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DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Parts 800 and 802

[Docket ID TREAS-DO-2024-0005]

RIN 1505-AC85

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

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

ACTION: Proposed rule.

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

DATES: Written comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Written comments may be submitted through one of two methods:

- *Electronic Submission:* Comments may be submitted electronically through the Federal government eRulemaking portal at <https://www.regulations.gov>.

Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Treasury Department to make the comments available to the public.

- *Mail:* Send to U.S. Department of the Treasury, Attention: Meena R. Sharma, Director, Office of Investment Security Policy and International Relations, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

We encourage comments to be submitted via <https://www.regulations.gov>. Please submit comments only and include your name and company name (if any) and cite “Amendments to Penalty Provisions, Provision of Information, Negotiation of Mitigation Agreements, and Other Procedures Pertaining to Certain Investments in the United States by Foreign Persons and Certain Transactions by Foreign Persons Involving Real Estate in the United States” in all correspondence. In general, the Treasury Department will post all comments to <https://www.regulations.gov> without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Meena R. Sharma, Director, Office of Investment Security Policy and International Relations at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: CFIUS.Regulations@treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

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

Among other things, the regulations at parts 800 and 802 include provisions that govern CFIUS’s requests for information from transaction parties and other persons and their responses to those requests. For example, where CFIUS is aware of a transaction that the parties have not notified or declared to CFIUS, the Committee may request information to determine whether the transaction is a covered transaction. To help CFIUS mitigate risks to U.S. national security and ensure compliance with section 721 and its implementing regulations, this proposed rule sets

forth amendments that would expand the categories of information the Committee may request from transaction parties and others. The proposed rule would also enhance the Committee's ability to communicate with parties in other contexts to include requirements to provide information for monitoring compliance with applicable obligations and determining whether a violation of such obligations has occurred.

The proposed rule also includes provisions pertaining to the negotiation of agreements to mitigate national security risk. Section 721(l)(3) authorizes the Committee, or a lead agency on behalf of the Committee, to negotiate and enter into an agreement with a party to a covered transaction in order to mitigate any national security risk that arises as a result of the covered transaction. The current regulations contain no provision establishing a time frame within which parties must respond to a Committee proposal or revision of terms to mitigate identified national security risks, and the Committee often exchanges multiple drafts with transaction parties during negotiation of a mitigation agreement. This proposed rule would include a provision ordinarily requiring transaction parties to respond to mitigation agreement drafts within a specified number of days.

A final subject addressed in this proposed rule is the maximum penalty amount that CFIUS may impose on a party for violating section 721 or the implementing regulations, including agreements entered into and conditions and orders imposed pursuant thereto, and the availability of such penalties outside the context of a declaration or notice. The regulations provide for penalties to be imposed in the following situations: (a) submitting a declaration or notice with a material misstatement or omission, or making a false certification; (b) failing to submit a timely declaration in the certain circumstances in which submission is mandatory; and (c) violating a material provision of a mitigation agreement, material condition imposed, or order

issued. In each case, the amount of the penalty imposed is based on the nature of the violation. Currently, violations can result in a civil monetary penalty not to exceed \$250,000 per violation, or, in certain instances, the greater of \$250,000 or the value of the transaction. This rule would amend the regulations by increasing the maximum penalty amount for situations where it is appropriate, allow the Committee to impose penalties for material misstatements or omissions in certain information submitted to the Committee outside of the submission of a declaration or notice, and extend the time frames related to a petition for reconsideration of a penalty.

II. Discussion of the Rule

A. Requesting Information and Requiring a Response for Transactions for which No Notice or Declaration was Submitted, for Compliance Monitoring, and for Determining Whether a Violation of Applicable Obligations has Occurred

Section 721(b)(1)(H) directs the Committee to establish a process to identify covered transactions for which no notice or declaration has been submitted to the Committee (each such transaction referred to hereafter as a “non-notified transaction”). A different provision of the Defense Production Act of 1950 (section 705), which applies to the Defense Production Act in its entirety, entitles the President “by regulation, subpoena, or otherwise, to obtain such information from . . . any person as may be necessary or appropriate, in his discretion, to the enforcement or administration of [the Defense Production Act of 1950] and the regulations or orders issued thereunder.” Section 705 further requires the President to “issue regulations insuring [sic] that the authority of [subsection (a) of section 705] will be utilized only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency.”

