 802.219 Foreign entity.

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

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

§ 802.220 Foreign government.

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

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§ 802.221 Foreign national.

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

§ 802.222 Foreign person.

(a) The term *foreign person* means:

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

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

(b) Examples:

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

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

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

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

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

(6) *Example 6.* Same facts as Example 5 of this section, except that one of the foreign investors controls Corporation A. Assuming no other relevant facts, Corporation A is not a

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foreign entity pursuant to § 802.219(b), but it is a foreign person because it is controlled by a foreign person.

§ 802.223 Hold.

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

§ 802.224 Housing unit.

The term *housing unit* means a single family house, townhome, mobile home or trailer, apartment, group of rooms, or single room that is occupied as a separate living quarters, or, if vacant, is intended for occupancy as a separate living quarters.

§ 802.225 Lead agency.

The term *lead agency* means the Department of the Treasury and any other agency designated by the Chairperson of the Committee to have primary responsibility, on behalf of the Committee, for the specific activity for which the Chairperson designates it as a lead agency, including without limitation all or a portion of an assessment, a review, an investigation, or the negotiation or monitoring of a mitigation agreement or condition.

§ 802.226 Lease.

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(a) The term *lease* means an arrangement conveying a possessory interest in real estate, short of ownership, to a person for a specified time and in exchange for consideration. This term includes subleases.

(b) Examples:

(1) *Example 1.* Foreign person A enters into an arrangement with a neighbor that allows the foreign person to use a private road running across the neighbor's land. The road will remain owned by the neighbor following the arrangement. The neighbor will also retain physical possession of his land despite the foreign person having permission to traverse the land while using the road. The arrangement does not convey a possessory interest in real estate. Assuming no other relevant facts, the foreign person has not entered into a lease.

(2) *Example 2.* Same facts as Example 1 of this section, except that the foreign person's arrangement with the neighbor gives the foreign person the exclusive right to occupy a portion of the neighbor's land and attach fixtures to the surface, in exchange for a fee for a specified period of time. The foreign person can unilaterally adjust, remove, and make other changes to the fixtures. The foreign person has entered into a lease.

NOTE 1 TO § 802.226: See § 800.249(a)(5) for certain long-term leases and concessions that could be subject to part 800 of this title.

§ 802.227 Maritime port.

The term *maritime port* means any:

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(a) Strategic seaport within the National Port Readiness Network, as identified by the Department of Transportation Maritime Administration; or

(b) Top 25 tonnage, container, or dry bulk port according to the most recent annual report submitted to Congress by the U.S. Department of Transportation, Bureau of Transportation Statistics pursuant to 49 U.S.C. 6314.

§ 802.228 Military installation.

The term *military installation* means any site that meets the following category descriptions, as identified in the list at Appendix A to this part:

(a) Active Air Force ballistic missile fields;

(b) Air Force bases administering active Air Force ballistic missile fields;

(c) Air Force bases and major annexes thereof containing a unit from the Air Force Air Combat Command;

(d) Air Force bases and major annexes thereof containing an Air Force research laboratory or test unit and associated sites;

(e) Air Force bases and major annexes thereof containing a unit of the North American Aerospace Defense Command and its regions;

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(f) Air Force bases and Air Force stations and major annexes thereof containing satellite, telemetry, tracking or commanding systems;

(g) Army bases, ammunition plants, centers of excellence and research laboratories and major annexes thereof, excluding depots, arsenals and airfields that are not collocated with an Army installation included in this section;

(h) Army combat training centers located in the continental United States;

(i) Headquarters of the Office of the Secretary of Defense and Defense Advanced Research Projects Agency and major offices and annexes thereof;

(j) Long range radar sites and major annexes thereof in any of the following states: Alaska, North Dakota, California, or Massachusetts;

(k) Major range and test facility base activities as defined in 10 U.S.C. 196;

(l) Marine Corps bases and air stations and major annexes thereof, excluding detachments, installations, logistics battalions, recruit depots, and support facilities;

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(m) Military ranges as defined in 10 U.S.C. 101(e)(1) owned by the U.S. Navy or U.S. Air Force, or joint forces training centers that are located in any of the following states: Oregon, Nevada, Idaho, Wisconsin, Mississippi, North Carolina, or Florida;

(n) Naval bases and air stations containing squadrons and supporting commands of the Submarine Force Atlantic or Submarine Force Pacific and major offices thereof;

(o) Naval surface, air, and undersea warfare centers and research laboratories and major annexes thereof; and

(p) U.S. Navy off-shore range complexes and off-shore operating areas.

§ 802.229 Minimum excepted ownership.

The term *minimum excepted ownership* means:

(a) With respect to an entity whose equity securities are primarily traded on an exchange in an excepted foreign state or the United States, a majority of its voting interest, the right to a majority of its profits, and the right in the event of dissolution to a majority of its assets; and

(b) With respect to an entity whose equity securities are not primarily traded on an exchange in an excepted foreign state or the United States, 90 percent or more of its voting

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interest, the right to 90 percent and more of its profits, or the right in the event of dissolution to 90 percent or more of its assets.

§ 802.230 Parent.

(a) The term *parent* means a person who or which directly or indirectly:

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

(2) Holds or will hold the right to at least 50 percent of the profits of an entity, or has or will have the right in the event of the dissolution to at least 50 percent of the assets of that entity.

(b) Any entity that meets the conditions of paragraph (a)(1) or (2) of this section with respect to another entity (*i.e.*, the intermediate parent) is also a parent of any other entity of which the intermediate parent is a parent.

(c) Examples:

(1) *Example 1.* Corporation P holds 50 percent of the voting interest in Corporations R and S. Corporation R holds 40 percent of the voting interest in Corporation X; Corporation S holds 50 percent of the voting interest in Corporation Y, which in turn holds 50 percent of the voting interest in Corporation Z. Corporation P is a parent of Corporations R, S, Y, and Z, but not of Corporation X. Corporation S is a parent of Corporation Y and Z, and Corporation Y is a parent of Corporation Z.

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(2) *Example 2.* Corporation A holds warrants which when exercised will entitle it to vote 50 percent of the outstanding shares of Corporation B. Corporation A is a parent of Corporation B.

§ 802.231 Party to a transaction.

(a) The term *party to a transaction* means:

(1) In the case of a purchase, the person acquiring the ownership interest, and the person from which such ownership interest is acquired, and the entity whose ownership interest is being acquired, without regard to any person providing brokerage or underwriting services for the transaction;

(2) In the case of a lease, the person acquiring the possessory interest, and the person from whom such possessory interest is acquired;

(3) In the case of a concession, the person receiving the right to use the covered real estate, and the U.S. public entity;

(4) In the case of a change in rights that a person has with respect to covered real estate obtained through a purchase, lease, or concession, the person whose rights change as a result of the transaction and the person conveying those rights; and

(5) 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,

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any person that participates in such transfer, agreement, arrangement, or other type of transaction.

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

(b) For purposes of section 721(l), the term *party to a transaction* includes any affiliate of any party described in paragraphs (a)(1) through (6) of this section that the Committee, or a lead agency acting on behalf of the Committee, determines is relevant to mitigating a risk to the national security of the United States.

§ 802.232 Person.

The term *person* means any individual or entity.

§ 802.233 Property right.

The term *property right* means, with respect to real estate, any of the following rights or abilities, whether or not exercised, whether or not shared concurrently with any other person, and whether or not the underlying real estate is subject to an easement or other encumbrance:

(a) To physically access the real estate;

(b) To exclude others from physical access to the real estate;

(c) To improve or develop the real estate; or

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(d) To attach fixed or immovable structures or objects to the real estate.

§ 802.234 Purchase.

(a) The term *purchase* means an arrangement conveying an ownership interest of real estate to a person in exchange for consideration.

(b) *Example:* Person A, a foreign person, acquires covered real estate from Person B, a U.S. national, in exchange for land and services. Person A was under no obligation to pay money to Person B in order to acquire the covered real estate. Person A has purchased the covered real estate because the arrangement was predicated on consideration in the form of land and services.

