

**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:** Final rule; interim rule with request for comments.

**SUMMARY:** The final rule establishes 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 rule sets forth the scope of, and process 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. The interim rule also adds a new definition for the term “principal place of business,” and the Department of the Treasury is seeking comments on this definition.

**DATES:**

*Effective date:* The final rule is effective on February 13, 2020. The interim rule adding § 802.232 is effective on February 13, 2020.

*Comment date:* The Department of the Treasury (Treasury Department) is seeking written comments from the public on the definition of “principal place of business” found at § 802.232, which must be received by February 18, 2020.

**ADDRESSES:** Written comments on § 802.232 may be submitted through one of two methods:

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

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

We encourage comments to be submitted via <https://>

[www.regulations.gov](http://www.regulations.gov). Please submit comments only and include your name and company name (if any), and cite “Provisions Pertaining to 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:** 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](mailto:CFIUS.FIRRMA@treasury.gov).

**SUPPLEMENTARY INFORMATION:****I. Background***A. The Statute and Proposed Rule*

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

FIRRMA requires the issuance of regulations implementing its provisions.

In Executive Order 13456, 73 FR 4677 (January 23, 2008), the President directs the Secretary of the Treasury to issue regulations implementing section 721. On September 24, 2019, the Treasury Department published two proposed rules to implement provisions of FIRRMA. See 84 FR 50174 (September 24, 2019); 84 FR 50214 (September 24, 2019). (The Office of the Federal Register made versions available for public inspection on September 17, 2019.) Public comments on the proposed rules were due by October 17, 2019.

The proposed rule at 84 FR 50214 proposed establishing new regulations at part 802 of title 31 of the Code of Federal Regulations (CFR). These regulations specifically relate to CFIUS’s authorities and the process and procedures to review transactions involving the purchase or lease by, or concession to, a foreign person of certain real estate in the United States. Further explanation of FIRRMA and the proposed provisions can be found in the proposed rule at 84 FR 50214; changes to the proposed rule are explained in further detail below.

The proposed rule at 84 FR 50174, which proposed amendments to the CFIUS regulations codified at part 800 of title 31 of the CFR, is being finalized in a separate rulemaking (the part 800 rule). The part 800 rule specifically relates to CFIUS’s authorities and the process and procedures to review: (1) A merger, acquisition, or takeover by or with a foreign person that could result in foreign control of a U.S. business; (2) a non-controlling “other investment” in a U.S. business that affords a foreign person specified access to information in the possession of, rights in, or involvement in the substantive decisionmaking of certain U.S. businesses related to critical technologies, critical infrastructure, or sensitive personal data (which the part 800 rule and this preamble describe 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; 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.

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

### *B. Structure of FIRRMA Rulemaking and This Rule*

Consistent with CFIUS processes generally, this rule reflects extensive consultation with CFIUS member agencies, as well as other relevant U.S. Government agencies.

This action finalizes the provisions for the new part 802 of title 31 of the CFR. This rule focuses on the Committee's expanded jurisdiction over certain types of real estate transactions. Accordingly, this rule implements one part of the overall scope of CFIUS's jurisdiction under section 721, as amended by FIRRMA. There are additional provisions in FIRRMA that are the subject of the part 800 rule. As explained in the preamble to the proposed rule, the Treasury Department is creating a new part (part 802) because it has 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 certain non-controlling investments to warrant separate rulemaking. Nevertheless, this rule incorporates certain features and relevant provisions from part 800, which should be familiar to parties that have filed with CFIUS in the past.

There are additional provisions in FIRRMA that are the subject of the part 800 rule. In particular, a transaction that could result in control of a U.S. business by a foreign person is subject to part 800, and is not a covered real estate transaction under this rule. Additionally, CFIUS's new authority over covered investments in certain U.S. businesses, as provided by FIRRMA, is subject to part 800 (under the concurrent rulemaking).

The Treasury Department 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. This rule therefore 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. In particular, this rule implements CFIUS's new real estate jurisdiction following the approach described in the proposed rule and is generally structured around specific sites—certain airports, maritime ports, and military installations—and specific geographic areas in or around those sites. (While the rule allows that “other facilities or properties of the U.S. Government” may in the future be included in the list of sites identified in the rule, none has been included at this time.) Given the specificity of certain

provisions of this rule, the Treasury Department anticipates that it will periodically review, and when necessary, amend the regulations to address changes in the national security landscape.

In response to public comments, this action also implements an interim rule with respect to the definition of “principal place of business” found at § 802.232, and the Treasury Department is seeking public comment on this definition.