In furtherance of the direction in section 721(b)(1)(H) and in accordance with the authority in section 705, the regulations at sections 800.501(b) and 802.501(b) provide that the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to a non-notified transaction to provide to the Committee information necessary to determine whether the transaction is a “covered transaction” or a “covered real estate transaction.” Sections 800.801(a) and 802.801(a) of the regulations address parties’ obligations to respond to such requests as well as certain other requests for information.

While the foregoing provisions contemplate requests related to a transaction’s potential status as “covered” (*i.e.*, subject to the jurisdiction of the Committee), they do not specifically address other types of information requests. For example, they do not expressly address requests for information that would enable the Committee to determine whether a transaction meets the criteria for a mandatory declaration under section 800.401, nor do they expressly address requests for information that would enable the Committee to determine whether a transaction may raise national security considerations. The proposed rule would amend sections 800.501(b) and 802.501(b) by expressly providing that the Staff Chairperson, acting on the recommendation of the Committee, may request information from transaction parties and other persons related to whether a transaction may raise national security considerations and, in the case of 800.501(b), information as to whether a transaction meets the criteria for a mandatory declaration under section 800.401. The proposed rule would make corresponding amendments to sections 800.801 and 802.801, requiring transaction parties and other persons to respond to such requests for information. As required by section 705, these amendments would define the scope and purpose of the investigation, inspection, or inquiry to be made by CFIUS so as to allow CFIUS to obtain relevant information.

Gathering information of the kind contemplated by the proposed amendments would allow the Committee to prioritize transactions that parties were required to submit under section 800.401 or that, in its view, otherwise warrant formal review. When the Committee is able to engage in preliminary fact-finding relevant to potential national security considerations prior to receiving a formal notice, the information it receives can inform the decision of whether and when to request the submission of a notice. In the event the Committee does request that the transaction parties file a notice, the Committee encourages the parties to submit the notice promptly so that the Committee can undertake its national security review. In the absence of a filing, CFIUS will consider all available options to protect national security, including initiating a review based on an agency notice as provided for in section 800.501(c). For the avoidance of doubt, the Committee does not intend to use its authority to obtain information related to risk as a substitute for a review or an investigation, but rather for the purpose of preventing unnecessary filings and increasing efficiency in connection with filings for transactions that may present an extant risk, benefitting both the transaction parties and national security. A similar efficiency would be gained by being able to request and require the submission of information that would enable the Committee to determine whether a non-notified transaction was one that should have been notified pursuant to the provision on mandatory declarations in section 800.401 of the regulations.

The proposed rule would further amend sections 800.801(a) and 802.801(a) to require parties to provide information to the Committee upon request in two other circumstances: (1) when the Committee seeks information to monitor compliance with or enforce the terms of a mitigation agreement, order, or condition, and (2) when it seeks information to determine whether the transaction parties had made a material misstatement or omitted material information

during the course of a previously concluded review or investigation (including a review or investigation that ended with rejection of the parties' notice). The Committee currently requests information in both circumstances, but the regulations do not expressly obligate parties to respond. Under the proposed amendments, parties would be obligated to respond to such requests, failing which the Committee may seek to compel responses through issuance of a subpoena, as provided for in section 705.

Finally, the last sentence of sections 800.801(a) and 802.801(a) of the regulations states that “[i]f deemed *necessary* by the Committee, information may be obtained from parties to a transaction or other persons through subpoena or otherwise. . . .” (emphasis added). The proposed rule would amend this provision to state that if deemed *appropriate* by the Committee, the Staff Chairperson may issue a subpoena to obtain information. Requiring the Committee to determine the appropriateness of a subpoena, rather than the necessity, is in alignment with the criteria of section 705, which states that the subpoena authority may be used only after the scope and purpose have been defined by competent authority and assurance has been obtained that no adequate and authoritative data are available from any Federal or other responsible agency. The Department of the Treasury expects that this change, and the explicit assignment of this function to the Staff Chairperson, will enhance operational efficiency.