§ 802.235 Real estate.

The term *real estate* means any land, including subsurface and submerged, or structure attached to land, including any building or any part thereof, that is located in the United States.

§ 802.236 Section 721.

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

§ 802.237 United States.

The term *United States* or *U.S.* means the United States of America, the States of the United States, the District of Columbia, and any commonwealth, territory, dependency, or possession of

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the United States, or any subdivision of the foregoing, and includes the Outer Continental Shelf, as defined in the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331(a)). For purposes of these regulations and their examples, an entity organized under the laws of the United States of America, one of the States, the District of Columbia, or a commonwealth, territory, dependency, or possession of the United States is an entity organized “in the United States.”

§ 802.238 Urban cluster.

The term *urban cluster* means a statistical geographic area as identified in the most recent U.S. Census consisting of a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have at least 2,500 individuals but fewer than 50,000 individuals.

NOTE 1 TO § 802.238: The Census Bureau maintains an interactive map on its website allowing the user to filter by various criteria, including urban clusters and urbanized areas according to the most recent U.S. Census.

§ 802.239 Urbanized area.

The term *urbanized area* means a statistical geographic area as identified in the most recent U.S. Census consisting of a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have a minimum population of at least 50,000 individuals.

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NOTE 1 TO § 802.239: See note to definition in § 802.238.

§ 802.240 U.S. business.

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

NOTE 1 TO § 802.240: See examples to definition in § 800.252.

§ 802.241 U.S. national.

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

§ 802.242 U.S. public entity.

The term *U.S. public entity* means the U.S. Government, a subnational government of the United States, or any other body exercising governmental functions of the United States, including without limitation air and maritime port authorities. The term includes, but is not limited to, the respective departments, agencies, and instrumentalities of the U.S. Government and the subnational governments of the United States.

§ 802.243 Voting interest.

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

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Subpart C—Coverage

§ 802.301 Transactions that are covered real estate transactions.

Transactions that are covered real estate transactions include, without limitation:

(a) A transaction that meets the criteria of § 802.212, including where a foreign person (other than an excepted real estate investor) enters into a purchase or lease of, or obtains a concession to, covered real estate either directly or indirectly. (See the example in § 802.301(h)(1).)

(b) A purchase by a foreign person of less than full ownership of covered real estate that nevertheless affords the foreign person at least three property rights with respect to the covered real estate. (See the example in § 802.301(h)(2).)

(c) A purchase or lease by, or concession to, a foreign person of real estate, a portion of which is covered real estate with respect to which the foreign person has at least three property rights. (See the example in § 802.301(h)(3).)

(d) A purchase or lease by, or concession to, a foreign person of a portion of covered real estate with respect to which the foreign person has at least three property rights. (See the example in § 802.301(h)(4).)

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(e) A purchase, lease, or assignment of a concession, of covered real estate that meets the criteria of § 802.212 by one foreign person from another foreign person. (See the examples in § 802.301(h)(5) and (6).)

(f) A change in the rights that a foreign person has with respect to covered real estate obtained through a purchase, lease, or concession, if that change affords a foreign person at least three property rights with respect to the covered real estate.

(g) A transaction the structure of which is designed or intended to evade or circumvent the application of this part.

(h) Examples:

(1) *Example 1.* Corporation A, a foreign person, acquires Corporation X, a business incorporated in the United States. As a result, Corporation X is a foreign person. Subsequently, Corporation X purchases real estate that is in close proximity to a military installation identified in part 1 or part 2 of Appendix A to this part and obtains all of the property rights with respect to such real estate. Assuming no other relevant facts, the proposed transaction is a covered real estate transaction.

(2) *Example 2.* Corporation A, a foreign person, together with Corporation B, a U.S. business, purchases real estate that is in close proximity to a military installation identified in

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part 1 or part 2 of Appendix A to this part. Neither party has full ownership; rather, the title to the real estate is held by the two parties jointly. Corporation A is afforded at least three property rights as a result of the transaction. Assuming no other relevant facts, the proposed transaction is a covered real estate transaction.

(3) *Example 3.* Corporation A, a U.S. business, purchases real estate. Half of such real estate is covered real estate that is located in close proximity to a military installation identified in part 1 or part 2 of Appendix A to this part. The other half of the real estate purchased by Corporation A is not located in close proximity to any such military installation. Assuming no other relevant facts, Corporation A's purchase is a covered real estate transaction.

(4) *Example 4.* Corporation A, a U.S. business, purchases covered real estate that is entirely located in close proximity to a military installation identified in part 1 or part 2 of Appendix A to this part. Corporation B, a foreign person, leases from Corporation A, a part of that real estate. Corporation B is entitled to at least three property rights with respect to the real estate as a result of the transaction. Assuming no other relevant facts, Corporation B's lease is a covered real estate transaction.

(5) *Example 5.* Corporation A, a foreign person, purchases covered real estate and is afforded three property rights with respect to the covered real estate. In a subsequent transaction, Corporation B, another foreign person, leases the covered real estate from Corporation A, and is

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also afforded three property rights. Assuming no other relevant facts, the transaction is a covered real estate transaction.

(6) *Example 6.* Corporation A, a foreign person, purchases covered real estate that is undeveloped. Corporation A's only asset in the United States is the covered real estate, and Corporation A is not a U.S. business. In a subsequent transaction, Corporation B, also a foreign person, purchases 100 percent of the shares of Corporation A. Assuming no other relevant facts, the transaction is a covered real estate transaction.

§ 802.302 Transactions that are not covered real estate transactions.

Transactions that are not covered real estate transactions include, without limitation:

- (a) A transaction that meets the definition of excepted real estate transaction in § 802.217;
- (b) A transaction that is not a covered transaction under part 800 of this title where a foreign person acquires an interest in an entity that holds covered real estate, and the foreign person does not have three or more of the property rights with respect to the covered real estate. (See the example in § 802.302(g).)
- (c) An acquisition of securities by a person acting as a securities underwriter, in the ordinary course of business and in the process of underwriting.

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

(e) A purchase or lease by, or concession to, a foreign person of covered real estate that does not afford the foreign person at least three of the property rights with respect to the covered real estate.

(f) A change in the rights that a foreign person has with respect to covered real estate, if that change could not result in the foreign person being afforded at least three of the property rights with respect to the covered real estate.

(g) *Example:* Corporation A, a U.S. business, purchases covered real estate. In a subsequent transaction, Corporation B, a foreign person, purchases 10 percent of the shares of Corporation A, which affords Corporation B the right to access the covered real estate, but none of the other property rights specified in § 802.233. The transaction is not a covered real estate transaction because Corporation B has not been afforded at least three of the property rights with respect to the covered real estate.

§ 802.303 Lending transactions.

(a) The extension of a mortgage, loan, or similar financing arrangement by a foreign person to another person for the purpose of the purchase, lease, or concession of covered real estate shall not, by itself, constitute a covered real estate transaction.

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(1) The Committee will accept notices or declarations concerning a mortgage, loan, or similar financing arrangement that does not, by itself, constitute a covered real estate transaction only at the time that, because of imminent or actual default or other condition, there is a significant possibility that the foreign person may purchase or lease, or be granted a concession to, the real estate as a result of the default or other condition in a manner that would constitute a covered real estate transaction.

(2) Where the Committee accepts a notice or declarations concerning a mortgage, loan, or similar financing arrangement pursuant to paragraph (a)(1) of this section, and a party to the transaction is a foreign person that makes mortgages or loans in the ordinary course of business, the Committee will take into account whether the foreign person has made any arrangements to transfer the ownership and property rights over the covered real estate to U.S. persons for purposes of determining whether such mortgage, loan, or financing arrangement constitutes a covered real estate transaction.

(b) Notwithstanding paragraph (a) of this section, a mortgage, loan, or similar financing arrangement through which a foreign person acquires property rights over covered real estate may constitute a covered real estate transaction to the extent that the arrangement would constitute a purchase, lease, or concession under this part.