### **II. Overview of Comments on the Proposed Rule**

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

The Treasury Department considered each comment submitted on the proposed rule. Some of the comments were general in nature, for example, supporting the Treasury Department's efforts and approach with respect to aspects of the proposed rule. Other commenters noted the potential impact of the proposed rule on certain types of real estate and related transactions. The Treasury Department recognizes the vital importance of foreign investment to the U.S. economy, including investments in real estate. The Treasury Department drafted the proposed rule, and made revisions in finalizing the rule, to protect U.S. national security from the risk posed by certain foreign investment while at the same time maintaining the open foreign investment policy of the United States. The Treasury Department has determined that the specificity provided in the rule—with respect to, for example, identification of specific sites and relevant distances—provides clarity to the business and investment communities with respect to the types of real estate transactions that are covered by the Committee's new authority under FIRRMA. The Treasury Department will evaluate implementation of the rule and will provide, as appropriate, additional information to assist the public.

Some commenters requested clarification of specific provisions. Where appropriate, the Treasury Department provided additional

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

In addition to comments on the substance of the rule, several commenters requested an extension of the public comment period. The Treasury Department did not extend the public comment period in light of the fixed effective date established by FIRRMA. The Treasury Department anticipates that it will periodically review, and as necessary, make changes to the regulations (and any appendices), consistent with applicable law, and when appropriate, will provide the public an opportunity to comment.

### **III. Discussion of the Rule**

#### *A. Relationship With Part 800*

Before addressing individual sections of the rule raised in the comments or otherwise revised from the proposed rule, it is important to address the relationship between this rule and the part 800 rule, which as noted is being issued concurrently with this rule.

The structure of the part 802 regulations is similar to the regulations at part 800, which are being updated and replaced through the concurrent rulemaking. Parties familiar with the part 800 regulations should find that this rule takes a comparable approach with respect to 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 process and procedures, among other things. While differences exist between this rule and the part 800 rule, 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.

Some commenters raised questions regarding specific sections of the rule that suggested additional clarity with respect to the relation between these two parts may be helpful. This rule is focused on certain types of real estate transactions involving a foreign person. Parties should be aware that certain transactions involving real estate could be covered transactions under the part 800 rule. For example, transactions that could result in foreign control or certain non-controlling investments by a foreign

person in an entity engaged in interstate commerce in the United States and that owns real estate could be subject to part 800 instead of part 802. In some cases, a collection of assets that includes real estate may constitute a U.S. business under part 800. Additionally, a long-term lease or concession arrangement under which a lessee makes substantially all business decisions concerning the operation of a leased entity, as if it were the owner, could be subject to part 800 instead of part 802. In order to comprehensively understand the transactions that could fall within the scope of this rule, in contrast to the transactions that could fall within the scope of the part 800 rule, 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, and this rule defines the geographic coverage for 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 the part 800 rule that gives rise to national security concerns on the basis of proximity to any government site and activity. The Committee’s authority under the part 800 rule to review and take action on a transaction is not limited in any way by the sites or distances specified in this rule.

#### *B. Interim Rule: Section 802.232—Principal Place of Business*

This rule includes a definition of “principal place of business” as an interim rule. The interim rule is effective as of February 13, 2020, and the Treasury Department is seeking public comment on the new definition through February 18, 2020.

The proposed rule used the term “principal place of business” but did not define it. A commenter urged the Committee to provide additional clarity by defining the term. In response to this comment and comments received on the part 800 rule, § 802.232 now provides a definition of a party’s “principal place of business” as “the primary location where an entity’s management directs, controls, or coordinates the entity’s activities, or, in the case of an investment fund, where the fund’s activities and investments are primarily directed, controlled, or coordinated by or on behalf of the general partner, managing member, or equivalent,” subject to the qualification in § 802.232(b). For those entities whose nerve center is in the United States, the purpose of the qualification in § 802.232(b) is to nevertheless ensure

consistent treatment of an entity’s principal place of business in accordance with its own assertions to government entities, provided the facts have not changed since those assertions.

Because the definition of “principal place of business” in § 802.232 is new, it is being made effective by this rule on an interim basis and may be amended based on comments received. As an interim rule, § 802.232 will become effective on the same date as the other provisions in this rule (*i.e.*, February 13, 2020) to provide clarity and certainty for transaction parties. The Treasury Department invites comments on this interim rule.