B. Time Frame for Responding to Proposed Mitigation Terms

In order for the Committee to complete an investigation of a transaction within the time prescribed by statute (*i.e.*, 45 days), it is incumbent upon parties to respond to Committee proposals of terms to mitigate identified national security risks in a timely manner, where relevant. However, parts 800 and 802 currently do not require transaction parties to respond within a specific time frame. By contrast, the regulations require parties to respond to follow-up

information requested by the Staff Chairperson in connection with a declaration or notice generally within two or three business days of the request, and this greatly facilitates the Committee's ability to complete its work within the statutory time frames. The absence of such a requirement in connection with proposed mitigation terms can sometimes result in a protracted process where parties may take longer than is reasonable to respond to the Committee's proposed terms. This is particularly the case with regard to reviews of closed transactions, in which timing is critical for the Committee when it has identified an extant risk to national security, but parties may be less motivated to respond promptly given the absence of an impending closing date. In some cases, parties' delayed responses impede the Committee's ability to fulfill its statutory obligation to complete an investigation in 45 days and may result in parties opting to withdraw and refile their notice, restarting the statutory clock, in order to allow sufficient time to reach agreement on mitigation terms. The proposed rule would amend the regulations to specify a three business day period for substantive party responses to proposed mitigation terms (both initial and subsequent proposals or revisions), unless the parties request a longer time frame and the Staff Chairperson grants that request in writing. The Committee expects a substantive response to consist of acceptance of the terms, a counterproposal, or a detailed statement of reasons that the party or parties cannot comply with the proposed terms, which may also include a counterproposal. The regulations as amended by this proposal would be similar to the time frame in which parties are required to respond to follow-up information requests under sections 800.504(a)(4) and 802.504(a)(4).

The Committee anticipates that parties will seek extensions in certain instances including but not limited to initial mitigation proposals and in instances where the proposed risk mitigation is complex and additional time is needed to consult with the transaction parties. The Staff

Chairperson may grant reasonable extension requests on a case-by-case basis, as appropriate and taking into account views of the Committee and factors such as the statutory time remaining for the case and whether the transaction has been filed before closing. The proposed rule would further provide that if the parties fail to respond within the time frame specified, the Committee, acting through the Staff Chairperson, may reject the notice, which mirrors the current practice for missed deadlines in responding to requests for follow-up information for a case in review or investigation. *See* 31 CFR § 800.504(a)(4) and 31 CFR § 802.504(a)(4).

C. Civil Monetary Penalties

Sections 800.901(a) and 802.901(a) of the regulations set the penalty amount for the submission of a declaration or notice with a material misstatement or omission or the making of a false certification at a maximum of \$250,000 per violation. Section 800.901(b) sets the penalty for failure to comply with the requirements in section 800.401 pertaining to “mandatory declarations” at a maximum of \$250,000 or the value of the transaction, whichever is greater, per violation. (There is no counterpart to the mandatory declaration provision in part 802, pertaining to real estate transactions.) Sections 800.901(c) and 802.901(b) set the penalty for violations of material provisions of mitigation agreements, material conditions imposed by the Committee, or orders issued by the Committee at a maximum of \$250,000 or the value of the transaction, whichever is greater, per violation. The current maximum penalty amounts provided for in sections 800.901 and 802.901 are not specified in statute and were developed over 15 years ago. This proposed rule would increase the *maximum* penalty amount to \$5,000,000 per violation under sections 800.901(a) and 802.901(a); the greater of \$5,000,000 or the value of the transaction per violation under section 800.901(b); and the greater of \$5,000,000 or the value of the transaction (or, as discussed below, the value of the party’s interest in the U.S. business at the

time of the violation or time of the transaction) per violation under sections 800.901(c) and 802.901(b). The Committee anticipates that the relevant value of the transaction or interest would be determined through, for example, audited financial statements or other industry standard methods of valuation. These changes would apply to violations that occur on or after the effective date of the final rule making the amendments with respect to sections 800.901(a) and (b) and 802.901(a). With respect to sections 800.901(c) and 802.901(b), the changes would apply to mitigation agreements entered into, conditions imposed, and orders issued on or after the effective date of the final rule making the amendments.