(c) *Example:* Corporation A, a foreign bank, makes a secured loan to Corporation B in order for Corporation B to purchase a building that constitutes covered real estate. The collateral for

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the loan is the building that Corporation B is purchasing. Corporation B defaults on the loan. Assuming no other relevant facts, the Committee would accept a notice or declaration of the imminent default or default transferring ownership of the building to Corporation A, which would constitute a covered real estate transaction.

§ 802.304 Timing rule for a contingent equity interest.

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

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

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

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

(b) When the Committee, applying paragraph (a) of this section, determines that the rights that the holder will acquire upon conversion or satisfaction of contingent condition will not be included in the Committee's analysis of whether a notified transaction is a covered real estate transaction, the Committee will disregard the contingent equity interest for purposes of that

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transaction except to the extent that they convey immediate rights to the holder with respect to the entity that issued the interest.

Subpart D—Declarations

§ 802.401 Procedures for declarations.

(a) A party or parties may submit a voluntary declaration of a covered real estate transaction by submitting electronically the information set out in § 802.402, including the certifications required thereunder, to the Staff Chairperson in accordance with the submission instructions on the Committee's section of the Department of the Treasury website at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

(b) No communications other than those described in paragraph (a) of this section shall constitute the submission of a declaration for purposes of section 721.

(c) Information and other documentary material submitted to the Committee pursuant to this section shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 802.802.

(d) Persons filing a declaration shall, during the time that the matter is pending before the Committee, promptly advise the Staff Chairperson of any material changes in plans, facts, or circumstances addressed in the declaration, and any material change in information provided or required to be provided to the Committee under § 802.402. Unless the Committee rejects the declaration on the basis of such material changes in accordance with § 802.404(a)(2)(i), such

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changes shall become part of the declaration filed by such persons under § 802.401, and the certification required under § 802.403(d) shall apply to such changes.

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

§ 802.402 Contents of declarations.

(a) The party or parties submitting a voluntary declaration of a covered real estate transaction pursuant to § 802.401 shall provide the information set out in this section, which must be accurate and complete with respect to the party or parties filing the voluntary declaration and to the transaction. (See also paragraphs (d), (e), and (f) of this section regarding U.S. public entities.)

(b) If fewer than all the parties to a transaction submit a declaration, the Committee may, at its discretion, request that the parties to the transaction file a written notice of the transaction under § 802.501, if the Staff Chairperson determines that the information provided by the submitting party or parties in the declaration is insufficient for the Committee to assess the transaction.

(c) Subject to paragraph (e) of this section, a declaration submitted pursuant to § 802.401 shall describe or provide, as applicable:

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(1) The name of the foreign person(s) and the current holder(s) of interest in the real estate that are parties to, or, in applicable cases, the subject of the transaction, as well as the name, telephone number, and email address of the primary point of contact for each party.

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

(i) A brief description of the rationale for and nature of the transaction, including its structure (*e.g.*, purchase, lease, or concession);

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

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

(iv) All sources of financing for the transaction and any real estate agents/brokers involved; and

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

(3) The following information regarding the real estate that is the subject of the transaction:

(i) The location, by address and geographic coordinates in decimal degrees to the 4th digit, of the real estate that is the subject of the transaction;

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(ii) The name(s) of the relevant airport, maritime port, military installation, or any other facility or property of the U.S. Government as identified in this part, based on the location of the real estate that is the subject of the transaction.

(iii) A description of the real estate that is the subject of the transaction including the approximate size (in acres, feet or other appropriate measurement); nature of the real estate (*e.g.*, zoning type and the major topographical or other features of the real estate); current use of the real estate; plans with respect to the real estate; and structures that are or will be on the real estate; and

(iv) A description of any licenses, permits, easements, encumbrances, or other grants or approvals associated with the real estate.

(4) A statement as to whether the foreign person will have any of the following rights or abilities with respect to the real estate as a result of the transaction:

(i) To physically access to the real estate;

(ii) To exclude others from physical access to the real estate;

(iii) To improve or develop the real estate; or

(iv) To attach fixed or immovable structures or objects to the real estate.

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

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(6) The principal place of business and address of the foreign person, ultimate parent and ultimate owner of such parent.

(7) A complete pre-transaction organizational chart (and post-transaction, if different) including, without limitation, information that identifies the name, principal place of business and place of incorporation or other legal organization (for entities), and nationality (for individuals), and ownership percentage (expressed in terms of both voting and economic interest, if different) for each of the following:

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

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

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

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

(9) With respect to the foreign person that is party to the transaction and any of its parents, as applicable, a brief summary of their respective business activities.

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(10) A statement as to whether a party to the transaction is stipulating that the transaction is a covered real estate transaction and a description of the basis for the stipulation.

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

(12) A statement (including relevant jurisdiction and criminal case law number or legal citation) as to whether the holder of the real estate, the foreign person, or any parent or subsidiary of the foreign person has been convicted in the last ten years of a crime in any jurisdiction.

(d) Each party submitting a declaration shall provide a certification of the information contained in the declaration consistent with § 802.203. A sample certification may be found on the Committee's section of the Department of the Treasury website at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

(e) A party that offers a stipulation pursuant to paragraph (c)(10) of this section acknowledges that the Committee and the President are entitled to rely on such stipulation in determining whether the transaction is a covered real estate 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

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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 real estate transaction.

(f) In the case of a transaction where a U.S. public entity is a party to the transaction, the other party or parties to the transaction shall provide the information set out in this section with respect to itself and, to the extent known or reasonably available to it, with respect to the U.S. public entity.

§ 802.403 Beginning of 30-day assessment period.

(a) Upon receipt of a declaration submitted pursuant to § 802.401, the Staff Chairperson shall promptly inspect the declaration and shall promptly notify in writing all parties to a transaction that have submitted a declaration that:

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

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

(b) A 30-day period for assessment of a covered real estate transaction that is the subject of a declaration shall commence on the date on which the declaration is received by the Committee from the Staff Chairperson. Such period shall end no later than the thirtieth day after it has

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commenced, or if the thirtieth day is not a business day, no later than the next business day after the thirtieth day.

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

(d) If the Committee notifies the parties to a transaction that have submitted a declaration pursuant to § 802.401 that the Committee intends to conclude all action under section 721 with respect to that transaction, each party that has submitted additional information subsequent to the original declaration shall file a certification as described in § 802.203. A sample certification may be found on the Committee's section of the Department of the Treasury website at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

(e) If a party fails to provide the certification required under paragraph (d) of this section, the Committee may, at its discretion, take any of the actions under § 802.405.

§ 802.404 Rejection, disposition, or withdrawal of declarations.

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

(1) Reject any declaration that does not comply with § 802.402 and so inform the parties promptly in writing;

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(2) Reject any declaration at any time, and so inform the parties promptly in writing, if, after the declaration has been submitted and before the Committee has taken one of the actions specified in § 802.405:

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

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

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

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

(c) Parties to a transaction that have submitted a declaration pursuant to § 802.401 may request in writing, at any time prior to the Committee taking action under § 802.405 that such declaration be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made and state whether the transaction that is the subject of the declaration is being fully and permanently abandoned. An official of the Department of the

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Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

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

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

NOTE 1 TO § 802.404: See § 802.401(e) regarding the prohibition on submitting a declaration regarding the same transaction or a substantially similar transaction for which a written notice has been filed without the approval of the Staff Chairperson.

§ 802.405 Committee actions.

(a) Upon receiving a declaration submitted pursuant to § 802.401 with respect to a covered real estate transaction, the Committee may, at the discretion of the Committee:

(1) Request that the parties to the transaction file a written notice pursuant to subpart E;

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

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to the transaction;

(3) Initiate a unilateral review of the transaction under § 802.501(c); or

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

(b) The Committee shall take action under paragraph (a) of this section within the time period set forth in § 802.403(b).

Subpart E—Notices

§ 802.501 Procedures for notices.