#### *C. Summary of Comments and Changes From the Proposed Rule*

##### 1. Subpart A—General

###### Section 802.102—Risk-Based Analysis

The proposed rule, at § 802.102, defined the terms “threat,” “vulnerabilities,” and “consequences to national security” in describing the risk-based analyses undertaken by the Committee to determine whether a specific transaction represents a risk to national security. One commenter sought clarification about how, specifically, these terms would be applied to use and lease agreements with foreign airlines.

The rule makes no change to the proposed text of § 802.102 in response to this comment because the rule applies to many types of real estate transactions, and it would be inappropriate in regulations of general applicability to specify the application of this provision to a particular type of transaction. In conducting a risk-based analysis for any transaction, CFIUS analyzes the particular facts and circumstances of the transaction to identify the national security considerations, if any, presented by the transaction. Section 721(f) of the DPA, as amended, provides an illustrative list of factors for consideration by CFIUS and the President in determining whether a covered transaction poses a national security risk. Some of these factors may be relevant to covered real estate transactions. While further discussing the specific factors relevant to particular types of real estate transactions in one sector is not appropriate for a broader rule, the Committee will consider whether additional information can be made publicly available to assist parties in understanding the Committee’s analysis in general. In the meantime, parties may find helpful the Treasury Department’s previously published Guidance Concerning the National Security

Review Conducted by CFIUS, 73 FR 74567 (December 8, 2008), which is still in effect.

###### Section 802.105—Rules of Construction and Interpretation

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

##### 2. Subpart B—Definitions

Subpart B sets forth the defined terms for part 802. More than half of the defined terms in this rule are incorporated from the part 800 rule, with conforming changes to apply in the context of real estate transactions, as applicable. The remainder of the terms are specifically defined for part 802.

###### Section 802.203—Close Proximity

The proposed rule defined “close proximity” as the area that extends outward one mile from the boundary of a relevant site. Some commenters encouraged the Committee to ensure that applicable set-back distances are appropriately tailored to each individual site. A number of commenters supported an online resource—such as a map or other interactive tool—to assist the public in understanding the geographic areas that are subject to CFIUS jurisdiction under the rule.

The rule makes no change to this definition in response to these comments. The identification of particular military installations and the distances around those sites were determined by the Department of Defense based upon an evaluation of national security considerations. The Department of Defense will continue on an ongoing basis to assess its military installations and the geographic scope set under the rule to ensure appropriate application in light of national security considerations.

With respect to the comments seeking an online resource, the Treasury Department anticipates making available a web-based tool to help the public understand the geographic coverage of the rule. In the meantime, information relevant to certain aspects of the rule is available online. For example, the Census Bureau within the Department of Commerce maintains a web-based system, TIGERweb, which allows users to select features (*e.g.*, military installations, urbanized areas,

and urban clusters) and view such attributes on a map. Additionally, each of the National Oceanic and Atmospheric Administration and the Bureau of Ocean Energy Management maintains a web-based map delineating U.S. maritime boundaries, including the territorial sea and other attributes relevant to the geographic coverage under the rule.

#### Section 802.206—Concession

The proposed rule defined “concession” as a grant of rights by a U.S. public entity for the purpose of developing or operating infrastructure for an airport or maritime port. A commenter noted that this term is defined differently in the Department of Transportation regulations regarding airport concessions and suggested that the specific definition in the proposed rule might cause confusion given the term’s usage in the Department of Transportation regulations.

The rule makes no change to this definition in response to the comment. The Department of Transportation definition does not match the intended scope of real estate transactions subject to CFIUS’s jurisdiction as implemented by the rule. Nevertheless, parties in all industries, including the airport concession industry, should not be confused about the meaning of the term “concession” in the rule as it is explicitly defined as a type of real estate transaction. For greater clarity, the rule does contain a revision specifying that the defined term includes the assignment of part of a concession.

#### Section 802.208—Control

The proposed rule adopted the definition of “control” from the proposed rule for part 800. The part 800 rule makes a technical correction to the definition of “control,” and in order to remain consistent with part 800, this rule makes the same technical correction. In particular, § 802.208(c)(4) has been revised to clarify that anti-dilution protections are more accurately characterized as a right instead of a power.

#### Section 802.210—Covered Port

The proposed rule provided definitions for the terms “airport” and “maritime port.” A commenter suggested that the Committee publish an appendix listing the airports and maritime ports that meet the definitions in the proposed rule, noting that the list of relevant sites may change and some practitioners are not familiar with information published by the Department of Transportation. Another commenter suggested that the

Committee make available on its website hyperlinks to the relevant lists of airports and maritime ports maintained by the Department of Transportation.