The Committee assesses that the current penalty maximum of \$250,000 (or the greater of \$250,000 or the value of the transaction) may not sufficiently deter or penalize certain violations. For context, from 2013 to 2022, the median value of covered transactions filed with CFIUS pursuant to a joint voluntary notice was \$170 million, with numerous transactions valued in the billions. For covered transaction declarations filed from 2018 (when declarations became an available format for submission) to 2022, the median value was over \$38 million. Furthermore, under the definition of “transaction” in sections 800.249 and 802.237, covered transactions involving businesses with valuations in the billions of dollars or with substantial liquidity might still be purported to be valued at zero dollars. This circumstance is due in part to the various forms a “transaction” may take under sections 800.249 and 802.237, which include an acquisition, or takeover including the acquisition of an ownership interest, the acquisition of a voting interest, a merger consolidation, or the formation of a joint venture; a long-term lease or concession arrangement; an investment; or the conversion of contingent equity interest. If a transaction has a low value (or a valuation of zero dollars), then the value of the transaction becomes irrelevant for penalty purposes, and the maximum penalty becomes \$250,000 per

violation, which the Committee has determined may be an insufficient deterrent or penalty. A higher maximum penalty stated as an absolute dollar amount is therefore needed. As is the case under the current regulations, the maximum would not necessarily be imposed, but may be appropriate depending on the facts and circumstances including any aggravating or mitigating factors as described in the Committee's Enforcement and Penalty Guidelines (*see* 87 FR 66220) available on the CFIUS webpage of the Department of the Treasury's website.

In the case of sections 800.901(c) and 802.901(b) (pertaining to violations of mitigation agreements or conditions), the proposed rule would further allow for the maximum penalty to be determined by reference to a person's interest in a U.S. business at the time of the violation or the transaction (which, in certain cases, could be greater than the value of the transaction). Thus, the *maximum* penalty for a violation of material provisions of mitigation agreements, material conditions imposed by the Committee, or orders issued by the Committee would be the greatest, per violation, of (i) \$5,000,000, (ii) the value of the violating party's interest in the U.S. business (or covered real estate) at the time of the transaction, (iii) the value of the violating party's interest in the U.S. business (or covered real estate) at the time of the violation or the most proximate time to the violation for which assessing such value is practicable, or (iv) the value of the transaction. This range of measurements for the maximum penalty would provide an additional deterrent or penalty in the case of certain transactions valued at less than \$5,000,000.

Separately, the proposed rule would expand the list of circumstances in which a penalty may be imposed under sections 800.901(a) and 802.901(a) respectively. Currently, the provision applies to material misstatements or omissions in a declaration or notice or false certifications. Under the proposed amendment, CFIUS penalties also would apply to material misstatements or omissions in contexts outside of declarations and notices—in particular, responses to the

Committee's requests for information related to non-notified transactions, certain responses to the Committee's requests for information related to monitoring or enforcing compliance, and other responses to the Committee's requests for information, such as for agency notices, as described in sections 800.901(a)(2) and 802.901(a)(2). Penalties of this nature are not intended to apply to every material misstatement or omission in a communication between parties and the Committee related to monitoring compliance with an agreement, condition, or order entered into pursuant to section 721 and these regulations. (In any event, there are criminal penalties for making false statements to the government under 18 U.S.C. 1001.) Pursuant to sections 800.901(a)(2) and 802.901(a)(2), the Committee will notify parties in writing when parties' response to a particular communication may be subject to a penalty under section 721 and these regulations due to a material misstatement or omission. The Committee anticipates such communications to include those relevant to requests for information related to non-notified transactions, failure to file a mandatory declaration, and compliance with, or enforcement, modification, or termination of a mitigation agreement, condition, or order imposed. The majority of the Committee's communications with transaction parties subject to a mitigation agreement or condition will not be subject to section 800.901(a)(2) or 802.901(a)(2).