(a) A party or parties to a proposed or completed real estate transaction may file a voluntary notice of the transaction with the Committee. Voluntary notice to the Committee is filed by sending an electronic copy of the notice that includes, in English, the information set out in § 802.502, including the certification required under paragraph (h) of that section. For electronic submission instructions, see the Committee's section of the Department of the Treasury website, currently available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

(b) If the Committee determines that a covered real estate transaction for which no voluntary notice has been filed under paragraph (a) of this section may be a covered real estate transaction

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and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction to provide to the Committee the information necessary to determine whether the transaction is a covered real estate transaction, and if the Committee determines that the transaction is a covered real estate transaction, to file a notice under paragraph (a) of such covered real estate transaction.

(c) With respect to any covered real estate transaction:

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

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

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

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

(ii) The transaction is a covered real estate transaction and:

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

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(B) Either:

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

(2) A party to such transaction or the entity resulting from consummation of such transaction materially breaches a mitigation agreement or condition described in section 721(l)(3)(A), such breach is certified to the Committee by the lead department or agency monitoring and enforcing such agreement or condition as a material breach, and the Committee determines that there are no other adequate and appropriate remedies or enforcement tools available to address such breach.

(2)(i) That is an investment where a foreign person is not an excepted real estate investor due to the application of § 802.216(d), any member of the Committee, or his designee at or above the Under Secretary or equivalent level, may file an agency notice to the Committee through the Staff Chairperson regarding such investment if:

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

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

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

(ii) No notice filed pursuant to this paragraph (c)(2) shall be made with respect to a transaction more than one year after the completion date of the transaction, unless the Chairperson of the Committee determines, in consultation with other members of the Committee, that because the foreign person no longer meets all the criteria set forth in § 802.216(a)(1), (2), or (3)(i) through (iii) the transaction may threaten to impair the national security of the United States, and in no event shall an agency notice under this paragraph be made with respect to such a transaction more than three years after the completion date of the transaction.

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

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

(f) Upon receipt of the electronic copy of a notice filed under paragraph (a) of this section, including the certification required by § 802.502(h), the Staff Chairperson shall promptly inspect such notice for completeness.

(g) Parties to a real estate transaction are encouraged to consult with the Committee in advance of filing a notice and, in appropriate cases, to file with the Committee a draft notice or

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other appropriate documents to aid the Committee's understanding of the transaction and to provide an opportunity for the Committee to request additional information to be included in the notice. Any such pre-notice consultation should take place, or any draft notice should be provided, at least five business days before the filing of a voluntary notice. All information and documentary material made available to the Committee pursuant to this paragraph shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 802.802.

(h) Information and other documentary material provided by any party to the Committee after the filing of a voluntary notice under this section shall be part of the notice, and shall be subject to the certification requirements of § 802.502(m).

(i) For any voluntarily submitted draft or formal written notice that includes a stipulation pursuant to section § 802.502(j) that a transaction is a covered real estate transaction, the Committee shall provide comments on a draft or formal written notice or accept a formal written notice of a covered transaction not later than the date that is 10 business days after the date of submission of the draft or formal written notice.

(j) No party to a transaction may file a notice pursuant to paragraph (a) of this section if the transaction has been subject to a declaration submitted pursuant to subpart D and the Committee has not yet taken action with respect to the transaction pursuant to § 802.405.

§ 802.502 Contents of voluntary notices.

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(a) If a party or the parties to a covered real estate transaction file a voluntary notice, they shall provide in detail the information set out in this section, which must be accurate and complete with respect to the party or parties filing the voluntary notice and to the transaction. (See also paragraph (l) of this section regarding U.S. public entities and paragraph (h) of this section and § 802.203 regarding certification requirements.)

(b) A voluntary notice filed pursuant to § 802.501 shall describe or provide, as applicable:

(1) The transaction in question, including:

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

(ii) The nature of the transaction, including whether the transaction involves a purchase, lease, or concession of real estate;

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

(iv) The name, address, website address (if any), principal place of business, and place of incorporation or other legal organization of the current holder of interest in the real estate that is the subject of the transaction;

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(v) In the case that a U.S. public entity is a party to the covered real estate transaction, provide the name, telephone number, and email address of the primary point of contact within the U.S. public entity;

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

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

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

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

(vii) The name, address, website address (if any), and nationality (for individuals) or place of incorporation or other legal organization (for entities) of the foreign person or foreign persons that will be afforded property rights with respect to the real estate that is the subject of the covered real estate transaction;

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(viii) The expected date for completion date of the transaction, or the date it was completed;

(ix) A good faith approximation of the fair market value of the interest acquired in the covered real estate in U.S. dollars, as of the date of the notice;

(x) The name of any and all financial institutions and real estate agents/brokers involved in the transaction, including as advisors, underwriters, or a source of financing for the transaction;

(xi) A copy of the purchase, lease, or concession agreement relating to the transaction; and

(xii) Whether the foreign person will have any of the following rights or abilities with respect to the real estate as a result of the transaction and any additional information regarding such property rights:

(A) To physically access the real estate;

(B) To exclude others from physical access to the real estate;

(C) To improve or develop the real estate; or

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(D) To attach fixed or immovable structures or objects to the real estate.

(2) A detailed description of real estate that is the subject of the transaction, including as applicable:

(i) The location, by address and geographic coordinates in decimal degrees to the 4th digit, of the real estate that is the subject of the covered real estate transaction;

(ii) A description of the real estate that is the subject of the covered real estate transaction including the approximate size (in acres, feet or other appropriate measurement); nature of the real estate (*e.g.*, zoning type and the major topographical or other features of the real estate); current use of the real estate; and structures that are or will be on the real estate;

(iii) A description of any licenses, permits, easements, encumbrances, or other grants or approvals associated with the real estate as well as any feasibility studies conducted with respect to the real estate; and

(iv) The name(s) of the relevant airport, maritime port, military installation, or any other facility or property of the U.S. Government as identified in this part, based on the location of the real estate that is the subject of the transaction.

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

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(i) A description of the business or businesses of the foreign person and each parent, including any interests in the United States, and the CAGE codes, NAICS codes, and DUNS numbers, if any, for such businesses;

(ii) The plans of the foreign person for the real estate with respect to:

(A) Use and development of the real estate;

(B) Changing the nature of the real estate including building new structures or removing or altering current structures, including the anticipated dimensions; and

(C) Assigning, modifying or terminating any licenses, permits, easements, encumbrances, or other grants or approvals referred to in paragraph (b)(2)(iii) of this section;

(iii) Whether the foreign person is controlled by or acting on behalf of a foreign government, including without limitation as an agent or representative, or in some similar capacity, and if so, the identity of the foreign government;

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

(A) Has or controls property rights in the covered real estate or has or controls ownership interests, including contingent equity interest, of the acquiring foreign person or any

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parent of the acquiring foreign person, and if so, the nature and amount of any such interests, and with regard to contingent equity interest, the terms and timing of conversion;

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

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

(D) Has any other affirmative or negative rights or powers with respect to control over the foreign party engaged in the transaction, and if there are any such rights or powers, their source (for example, a “golden share,” shareholders agreement, contract, statute, or regulation) and the mechanics of their operation;

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

(vi) For each member of the board of directors or similar body (including external directors and other persons who perform duties usually associated with such titles) and officers

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

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

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

- (1) Full name (last, first, middle name);
- (2) All other names and aliases used;
- (3) Business address;
- (4) Country and city of residence;
- (5) Date of birth, in the format MM/DD/YYYY;
- (6) Place of birth;
- (7) U.S. Social Security number (where applicable);

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

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

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

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

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

(B) Business address;

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

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

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

(d) In the case of the establishment of a joint venture in which one or more of the parties is contributing covered real estate, information for the voluntary notice shall be prepared on the assumption that the foreign person that is party to the joint venture has made a purchase or lease, or been granted a concession to, the covered real estate that the other party to the joint venture is contributing or transferring to the joint venture. The voluntary notice shall describe the name and address of the joint venture and the entities that established, or are establishing, the joint venture.