Several revisions have been made to the rule in response to the comments. First, the rule combines the definitions of “airport” and “maritime port” from the proposed rule into a new term, “covered port.” This definition of “covered port” identifies in § 802.210(a) the relevant lists maintained by the Department of Transportation and clarifies the specific references to the various lists. Second, the definition includes provisions to clarify the effective date of any changes to the Department of Transportation lists. Specifically, § 802.210(b)(1) sets forth a 30-day delayed effectiveness for any additions to any of the airport and maritime port lists under the definition of “covered port” in paragraph (a). This was done because changes to the lists are not published in the **Federal Register**, and the Treasury Department wanted to provide the public with a notice period for any additions. By contrast, when an airport or maritime port no longer meets the rule’s definition of covered port in paragraph (a), the removal of the port from the relevant list will be recognized immediately upon publication of the updated list by the Department of Transportation. The rule adds § 802.210(b)(2) to make clear that the airport or maritime port list that applies for any particular transaction is the list that is in effect (taking into account the 30-day delayed effectiveness in paragraph (b)(1)) on the day prior to the earlier of the date on which the parties have signed a written document establishing the material terms of the transaction or the completion date.

With respect to compiling all covered ports into a single list, the Treasury Department has determined it most practicable to direct the public to available online resources maintained and updated by the Department of Transportation. The Treasury Department anticipates making information available on the CFIUS web page that will assist the public in navigating to the relevant lists maintained by the Department of Transportation.

#### Section 802.211—Covered Real Estate

The proposed rule defined “covered real estate” in a manner that connected specific sites with the relevant geographic coverage in and around those sites. Commenters did not suggest specific changes to the text of this definition. Instead, commenters

generally supported the approach in the proposed rule of identifying specific sites and distances, and supported having online resources available to assist the public in understanding the geographic coverage of the rule. In particular, commenters expressed an interest in understanding the delineation of certain boundaries, including the U.S. coastline.

The rule revises paragraph (b)(4) of this section by replacing the 12 nautical mile reference with a reference to the territorial sea. The Treasury Department has determined that a reference to the territorial sea provides greater clarity to the public. Additionally, as noted above, the Treasury Department anticipates making a web-based tool available in the near-term to assist the public. In the meantime, existing U.S. Government resources provide relevant information for purposes of understanding various aspects of this rule.

#### Section 802.212—Covered Real Estate Transaction

The proposed rule defined “covered real estate transaction” to capture the types of transactions subject to CFIUS’s jurisdiction under the rule. A commenter suggested that the definition explicitly exclude transactions between a foreign person and its parent as well as between a foreign person and one or more of its controlled affiliates. The commenter also requested clarification with respect to submitting a single declaration or filing a single notice for multiple covered real estate transactions that are in close proximity to one another and associated with a single project such as in the renewable energy industry. Another commenter suggested that the rule cover other categories of real estate transactions—such as those involving cropland and rare earth minerals.

The rule makes no change to the definition of “covered real estate transaction” in response to the comments. First, an intra-company transfer of assets, including real estate, carried out to achieve some legal, financial, or other business objective, might not constitute a covered real estate transaction, and in any case might not result in a change in the ultimate parent of the entity with the covered real estate and, therefore, might not present new national security considerations. However, the particular facts and circumstances of the specific arrangement would need to be considered. Second, with respect to multiple covered real estate transactions that are part of a larger project, a revision to the rule is not necessary

because parties can and should consider the particular circumstances of any transaction, including related transactions, in determining whether to submit a single declaration or notice or multiple to the Committee for review. National security factors, timing considerations, and other transaction characteristics may weigh in favor of taking a particular approach. Related to this comment, however, the rule has been revised in the sections describing the contents of declarations and notices to include a description of whether the transaction is part of a larger project undertaken by the foreign person. Finally, the Committee has not expanded this definition to cover other categories of real estate transactions because the categories suggested by the commenter are not authorized under FIRRMA.

This section incorporates other revisions including to § 802.212(b) to clarify that a purchase, lease, or concession, where there is a subsequent change in rights that could result in the foreign person having at least three property rights, is a covered real estate transaction.