For the avoidance of doubt, while the amendments provided for in the proposed rule pertain to the *maximum* penalty that may be imposed for certain violations, they would not affect the Committee's discretion to determine the appropriate penalty in individual cases, similar to other Federal enforcement regimes. In exercising this discretion, the Committee will continue to take into account the specific facts and circumstances of the violation and relevant aggravating and mitigating factors as identified in the Committee's Enforcement and Penalty Guidelines (*see* 87 FR 66220) available on the CFIUS webpage of the Department of the Treasury's website.

Under current regulations, upon receiving notice of a penalty to be imposed, the subject person may submit a petition within 15 business days of receipt of such notice, subject to an extension through written agreement with the Committee. Similarly, the Committee has 15 business days to assess the petition and issue a final penalty determination. The proposed rule would extend both time frames to 20 business days. The Committee routinely grants extensions for penalty petitions, and the Committee's experience is that extending both time frames will facilitate the review of the penalty to be imposed. Consistent with the current regulations, persons subject to a penalty may continue to request extensions for submitting a petition for reconsideration. The Staff Chairperson may also extend the time frames due to compelling circumstances.

III. Rulemaking Requirements

Executive Order 12866

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

Paperwork Reduction Act

The collection of information contained in this rule has been previously submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork

Reduction Act of 1995 (44 U.S.C. 3507(d)), and approved under OMB Control Number 1505-0121. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB Control Number.

Regulatory Flexibility Act

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 Defense Production Act of 1950, as amended (the Defense Production Act of 1950), such as these regulations, are not subject to the rulemaking requirements of the APA or other law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply.

The proposed rule makes amendments to the regulations implementing section 721 of the Defense Production Act of 1950. Section 709(a) of the Defense Production Act of 1950 provides that the regulations issued under it are not subject to the rulemaking requirements of the APA. Section 709(b)(1) instead provides that any regulation issued under the Defense Production Act of 1950 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 Defense Production Act of 1950 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 Defense Production Act of 1950, legislative history confirms that Congress intended that regulations under the Defense Production Act of 1950 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 Defense Production Act of 1950 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 Defense Production Act of 1950's procedures from a rule that requires a general notice of proposed rulemaking. In providing the President with authority to suspend or prohibit the acquisition, merger, or takeover of, or certain other investments in, a U.S. business by a foreign person, and 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 foregoing, available data do not suggest that the proposed rule, if implemented, would have a significant economic impact on a substantial number of small entities. The proposed rule would modify certain provisions pertaining to penalties for violations, negotiation of mitigation agreements, requests for information by CFIUS, and certain other procedures. The proposed rule would not impose any new filing requirements on U.S. businesses, including small businesses, that receive foreign investment subject to CFIUS's jurisdiction.

The proposed rule expands the categories of information the Committee may request from transaction parties and others in connection with transactions that have not been notified or declared to include whether a transaction meets the criteria for a mandatory declaration and

information that would enable the Committee to determine whether a transaction may raise national security considerations. This proposed change would not have a significant economic impact on a substantial number of small entities for two reasons. First, the instances in which the Committee requests this information are limited and, on average, occur less than one hundred times in a year. Additionally, the volume of overall non-notified transactions put forward to the Committee for consideration may decrease as CFIUS works through its consideration of transactions that pre-date the Committee's current, increased level of resources. Second, even if some of these transactions may involve U.S. businesses that qualify as small entities, the Department of the Treasury does not anticipate that expanding information requests for non-notified transactions will have a significant impact on the burden hours for a party response. In instances of mandatory filing requirements, transaction parties should be conducting this analysis regardless of whether the Department of the Treasury reaches out.