(e) Persons filing a voluntary notice shall, during the time that the matter is pending before the Committee or the President, promptly advise the Staff Chairperson of any material changes in plans, facts and circumstances addressed in the notice, and information provided or required to be provided to the Committee under this section, and shall file amendments to the notice to reflect such material changes. Such amendments shall become part of the notice filed by such persons under § 802.501, and the certifications required under paragraphs (h) and (m) of this section shall apply to such amendments.

(f) Persons filing a voluntary notice shall include:

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(1) A complete pre-transaction organizational chart (and post-transaction, if different) including, without limitation, information that identifies the name, principal place of business and place of incorporation or other legal organization (for entities), and nationality (for individuals), and ownership percentage (expressed in terms of both voting and economic interest, if different) for each of the following:

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

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

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

(2) The opinion of the person regarding whether:

(i) It is a foreign person;

(ii) It is controlled by a foreign government; and

(iii) The transaction has resulted or could result in a foreign person being afforded property rights with respect to covered real estate, and the reasons for its view.

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

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

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

(h) Each party filing a voluntary notice shall provide a certification of the notice consistent with § 802.203. A sample certification may be found on the Committee's section of the Department of the Treasury website, currently available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

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

(j) A person filing a voluntary notice may stipulate that the transaction is a covered real estate transaction. A stipulation offered by any party pursuant to this section must be accompanied by a detailed description of the basis for the stipulation. 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 real estate transaction for 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

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

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

(l) In the case of a transaction where a U.S. public entity is a party to the transaction, the notifying party or parties may be the non-U.S. public entity. Each notifying party shall provide the information set out in this section with respect to itself and, to the extent known or reasonably available to it, with respect to the U.S. public entity.

(m) At the conclusion of a review or investigation, each party that has filed additional information subsequent to the original notice shall file a final certification. (See § 802.203.) A sample certification may be found at the Committee's section of the Department of the Treasury website, currently available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

§ 802.503 Beginning of 45-day review period.

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

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(1) Determined that the notice complies with § 802.502; and

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

(b) A 45-day period for review of a transaction shall commence on the date on which the voluntary notice has been accepted, agency notice has been received by the Staff Chairperson of the Committee, or the Chairperson of the Committee has requested a notice pursuant to § 802.501(b). Such review shall end no later than the forty-fifth day after it has commenced, or if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

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

(1) The acceptance of the notice;

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

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

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

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

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

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

(1) Reject any voluntary notice that does not comply with § 802.501 or § 802.502 and so inform the parties promptly in writing;

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

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

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

(3) Reject any voluntary notice at any time after the notice has been accepted, and so inform the parties promptly in writing, if the party or parties that have submitted the voluntary notice do not provide follow-up information requested by the Staff Chairperson within three business days of the request, or within a longer time frame if the parties so request in writing and the Staff Chairperson grants that request in writing; or

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(4) Reject any voluntary notice before the conclusion of a review or investigation, and so inform the parties promptly in writing, if one of the parties submitting the voluntary notice has not submitted the final certification required by § 802.502(m).

(b) Notwithstanding the authority of the Staff Chairperson under paragraph (a) of this section to reject an incomplete notice, the Staff Chairperson may defer acceptance of the notice, and the beginning of the review period specified by § 802.503, to obtain any information required under this section that has not been submitted by the notifying party or parties or other parties to the transaction. Where necessary to obtain such information, the Staff Chairperson may inform any non-notifying party or parties that notice has been filed with respect to a proposed transaction involving the party, and request that certain information required under this section, as specified by the Staff Chairperson, be provided to the Committee within seven days after receipt of the Staff Chairperson's request.

(c) The Staff Chairperson shall notify the parties when the Committee has found that the transaction that is the subject of a voluntary notice is not a covered real estate transaction.

(d) *Example:* The Staff Chairperson receives a joint notice from Corporation A, a foreign person, and Corporation X, a company that is selling covered real estate. The joint notice does not contain any information described under § 802.502 concerning the nature of the real estate. The Staff Chairperson may reject the notice or defer the start of the review period until the parties have supplied the omitted information.

§ 802.505 Determination of whether to undertake an investigation.

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(a) After a review of a notified transaction under § 802.503, the Committee shall undertake an investigation of any transaction that it has determined to be a covered real estate transaction if:

(1) A member of the Committee (other than a member designated as ex officio under section 721(k)) advises the Staff Chairperson that the member believes that the transaction threatens to impair the national security of the United States and that the threat has not been mitigated; or

(2) The lead agency recommends, and the Committee concurs, that an investigation be undertaken.

(b) The Committee shall also undertake, after a review of a covered real estate transaction under § 802.503, an investigation to determine the effects on national security of any covered real estate transaction that would result in control by a foreign person of critical infrastructure of or within the United States, if the Committee determines that the transaction could impair the national security and such impairment has not been mitigated.

(c) The Committee shall undertake an investigation as described in paragraph (b) of this section unless the Chairperson of the Committee (or the Deputy Secretary of the Treasury) and the head of any lead agency (or his or her delegee at the deputy level or equivalent) designated by the Chairperson determine on the basis of the review that the covered real estate transaction will not impair the national security of the United States.

§ 802.506 Determination not to undertake an investigation.

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If the Committee determines, during the review period described in § 802.503, not to undertake an investigation of a notified covered real estate transaction, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly inform the parties to a covered real estate transaction in writing of a determination of the Committee not to undertake an investigation and to conclude action under section 721.

§ 802.507 Commencement of investigation.

(a) If it is determined that an investigation should be undertaken, such investigation shall commence no later than the end of the review period described in § 802.503.

(b) An official of the Department of the Treasury shall promptly inform the parties to a covered real estate transaction in writing of the commencement of an investigation.

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

(a) Subject to paragraph (e) of this section, the Committee shall complete an investigation no later than the forty-fifth day after the date the investigation commences, or, if the forty-fifth day is not a business day, no later than the next business day after the forty-fifth day.

(b) Upon completion or termination of any investigation, the Committee shall send a report to the President requesting the President's decision if:

- (1) The Committee recommends that the President suspend or prohibit the transaction;

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(2) The Committee is unable to reach a decision on whether to recommend that the President suspend or prohibit the transaction; or

(3) The Committee requests that the President make a determination with regard to the transaction.

(c) In circumstances when the Committee sends a report to the President requesting the President's decision with respect to a covered real estate transaction, such report shall include information relevant to sections 721(d)(4)(A) and (B), and shall present the Committee's recommendation. If the Committee is unable to reach a decision to present a single recommendation to the President, the Chairperson of the Committee shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for decision.

(d) Upon completion or termination of an investigation, if the Committee determines to conclude all deliberative action under section 721 with regard to a notified covered real estate transaction without sending a report to the President, action under section 721 shall be concluded. An official at the Department of the Treasury shall promptly advise the parties to such a transaction in writing of a determination to conclude action.

(e) In extraordinary circumstances, the Chairperson may, upon a written request signed by the head of a lead agency, extend an investigation for one 15-day period. A request to extend an investigation must describe, with particularity, the extraordinary circumstances that warrant the Chairperson extending the investigation. The authority of the head of a lead agency to request the

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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 with respect to a covered real estate 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.

§ 802.509 Withdrawal of notices.

(a) A party (or parties) to a transaction that has filed notice under § 802.501(a) may request in writing, at any time prior to conclusion of all action under section 721, that such notice be withdrawn. Such request shall be directed to the Staff Chairperson and shall state the reasons why the request is being made. Such requests will ordinarily be granted, unless otherwise determined by the Committee. An official of the Department of the Treasury will promptly advise the parties to the transaction in writing of the Committee's decision.

(b) Any request to withdraw an agency notice by the agency that filed it shall be in writing and shall be effective only upon approval by the Committee. An official of the Department of the Treasury shall advise the parties to the transaction in writing of the Committee's decision to approve the withdrawal request within two business days of the Committee's decision.