#### Section 802.214—Excepted Real Estate Foreign State

The Treasury Department received a number of comments on the definition of “excepted real estate foreign state.” Commenters supported the concept of the excepted real estate foreign state and requested that the initial list be published as soon as possible. Commenters suggested particular countries or defined groups of countries be included as excepted real estate foreign states and that advance notice be given prior to any rescission. Commenters also requested that the factors for a determination under § 802.1001 be precise and transparent and that the Committee consult with foreign states seeking to qualify as excepted real estate foreign states.

The rule makes no change to the proposed text in response to these comments. With respect to the eligible foreign states, the Committee has initially selected Australia, Canada, and the United Kingdom of Great Britain and Northern Ireland. The Committee identified these countries due to aspects of their robust intelligence-sharing and defense industrial base integration mechanisms with the United States. Additionally, as noted in the preamble to the proposed rule, the concept and definition of “excepted real estate foreign states” are new and an expansive application carries potentially significant implications for the national security of the United

States. Consequently, the Committee is initially identifying a limited number of eligible foreign states and may expand the list in the future.

The rule revises this section to clarify that the definition of “excepted real estate foreign state” operates as a two-criteria conjunctive test, with delayed effectiveness for the second criterion. Thus, as of February 13, 2020, each of the three foreign states that the Committee identifies as eligible foreign states will be an excepted real estate foreign state, without regard to the second criterion (*i.e.*, favorable determination under § 802.1001). In order for each of these countries to remain an excepted real estate foreign state after the end of the two-year delayed effectiveness period (*i.e.*, February 13, 2022), the Committee must make a determination under § 802.1001. This two-year period is intended to provide these initial eligible foreign states time to ensure that their national security-based foreign investment review processes and bilateral cooperation with the United States on national security-based investment reviews meet the requirement under § 802.1001. This two-year period also provides the Committee time to develop processes and procedures for making determinations under § 802.1001, which could be applied to a broader group of countries in the future. In selecting the initial eligible foreign states, the Committee takes no position on whether the foreign states currently meet the determination factors discussed below at § 802.1001.

Finally, the rule removes language regarding internal Committee processes (for which a conforming change was also made in § 802.1001), and revises note 1 to § 802.214 to clarify the publication mechanics for identifying the foreign states that have met each of the two separate criteria of the definition of “excepted real estate foreign state.”

#### Section 802.215—Excepted Real Estate Investor

The proposed rule set forth a definition of “excepted real estate investor,” taking into account increasingly complex ownership structures and accounting for such structures in the application of the Committee’s jurisdiction. With respect to the criteria to qualify as an excepted real estate investor, commenters discussed the board composition requirement, noting that it was limiting and suggested changes. Commenters also sought additional clarity regarding the process to be considered an excepted real estate investor, including

how an excepted real estate investor can prove that status, or whether an excepted real estate investor would receive a form or certificate from the Committee establishing that status. Other commenters suggested that the Committee adopt a parallel category to excepted real estate investor, which some termed “excepted trusted real estate investor,” that would allow certain investors who are not connected to an excepted real estate foreign state to receive the benefits of being an excepted real estate investor. A commenter suggested various criteria for this concept, including the individual investor’s previous interactions with the Committee.

In response to these comments and similar comments received on the part 800 proposed rule, the rule modifies the definition of “excepted real estate investor.” First, the board member nationality criterion is revised to allow up to 25 percent representation by foreign nationals of foreign states that are not excepted real estate foreign states. Second, the percentage ownership limit for an individual investor in an excepted real estate investor is revised from five to 10 percent. Third, the definition of “minimum excepted ownership” under § 802.228 is revised as discussed below.

The rule does not make other changes in response to the comments. All of the conditions under § 802.215(a)(3), including the minimum excepted ownership conditions, apply to *each parent* (as defined at § 802.229) of the foreign person. There is no separate process for the Committee to provide a determination for a prospective investor on whether it qualifies as an excepted real estate investor. As with other jurisdictional determinations, parties themselves should assess whether they qualify as excepted real estate investors. It is important to note that not qualifying as an excepted real estate investor should not be interpreted as an individualized assessment that the particular foreign person poses a threat to national security.

Consistent with FIRRMA, the “excepted real estate investor” definition focuses on the investor’s connection to an excepted real estate foreign state, which provides the greatest clarity to the business and investment communities while protecting national security interests. Such a definition also furthers the Committee’s efforts to encourage partner countries to implement robust processes to review foreign investment in their countries and increase cooperation with the United States. Notably, the excepted real estate investor definition eliminates

Committee jurisdiction for specified real estate transactions by certain investors. Therefore, some criteria suggested by commenters as part of the “excepted trusted real estate investor” concept are less suitable for determining jurisdiction and more suitable for other issues, such as certain aspects of the part 800 rule relating to mandatory declarations.