With regard to information requests for the purposes of monitoring compliance, the proposed rule would not create any new reporting requirements. Rather, the rule would clarify that parties are obligated under the regulations to provide information pertaining to the monitoring of a mitigation agreement, condition, or order and may be penalized for a material misstatement or omission in specified circumstances. Under the current regulations, CFIUS can penalize parties for submitting a declaration or notice with a material misstatement or omission. The amendment put forth is consistent with penalties already authorized under the current regulations.

As discussed above, the proposed rule would include a provision ordinarily requiring transaction parties to respond to national security risk mitigation proposals within three business days. The Committee anticipates that parties would seek extensions in certain instances and the

Committee may grant reasonable extension requests on a case-by-case basis, as appropriate. In recent years, the volume of transactions before the Committee has been below 500 annually; only a portion of these are subject to mitigation, and of those, many do not involve small entities. Thus, this change will not have a significant economic impact on a substantial number of small entities.

The proposed rule would increase the civil monetary penalty maximum from \$250,000 to \$5,000,000 for certain violations and would expand the scope of circumstances in which a penalty may be imposed. The maximum penalty for a violation of material provisions of mitigation agreements, material conditions imposed by the Committee, or orders issued by the Committee would be the greatest, per violation, of (i) \$5,000,000, (ii) the value of the violating party's interest in the U.S. business (or covered real estate) at the time of the transaction, (iii) the value of the violating party's interest in the U.S. business (or covered real estate) at the time of the violation, or (iv) the value of the transaction. In assessing the penalty amount, as noted above, the Committee has discretion to determine the appropriate penalty in individual cases which in many instances may be lower than the maximum allowed. In exercising this discretion, the Committee will continue to take into account the specific facts and circumstances of the violation including relevant aggravating and mitigating factors. Given the approach to determining the monetary penalty and the limited number of enforcement actions as compared to the number of transactions reviewed by the Committee each year, this proposed change will not have a significant economic impact on a substantial number of small entities.

While the Department of the Treasury 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 Department of the Treasury invites comments on the potential impacts of this rule on small entities.

List of Subjects

31 CFR Part 800

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

31 CFR Part 802

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

For the reasons set forth in the preamble, the Department of the Treasury proposes to amend 31 CFR parts 800 and 802 as follows:

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

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

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

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

§ 800.501 Procedures for notices.

* * * * *

(b)(1) If the Committee determines that a transaction for which no voluntary notice or declaration has been submitted under this part, and with respect to which the Committee has not informed the parties in writing that the Committee has concluded all action under section 721,

may be a covered transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction or other persons to provide to the Committee information necessary to determine whether the transaction is a covered transaction, whether the transaction may raise national security considerations, or, as appropriate, whether the transaction is a transaction for which a submission is or was required under § 800.401.

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

* * * * *

3. Amend § 800.504 by:

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

The addition reads as follows:

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

(a) ***

(6) Reject any voluntary notice at any time after the notice has been accepted, and so inform the parties promptly in writing, if the Committee has proposed risk mitigation terms,

including revisions to such terms, to the party or parties that submitted the notice and the party or parties have failed to substantively respond to such terms within three business days of the proposal, or within a longer time frame if the parties so request in writing and the Staff Chairperson grants that request in writing.

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

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

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

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

(2) For a transaction for which no voluntary notice or declaration has been submitted and for which the Staff Chairperson has requested information as provided for in § 800.501(b), parties to the transaction or other persons shall provide information to the Staff Chairperson that will enable the Committee to determine:

(i) Whether the transaction is a covered transaction;

(ii) Whether the transaction may raise national security considerations; or

(iii) As appropriate, whether the transaction is a transaction for which a submission is or was required under § 800.401.

(3) Independent of any obligations under an agreement, condition, or order authorized under section 721(l), parties shall provide information to the Staff Chairperson or the requesting

lead agency so as to enable the Committee to assess compliance with section 721 and the regulations in this part or to monitor compliance with, enforce or modify the terms of, or decide to terminate any agreement, condition, or order.

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

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

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

* * * * *

5. Amend § 800.901 by:

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

The revisions read as follows:

§ 800.901 Penalties and damages.