(c) In any case where a request to withdraw a notice is granted under paragraph (a) of this section:

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(1) The Staff Chairperson, in consultation with the Committee, shall establish, as appropriate:

(i) A process for tracking actions that may be taken by any party to the covered real estate transaction before notice is refiled under § 802.501; and

(ii) Interim protections to address specific national security concerns with the transaction identified during the review or investigation of the transaction.

(2) The Staff Chairperson shall specify a time frame, as appropriate, for the parties to resubmit a notice and shall advise the parties of that time frame in writing.

(d) A notice of a transaction that is submitted pursuant to paragraph (c)(2) of this section shall be deemed a new notice for purposes of the regulations in this part, including § 802.701.

Subpart F—Committee Procedures

§ 802.601 General.

(a) In any assessment, review, or investigation of a covered real estate transaction, the Committee should consider the factors specified in section 721(f), as applicable, and, as appropriate, require parties to provide to the Committee the information necessary to consider such factors. The Committee's assessment, review, or investigation (if necessary) shall examine, as appropriate, whether:

(1) The transaction is a covered real estate transaction or subject to part 800 of this title;

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(2) There is credible evidence to support a belief that any foreign person party to a covered real estate transaction might take action that threatens to impair the national security of the United States; and

(3) Provisions of law, other than section 721 and the International Emergency Economic Powers Act, provide adequate and appropriate authority to protect the national security of the United States.

(b) During an assessment, review, or investigation, the Staff Chairperson may invite the parties to a notified transaction to attend a meeting with the Committee staff to discuss and clarify issues pertaining to the transaction. During an investigation, a party to the transaction under investigation may request a meeting with the Committee staff; such a request ordinarily will be granted.

(c) The Staff Chairperson shall be the point of contact for receiving material filed with the Committee, including notices.

(d) Where more than one lead agency is designated, communications on material matters between a party to the transaction and a lead agency shall include all lead agencies designated with regard to those matters.

(e) The parties' description of a transaction in a declaration or notice does not limit the ability of the Committee to, as appropriate, assess, review, or investigate, or exercise any other authorities available under section 721 with respect to any covered real estate transaction that the Committee identifies as having been notified to the Committee based upon the facts set forth in

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the declaration or notice, any additional information provided to the Committee subsequent to the original declaration or notice, or any other information available to the Committee.

§ 802.602 Role of the Secretary of Labor.

In response to a request from the Chairperson of the Committee, the Secretary of Labor shall identify for the Committee any risk mitigation provisions proposed to or by the Committee that would violate U.S. employment laws or require a party to violate U.S. employment laws. The Secretary of Labor shall serve no policy role on the Committee.

§ 802.603 Materiality.

The Committee generally will not consider as material minor inaccuracies, omissions, or changes relating to financial or commercial factors not having a bearing on national security.

§ 802.604 Tolling of deadlines during lapse in appropriations.

Any deadline or time limitation under subparts D or E imposed on the Committee shall be tolled during a lapse in appropriations.

Subpart G—Finality of Action

§ 802.701 Finality of actions under section 721.

(a) All authority available to the President or the Committee under section 721(d), including without limitation divestment authority, shall remain available at the discretion of the President

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with respect to any covered real estate transaction. Subject to § 802.501(c)(1)(ii), such authority shall not be exercised if:

(1) The Committee, through its Staff Chairperson, has advised a party (or the parties) in writing that a particular transaction with respect to which a voluntary notice or a declaration has been filed is not a covered real estate transaction;

(2) The parties to the transaction have been advised in writing pursuant to § 802.405(a)(4), § 802.506 or § 802.508(d) that the Committee has concluded all action under section 721 with respect to the covered real estate transaction; or

(3) The President has previously announced, pursuant to section 721(d), his decision not to exercise his authority under section 721 with respect to the covered real estate transaction.

Subpart H—Provision and Handling of Information

§ 802.801 Obligation of parties to provide information.

(a) Parties to a transaction that is notified or declared under subparts D or E, or a transaction for which no notice or declaration has been submitted and for which the Staff Chairperson has requested information to assess whether the transaction is a covered real estate transaction, shall provide information to the Staff Chairperson that will enable the Committee to conduct a full assessment, review, and/or investigation of the proposed transaction, and shall promptly advise the Staff Chairperson of any material changes in plans or information pursuant to § 802.401(d) or § 802.502(e). If deemed necessary by the Committee, information may be obtained from parties

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to a transaction or other persons through subpoena or otherwise, pursuant to the Defense Production Act Reauthorization of 2003, as amended, public law 108-195 (50 U.S.C. 4555(a)).

(b) Documentary materials or information required or requested to be filed with the Committee under this part shall be submitted in English. Supplementary materials, such as annual reports, written in a foreign language, shall be submitted in certified English translation.

(c) Any information filed with the Committee in connection with any action for which a report is required pursuant to section 721(l)(3)(B) with respect to the implementation of a mitigation agreement or condition described in section 721(l)(1)(A) shall be accompanied by a certification that complies with the requirements of section 721(n) and § 802.203. A sample certification may be found at the Committee's section of the Department of the Treasury website, currently available at <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

§ 802.802 Confidentiality.

(a) Except as provided in paragraph (b) of this section, any information or documentary material submitted or filed with the Committee pursuant to this part, including information or documentary material filed pursuant to § 802.501(f), shall be exempt from disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552, et seq.), and no such information or documentary material may be made public.

(b) Paragraph (a) of this section shall not prohibit disclosure of the following:

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(1) Information relevant to any administrative or judicial action or proceeding;

(2) Information to Congress or to any duly authorized committee or subcommittee of Congress;

(3) Information important to the national security analysis or actions of the Committee to any domestic governmental entity, or to any foreign governmental entity of a United States ally or partner, under the exclusive direction and authorization of the Chairperson, only to the extent necessary for national security purposes, and subject to appropriate confidentiality and classification requirements; or

(4) Information that the parties have consented to be disclosed to third parties;

(c) This section shall continue to apply with respect to information and documentary material submitted or filed with the Committee in any case where:

(1) Action has concluded under section 721 concerning a notified transaction;

(2) A request to withdraw a notice or a declaration is granted under § 802.509 or § 802.404(c), respectively, or where a notice or a declaration has been rejected under § 802.504(a) or § 802.404(a), respectively;

(3) The Committee determines that a notified or declared transaction is not a covered real estate transaction; or

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(4) Such information or documentary material was filed pursuant to subpart D and the parties do not subsequently file a notice pursuant to subpart E.

(d) Nothing in paragraph (a) of this section shall be interpreted to prohibit the public disclosure by a party of documentary material or information that it has submitted or filed with the Committee. Any such documentary material or information so disclosed may subsequently be reflected in the public statements of the Chairperson, who is authorized to communicate with the public and the Congress on behalf of the Committee, or of the Chairperson's designee.

(e) The provisions of the Defense Production Act Reauthorization of 2003, as amended (50 U.S.C. 4555(d)) relating to fines and imprisonment shall apply with respect to the disclosure of information or documentary material filed with the Committee under these regulations.

Subpart I—Penalties and Damages

§ 802.901 Penalties and damages.

(a) Any person who submits a material misstatement or omission in a declaration or notice 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 \$250,000 per violation. The amount of the penalty imposed for a violation shall be based on the nature of the violation.

(b) Any person who violates a material provision of a mitigation agreement entered into on or after the effective date with, a material condition imposed on or after the effective date by, or an order issued on or after the effective date by, the United States under section 721(l) may be

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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. The amount of the penalty imposed for a violation shall be based on the nature of the violation.

(c) A mitigation agreement entered into or amended under section 721(l) after the effective date may include a provision providing for liquidated or actual damages for breaches of the agreement. The Committee shall set the amount of any liquidated damages as a reasonable assessment of the harm to the national security that could result from a breach of the agreement. Any mitigation agreement containing a liquidated damages provision shall include a provision specifying that the Committee will consider the severity of the breach in deciding whether to seek a lesser amount than that stipulated in the agreement.