Finally, the rule revises § 802.215(b) to specify when the ownership interests of separate foreign persons will be aggregated for the purposes of § 802.215(a)(3)(iv). The rule also modifies § 802.215(d) to include the criteria in § 802.215(c)(1)(i) through (iii) in order to retain jurisdiction over certain transactions where the foreign investor is deemed not to be an excepted real estate investor subsequent to the transaction due to action by the President under section 721, or enforcement by the Committee of violations under this part, parts 800 or 801, or section 721.

#### Section 802.216—Excepted Real Estate Transaction

The proposed rule defined “excepted real estate transaction” by listing specific types of transactions that are not covered real estate transactions, as well as examples. Some commenters sought clarification with respect to when the acquisition of commercial real estate constitutes the acquisition of a U.S. business. Some commenters suggested broadening certain exceptions. A couple of these comments noted the application of the rule in the airport context and suggested broadening the exception for retail trade, accommodation, and food service sector establishments, as well as excepting foreign air carrier leasing arrangements. One commenter sought clarification on the exception related to commercial space and whether 10 percent of tenants should be determined by the number of leaseholders or by the number of employee-occupants in the commercial space. Another commenter suggested excluding certain shore-based and offshore areas and structures.

The rule is revised in response to certain of the comments. First, the rule adds an exception for “foreign air carriers,” as defined in 49 U.S.C. 40102, to the extent that the lease or concession is related to the foreign person’s activities as a foreign air carrier, and for whom the Department of Homeland Security’s Transportation Security Administration has accepted a security program under 49 CFR 1546.105. This exception was added in light of the Department of Homeland Security’s existing oversight with respect to foreign air carriers. Second, the rule

revises the exception for retail trade, accommodation, and food service sector establishments by eliminating the reference to the North American Industry Classification System codes and instead applying the exception to leases and concessions of real estate that may be used only for the purposes of engaging in the retail sale of consumer goods or services to the public. This revision provides a broader exception for retail services as compared to the proposed rule, with respect to, for example, car rental and parking. Finally, the rule clarifies through the text of § 802.216(f) and illustrates through a new example that the exception related to commercial space in a building is based on the number of parties that own, lease or have a concession to the commercial space in the building.

The rule makes other clarifying edits to this section, including in the illustrative examples. Changes were not made in this section in response to the comment regarding certain shore-based and offshore areas and structures based on a balancing of various considerations.

#### Section 802.217—Extended Range

The proposed rule defined the “extended range” to mean the area that extends 99 miles outward from the outer boundary of close proximity of certain military installations, but, where applicable, no more than 12 nautical miles seaward of the coastline of the United States. Commenters sought to understand the rationale behind the specific distance set in the regulations and the interaction with the exception under § 802.216(c) for urbanized areas and urban clusters.

The rule makes no change to the proposed definition of “extended range” in response to the comments. The particular military installations listed in the appendix and the covered distances defined in the regulations were determined by the Department of Defense based upon an evaluation of national security considerations. The Department of Defense will continue on an ongoing basis to assess its military installations and the geographic scope set under the rule to ensure appropriate application in light of national security considerations. The rule does replace the reference to 12 nautical miles with a reference to the territorial sea. As noted above in the definition of “covered real estate,” the Treasury Department has determined that a reference to the territorial sea will be more useful to the public as a geographic reference.

#### Section 802.224—Investment Fund

The rule adds a definition for investment fund that conforms to the term used in the part 800 rule. This term was added in part 802 to provide clarity with respect to the new interim definition of “principal place of business.”

#### Section 802.226—Lease

The definition of “lease” is modified in the rule to clarify that the term includes assignments in whole or part.

#### Section 802.228—Minimum Excepted Ownership

To conform with changes to part 800, in response to comments received on specific provisions of that separate rulemaking, the rule amends the text of § 802.228 by revising the minimum excepted ownership percentage in § 802.228(b) from 90 to 80 percent.

#### Section 802.229—Parent

To conform with changes to part 800, in response to comments received on that separate rulemaking, the rule adds a provision at § 802.229(a)(2) that explicitly includes a general partner, managing member, or equivalent of an entity within the definition of “parent.” The rule also makes some minor technical edits and adds an example illustrating an entity with more than one parent.