(a)(1) Any person who submits a declaration or notice with a material misstatement or omission or makes a false certification under § 800.404, § 800.405, or § 800.502 may be liable to the United States for a civil penalty not to exceed \$5,000,000 per violation.

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

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

* * * * *

(c)(1) Any person who, after December 22, 2008, violates, intentionally or through gross negligence, a material provision of a mitigation agreement entered into before October 11, 2018, with, a material condition imposed before October 11, 2018, by, or an order issued before October 11, 2018, by, the United States under section 721(l) may be liable to the United States for a civil penalty not to exceed \$250,000 per violation or the value of the transaction, whichever is greater. For clarification, under the previous sentence, whichever penalty amount is greater may be imposed per violation, and the amount of the penalty imposed for a violation shall be based on the nature of the violation.

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

whichever is greater. For clarification, under the previous sentence, whichever penalty amount is greater may be imposed per violation, and the amount of the penalty imposed for a violation shall be based on the nature of the violation.

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

(A) \$5,000,000;

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

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

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

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

* * * * *

(f) Upon receiving notice of a penalty to be imposed under paragraphs (a) through (c) of this section, the subject person may, within 20 business days of receipt of such notice, submit a petition for reconsideration to the Staff Chairperson, including a defense, justification, or explanation for the conduct to be penalized. The Committee will review the petition and issue

any final penalty determination within 20 business days of receipt of the petition. The Staff Chairperson and the subject person may extend either such period through written agreement or, where there is a compelling circumstance and it is deemed appropriate by the Committee, the Staff Chairperson may extend either period by notifying the subject person in writing of the extended time frame. The Committee and the subject person may reach an agreement on an appropriate remedy at any time before the Committee issues any final penalty determination.

* * * * *

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

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

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

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

§ 802.501 Procedures for notices.

* * * * *

(b)(1) If the Committee determines that a transaction for which no voluntary notice or declaration has been submitted under this part, and with respect to which the Committee has not informed the parties in writing that the Committee has concluded all action under section 721, may be a covered real estate transaction and may raise national security considerations, the Staff Chairperson, acting on the recommendation of the Committee, may request the parties to the transaction or other persons to provide to the Committee information necessary to determine whether the transaction is a covered real estate transaction or whether the transaction may raise national security considerations.

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

* * * * *

8. Amend § 802.504 by:

a. In paragraph (a)(3), removing the period at the end of the section and adding a semicolon in its place;

b. In paragraph (a)(4), removing “or” at the end of the paragraph;

c. In paragraph (a)(5), removing the period and adding “; or” in its place; and

d. Adding paragraph (a)(6).

The addition reads as follows:

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

(a) ***

(6) Reject any voluntary notice at any time after the notice has been accepted, and so inform the parties promptly in writing, if the Committee has proposed risk mitigation terms, including revisions to such terms, to the party or parties that submitted the notice and the party or parties have failed to substantively respond to such terms within three business days of the proposal, or within a longer time frame if the parties so request in writing and the Staff Chairperson grants that request in writing.

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

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

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

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

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

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

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

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

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

* * * * *

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

§ 802.901 Penalties and damages.

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

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

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

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

whichever is greater. For clarification, under the previous sentence, whichever penalty amount is greater may be imposed per violation, and the amount of the penalty imposed for a violation shall be based on the nature of the violation.

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

(A) \$5,000,000;

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

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

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

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

* * * * *

(e) Upon receiving notice of a penalty to be imposed under paragraphs (a) through (c) of this section, the subject person may, within 20 business days of receipt of such notice, submit a petition for reconsideration to the Staff Chairperson, including a defense, justification, or explanation for the conduct to be penalized. The Committee will review the petition and issue

any final penalty determination within 20 business days of receipt of the petition. The Staff Chairperson and the subject person may extend either such period through written agreement or, where there is a compelling circumstance and if it is deemed appropriate by the Committee, the Staff Chairperson may extend either period by notifying the subject person in writing of the extended time frame. The Committee and the subject person may reach an agreement on an appropriate remedy at any time before the Committee issues any final penalty determination.

Paul M. Rosen,

Assistant Secretary for Investment Security.