(d) A determination to impose penalties under paragraph (a) or (b) of this section must be made by the Committee. Notice of the penalty, including a written explanation of the penalized conduct and the amount of the penalty, shall be sent to the penalized party electronically and by U.S. mail.

(e) Upon receiving notice of the imposition of a penalty under paragraph (a) or (b) of this section, the penalized party may, within 15 days of receipt of the notice of the penalty, submit a petition for reconsideration to the Staff Chairperson, including a defense, justification, or explanation for the penalized conduct. The Committee will review the petition and issue a final decision within 15 days of receipt of the petition.

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(f) The penalties and damages authorized in paragraphs (a) through (c) of this section may be recovered in a civil action brought by the United States in federal district court.

(g) Section 2 of the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001), shall apply to all information provided to the Committee under section 721, including by any party to a covered real estate transaction.

(h) The penalties and damages available under this section are without prejudice to other penalties, civil or criminal, available under law.

(i) The imposition of a civil monetary penalty or damages pursuant to these regulations creates a debt due to the U.S. Government. The Department of the Treasury may take action to collect the penalty or damages assessed if not paid within the time prescribed by the Committee and notified to the applicable party or parties. In addition or instead, the matter may be referred to the Department of Justice for appropriate action to recover the penalty or damages.

§ 802.902 Effect of lack of compliance.

(a) If, at any time after a mitigation agreement or condition is entered into or imposed under section 721(l), the Committee or a lead agency in coordination with the Staff Chairperson, as the case may be, determines that a party or parties to the agreement or condition are not in compliance with the terms of the agreement or condition, the Committee or a lead agency in coordination with the Staff Chairperson may, in addition to the authority of the Committee to impose penalties pursuant to section 721(h) and to unilaterally initiate a review of any covered transaction pursuant to section 721(b)(1)(D)(iii):

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(1) 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;

(2) Require that the party or parties submit a written notice or declaration under clause (i) of section 721(b)(1)(C) with respect to a covered real estate 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

(3) Seek injunctive relief.

Subpart J—Foreign National Security Investment Review Regimes

§ 802.1001 Determinations.

(a) The Chairperson of the Committee, with the agreement of two-thirds of the voting members of the Committee, may determine at any time that a foreign state has made significant progress toward establishing and effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security.

(b) The Chairperson of the Committee may rescind a determination under paragraph (a) of this section if the Chairperson of the Committee determines, with the agreement of two-thirds of the voting members of the Committee, that such a rescission is appropriate.

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(c) The Chairperson of the Committee shall publish a notice of any determination or rescission of a determination under paragraph (a) or (b) of this section, respectively, in the Federal Register.

§ 802.1002 Effect of determinations.

(a) A determination under § 802.1001(a) shall take effect immediately upon publication of a notice of such determination under § 802.1001(c) and remain in effect unless rescinded pursuant to paragraph (b) of this section.

(b) A rescission of a determination under § 802.1001(b) shall take effect on the date specified in the notice published under § 802.1001(c).

(c) A determination under § 802.1001(a) does not apply to any transaction for which a declaration or notice has been accepted by the Staff Chairperson pursuant to § 802.403(a)(1) or § 802.503(a), respectively.

(d) A rescission of a determination under § 802.1001(b) does not apply to any transaction for which:

(1) The completion date is prior to the date upon which the rescission of a determination under paragraph (b) of this section becomes effective; or

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(2) Before publication of the rescission of determination under § 802.1001(c), the parties to the transaction have executed a binding written agreement, or other binding document, establishing the material terms of the transaction that is ultimately consummated.

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Appendix A to part 802- List of Military Installations

Part 1

Site Name	Location
Adelphi Laboratory Center	Adelphi, MD
Air Force Maui Optical and Supercomputing Site	Maui, HI
Air Force Office of Scientific Research	Arlington, VA
Andersen Air Force Base	Yigo, Guam
Army Futures Command	Austin, TX
Army Research Lab – Orlando Simulations and Training Technology Center	Orlando, FL
Army Research Lab – Raleigh Durham	Raleigh Durham, NC
Arnold Air Force Base	Coffee County and Franklin County, TN
Beale Air Force Base	Yuba City, CA
Biometric Technology Center (Biometrics Identity Management Activity)	Clarksburg, WV
Buckley Air Force Base	Aurora, CO
Camp MacKall	Pinebluff, NC
Cape Cod Air Force Station	Sandwich, MA
Cape Newenham Long Range Radar Site	Cape Newenham, AK
Cavalier Air Force Station	Cavalier, ND
Cheyenne Mountain Air Force Station	Colorado Springs, CO
Clear Air Force Station	Anderson, AK
Creech Air Force Base	Indian Springs, NV
Davis-Monthan Air Force Base	Tucson, AZ
Defense Advanced Research Projects Agency	Arlington, VA
Eareckson Air Force Station	Shemya, AK
Eielson Air Force Base	Fairbanks, AK
Ellington Field Joint Reserve Base	Houston, TX
Fairchild Air Force Base	Spokane, WA
Fort Benning	Columbus, GA
Fort Belvoir	Fairfax County, VA
Fort Bliss	El Paso, TX
Fort Campbell	Hopkinsville, KY
Fort Carson	Colorado Springs, CO
Fort Detrick	Frederick, MD
Fort Drum	Watertown, NY
Fort Gordon	Augusta, GA
Fort Hood	Killeen, TX

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Fort Knox	Fort Knox, KY
Fort Leavenworth	Leavenworth, KS
Fort Lee	Petersburg, VA
Fort Leonard Wood	Pulaski County, MO
Fort Meade	Anne Arundel County, MD
Fort Riley	Junction City, KS
Fort Shafter	Honolulu, HI
Fort Sill	Lawton, OK
Fort Stewart	Hinesville, GA
Fort Yukon Long Range Radar Site	Fort Yukon, AK
Francis E. Warren Air Force Base	Cheyenne, WY
Guam Tracking Station	Inarajan, Guam
Hanscom Air Force Base	Lexington, MA
Holloman Air Force Base	Alamogordo, NM
Holston Army Ammunition Plant	Kingsport, TN
Joint Base Anacostia-Bolling	Washington, DC
Joint Base Andrews	Camp Springs, MD
Joint Base Elmendorf-Richardson	Anchorage, AK
Joint Base Langley-Eustis	Hampton, VA and Newport News, VA
Joint Base Lewis-McChord	Tacoma, WA
Joint Base McGuire-Dix-Lakehurst	Lakehurst, NJ
Joint Base Pearl Harbor-Hickam	Honolulu, HI
Joint Base San Antonio	San Antonio, TX
Joint Expeditionary Base Little Creek-Fort Story	Virginia Beach, VA
Kaena Point Satellite Tracking Station	Waianae, HI
King Salmon Air Force Station	King Salmon, AK
Kirtland Air Force Base	Albuquerque, NM
Kodiak Tracking Stations	Kodiak Island, AK
Los Angeles Air Force Base	El Segundo, CA
MacDill Air Force Base	Tampa, FL
Malmstrom Air Force Base	Great Falls, MT
Marine Corps Air Ground Combat Center Twentynine Palms	Twentynine Palms, CA
Marine Corps Air Station Beaufort	Beaufort, SC
Marine Corps Air Station Cherry Point	Cherry Point, NC
Marine Corps Air Station Miramar	San Diego, CA
Marine Corps Air Station New River	Jacksonville, NC
Marine Corps Air Station Yuma	Yuma, AZ
Marine Corps Base Camp Lejeune	Jacksonville, NC
Marine Corps Base Camp Pendleton	Oceanside, CA
Marine Corps Base Hawaii	Kaneohe Bay, HI