#### Section 802.233—Property Right

The proposed rule included 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 rule adds examples under this definition. The first example illustrates that the right to exclude others from physically accessing the property need not be absolute with respect to all other persons or activities. The second example illustrates that a right is afforded, even if it is not exercisable until a separate regulatory approval is received.

#### Section 802.238—United States

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

#### Section 802.241—U.S. Business

The proposed rule defined “U.S. business” to conform to the definition in FIRRMA. Commenters to the proposed rule for part 800 requested clarity with respect to the Committee’s intended interpretation of the term U.S. business. Consistent with the concurrent rulemaking finalizing part

800, the rule makes no change to the proposed definition of “U.S. business.” The proposed definition tracks the language of FIRRMA and is not intended to suggest that the extent of a business’s activities in interstate commerce in the United States is irrelevant to the Committee’s analysis of national security risk.

#### Section 802.244—Voting Interest

The proposed rule provided a definition for the term “voting interest.” One commenter sought clarification of the term and whether it includes consent, veto, right to appoint a board member (without a shareholder vote), or other special rights. The commenter also suggested the term be limited to voting interests in major decisions. Similar comments were made on this provision in the part 800 rule.

The rule makes no change in response to the comments. The definition of “voting interest” is long-established, and, any revisions will have wide-ranging effects throughout the part 802 and part 800 regulations because voting interest is incorporated into other defined terms, such as parent. Where appropriate, the Treasury Department provided clarification through revisions to the part 800 rule.

#### 3. Subpart C—Coverage

##### Section 802.302—Transactions That Are Not Covered Real Estate Transactions

One commenter requested a sample list of transactions that are not covered real estate transactions. The commenter provided examples and noted its understanding that such scenarios would not be covered real estate transactions because they would not meet the criteria under the rule if a foreign person were an investor.

No change was made to this section in response to this comment because whether a particular type of transaction is covered by the rule is determined by the particular facts and circumstances. This section was revised for clarity by streamlining the provisions and removing an example.

##### Section 802.303—Lending Transactions

The proposed rule discussed lending transactions at § 802.303, which include commercial mortgages. While a lending transaction generally shall not, by itself, constitute a covered real estate transaction, the proposed rule discussed factors that CFIUS will consider in determining whether the lending transaction is a covered real estate transaction. One commenter requested language be added that would except from CFIUS jurisdiction lenders who take possession of property in

foreclosure and put the property back on the market a short period of time later. No change was made to this section in response to this comment because an assessment of the particular facts and circumstances would be needed to determine whether national security concerns arise from the transaction. The proposed rule noted the factors the Committee will consider with respect to whether a default under a 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. The rule makes clarifying revisions in this section including incorporating the change in rights construct to paragraph (a)(1) and consideration of whether the foreign person had made arrangements to transfer the ownership or property rights to an excepted real estate investor under paragraph (a)(2).

#### 4. Subpart D—Declarations

The proposed rule, in subpart D, set out an abbreviated filing process through the submission of a declaration.

##### Section 802.401—Procedures for Declarations

A commenter expressed concern about having public entities, such as airports, submit declarations or file notices. No change was made to this section in response to this comment. The Treasury Department has attempted to minimize the burden of this rule on U.S. public entities, particularly where the counterparty has the relevant information to submit a notice or file a declaration.

##### Section 802.402—Contents of Declarations

The rule modifies this section to require additional information including to allow the Committee to more efficiently assess whether a transaction falls under its jurisdiction for real estate transactions. The rule requires a brief description of whether the transaction is part of a larger project undertaken by the foreign person, and whether the foreign person is acquiring a collection of assets or interest in an entity. This information will help the Committee better determine whether there is a U.S. business that is the subject of the transaction. Additionally, this section is revised to require parties to provide a brief description of any U.S. Government leases involved in the transaction. With respect to the foreign person and its affiliates, the final rule

further clarifies what relevant address information should be included in a declaration. Finally, the rule requires that parties provide additional information about the transaction such as any applicable term, current physical security of premises, and distance to covered port(s) or military installation(s) relevant to CFIUS’s geographic coverage under the rule.

#### Section 802.405—Committee Actions

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

#### 5. Subpart E—Notices

The rule makes revisions to § 802.502(b) similar to the revisions discussed above under § 802.402, and makes other clarifying edits.

#### 6. Subpart I—Penalties and Damages

The proposed rule set out the penalty provisions, at subpart I. A number of clarifying and technical edits were made to this subpart. Additionally, the rule revises § 802.901(e) to allow tolling of the Committee’s deadline to respond to a petition, upon written agreement with the party, to facilitate further negotiations, including for settlement of the potential civil monetary penalty.