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Marine Corps Base Hawaii, Camp H.M. Smith	Halawa, HI
Marine Corps Base Quantico	Quantico, VA
Mark Center	Alexandria, VA
Minot Air Force Base	Minot, ND
Moody Air Force Base	Valdosta, GA
National Capital Region Coordination Center	Herndon, VA
Naval Air Station Joint Reserve Base New Orleans	Belle Chasse, LA
Naval Air Station Oceana	Virginia Beach, VA
Naval Air Station Oceana Dam Neck Annex	Virginia Beach, VA
Naval Air Station Whidbey Island	Oak Harbor, WA
Naval Base Guam	Apra Harbor, Guam
Naval Base Kitsap Bangor	Silverdale, WA
Naval Base Point Loma	San Diego, CA
Naval Base San Diego	San Diego, CA
Naval Base Ventura County – Port Hueneme Operating Facility	Port Hueneme, CA
Naval Research Laboratory	Washington, DC
Naval Research Laboratory – Blossom Point	Welcome, MD
Naval Research Laboratory – Stennis Space Center	Hancock County, MS
Naval Research Laboratory – Tilghman	Tilghman, MD
Naval Station Newport	Newport, RI
Naval Station Norfolk	Norfolk, VA
Naval Submarine Base Kings Bay	Kings Bay, GA
Naval Submarine Base New London	Groton, CT
Naval Surface Warfare Center Carderock Division – Acoustic Research Detachment	Bayview, ID
Naval Support Activity Crane	Crane, IN
Naval Support Activity Orlando	Orlando, FL
Naval Support Activity Panama City	Panama City, FL
Naval Support Activity Philadelphia	Philadelphia, PA
Naval Support Facility Carderock	Bethesda, MD
Naval Support Facility Dahlgren	Dahlgren, VA
Naval Support Facility Indian Head	Indian Head, MD
Naval Weapons Station Seal Beach Detachment Norco	Norco, CA
New Boston Air Station	New Boston, NH
Offutt Air Force Base	Bellevue, NE
Oliktok Long Range Radar Site	Oliktok, AK
Orchard Combat Training Center	Boise, ID

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Peason Ridge Training Area	Leesville, LA
Pentagon	Arlington, VA
Peterson Air Force Base	Colorado Springs, CO
Picatinny Arsenal	Morris County, NJ
Piñon Canyon Maneuver Site	Tyrone, CO
Pohakuloa Training Area	Hilo, HI
Point Barrow Long Range Radar Site	Point Barrow, AK
Portsmouth Naval Shipyard	Kittery, ME
Radford Army Ammunition Plant	Radford, VA
Redstone Arsenal	Huntsville, AL
Rock Island Arsenal	Rock Island, IL
Rome Research Laboratory	Rome, NY
Schriever Air Force Base	Colorado Springs, CO
Seymour Johnson Air Force Base	Goldsboro, NC
Shaw Air Force Base	Sumter, SC
Southeast Alaska Acoustic Measurement Facility	Ketchikan, AK
Tin City Long Range Radar Site	Tin City, AK
Tinker Air Force Base	Midwest City, OK
Travis Air Force Base	Fairfield, CA
Tyndall Air Force Base	Bay County, FL
U.S. Army Natick Soldier Systems Center	Natick, MA
Watervliet Arsenal	Watervliet, NY
Wright-Patterson Air Force Base	Dayton, OH

Part 2

Site Name	Location
Aberdeen Proving Ground	Aberdeen, MD
Camp Shelby	Hattiesburg, MS
Cape Canaveral Air Force Station	Cape Canaveral, FL
Dare County Range	Manns Harbor, NC
Edwards Air Force Base	Edwards, CA
Eglin Air Force Base	Valparaiso, FL
Fallon Range Complex	Fallon, NV
Fort Bragg	Fayetteville, NC
Fort Greely	Delta Junction, AK
Fort Huachuca	Sierra Vista, AZ
Fort Irwin	San Bernardino County, CA
Fort Polk	Leesville, LA

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Fort Wainwright	Fairbanks, AK
Hardwood Range	Necehuenemedah, WI
Hill Air Force Base	Ogden, UT
Mountain Home Air Force Base	Mountain Home, ID
Naval Air Station Meridian	Meridian, MS
Naval Air Station Patuxent River	Lexington Park, MD
Naval Air Weapons Station China Lake	Ridgecrest, CA
Naval Base Kitsap – Keyport	Keyport, WA
Naval Base Ventura County – Point Mugu Operating Facility	Point Mugu, CA
Naval Weapons Systems Training Facility Boardman	Boardman, OR
Nellis Air Force Base	Las Vegas, NV
Nevada Test and Training Range	Tonopah, NV
Pacific Missile Range Facility	Kekaha, HI
Patrick Air Force Base	Cocoa Beach, FL
Tropic Regions Test Center	Wahiawa, HI
Utah Test and Training Range	Barro, UT
Vandenberg Air Force Base	Lompoc, CA
West Desert Test Center	Dugway, UT
White Sands Missile Range	White Sands Missile Range, NM
Yuma Proving Ground	Yuma, AZ

Part 3

Site Name	County	Township/Range
90 th Missile Wing Francis E. Warren Air Force Base Missile Field (Colorado, Nebraska, and Wyoming)	Chase County, NE	All
	Dundy County, NE	All
	Goshen County, WY	All
	Hitchcock County, NE	All
	Laramie County, WY	All
	Logan County, CO	All
	Platte County, WY	All
	Weld County, CO	All
341 st Missile Wing Malmstrom Air Force Base Missile Field (Montana)	Cascade County, MT	All
	Chouteau County, MT	All, except lands located north of Township 22 North and east of Range 7 East based on the Bureau of Land Management’s Public Lands Survey System

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	Fergus County, MT	All
	Judith Basin County, MT	All
	Lewis and Clark County, MT	All, except lands located south of Township 14 North and west of Range 9 West based on the Bureau of Land Management's Public Lands Survey System
	Pondera County, MT	All, except lands located west of Range 9 West based on the Bureau of Land Management's Public Lands Survey System
	Teton County, MT	All, except lands located west of Range 9 West based on the Bureau of Land Management's Public Lands Survey System
	Toole County, MT	All
	Wheatland County, MT	All
91 st Missile Wing Minot Air Force Base Missile Field (North Dakota)	Bottineau County, ND	All
	Burke County, ND	All
	McHenry County, ND	All
	McLean County, ND	All
	Mountrail County, ND	All
	Renville County, ND	All
	Ward County, ND	All

Part 4

Site Name	Location
Boston Range Complex	Offshore Massachusetts, New Hampshire, Maine
Boston Operating Area	Offshore Massachusetts, New Hampshire, Maine
Charleston Operating Area	Offshore North Carolina, South Carolina
Cherry Point Operating Area	Offshore North Carolina, South Carolina
Corpus Christi Operating Area	Offshore Texas
Eglin Gulf Test and Training Range	Offshore Florida
Gulf of Mexico Range Complex	Offshore Mississippi, Alabama, Florida
Hawaii Range Complex	Offshore Hawaii

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Jacksonville Operating Area	Offshore Florida, Georgia
Jacksonville Range Complex	Offshore Florida
Key West Operating Area	Offshore Florida
Key West Range Complex	Offshore Florida
Narragansett Bay Range Complex	Offshore Connecticut, Massachusetts, New York, Rhode Island
Narragansett Bay Operating Area	Offshore Connecticut, Massachusetts, New York, Rhode Island
New Orleans Operating Area	Offshore Louisiana
Northern California Range Complex	Offshore California
Northwest Training Range Complex	Offshore Oregon, Washington
Panama City Operating Area	Offshore Florida
Pensacola Operating Area	Offshore Alabama, Florida
Point Mugu Sea Range	Offshore California
Southern California Range Complex	Offshore California
Virginia Capes Operating Area	Offshore Delaware, Maryland, North Carolina, Virginia
Virginia Capes Range Complex	Offshore Delaware, Maryland, North Carolina, Virginia

Dated: September 11, 2019

Thomas Feddo,
Deputy Assistant Secretary for Investment Security.