#### 7. Appendix A

The appendix to the proposed rule identified bases, ranges, and other installations that meet the definition of “military installation” at § 802.227, and, as applicable, related counties or other geographic areas throughout the United States that are covered real estate for the purposes of this part. A commenter sought additional information about whether, and how, appendix A will be revised in the future. The Treasury Department anticipates updating appendix A, as appropriate, through notices published in the **Federal Register**.

The rule includes revisions to appendix A to remove one site and to further refine the geographic areas covered in connection with the sites listed at part 3 of the appendix.

#### 8. Other Comments

The Treasury Department received several comments that did not address any specific provision of the rule. For example, one commenter sought guidance from the Committee on when parties should submit a declaration rather than file a notice. Such advice is beyond the purview of this rule; whether a party files a notice or submits a declaration will depend on many

factors specific to the party and to the transaction.

#### IV. Rulemaking Requirements

##### *Executive Order 12866*

These regulations are not subject to the general requirements of Executive Order 12866, which governs review of regulations by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB), because they relate to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order. In addition, these regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to section 7(c) of the April 11, 2018 Memorandum of Agreement between the Treasury Department and OMB, which states that CFIUS regulations are not subject to OMB's standard centralized review process under Executive Order 12866.

##### *Justification for Interim Rule*

The proposed rule, and the proposed rule for part 800 at 84 FR 50174, included provisions that use the term "principal place of business." The Treasury Department received comments on these provisions, including recommendations to add a definition for the term.

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

It is in the public interest to make the "principal place of business" definition effective on the same date as the rule. Commenters requested greater clarity concerning which parties are subject to CFIUS jurisdiction. The new definition directly addresses those requests and provides greater transactional certainty. By clarifying that certain transactions are not subject to CFIUS jurisdiction, the addition of the definition of "principal place of business" reduces the regulatory burden on the public, allowing some parties to forego the expense, time, and uncertainty involved in submitting a declaration or filing a notice with the Committee. Because of the added clarity and potential reduction in regulatory burden the

definition provides to the public, having it become effective immediately is in the public's interest. Nonetheless, the Treasury Department is requesting comments to that definition and will consider them before finalizing the interim rule.

##### *Paperwork Reduction Act*

The collections of information contained in this rule were submitted to OMB for review along with the proposed rule, in accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3507(d)). No comments were received to the PRA estimates. However, and as noted above, the Treasury Department has modified some of the information requests associated with notices and on the declarations form. These changes represent clarifications that the Treasury Department identified in its review of the information requirements, as well as changes necessary to implement certain provisions that were modified from the proposed rule. The additional information requested is not substantially different from the information that was proposed to be collected, and the Treasury Department's estimates of burden hours for completing declarations and notices do not differ from those estimated at the proposed rule stage. These collections have been submitted to OMB under control number 1505-0121.

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

##### *Regulatory Flexibility Act*

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

The 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. Accordingly, the rule

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

There is no single source for information on the number of small U.S. businesses that would be involved in some way in the purchase or lease by, or concession to a foreign person of real estate that could be covered under this rule. However, the Treasury Department anticipates only 350 real estate transactions, out of the thousands or more of the annual number of real estate transactions in the United States, will be the subject of a declaration or notice of a covered real estate transaction. Even if each of these 350 transactions involved a small U.S. business, based on past experience it is likely that only a small, and not significant, percentage of those anticipated 350 real estate transactions will incur impacts, such as incurring additional costs through mitigation or action by the President.

Additionally, the Treasury Department also has taken steps to reduce the burden of this rule on small entities. For example, in addition to filing notices of transactions with the Committee, the rule allows parties to submit shorter declarations to the Committee using an online fillable form. Also, the Committee anticipates making available a free, web-based tool to help the public understand the geographic coverage of the rule. As noted above, in the meantime, information relevant to certain aspects of the rule is available online. These tools should help reduce compliance costs for small entities.

##### *Congressional Review Act*

This rule has been submitted to OIRA, which has determined that the rule is a "major" rule under the Congressional Review Act (CRA). However, the Treasury Department has determined there is good cause under 5 U.S.C. 808(2) to publish the rule notwithstanding the timing requirements for major rules under 5 U.S.C. 801(a)(3) because delaying the effectiveness of this rule beyond 30 days is impracticable, unnecessary, and contrary to the public interest. Under FIRRMA, the provisions expanding jurisdiction over real estate transactions and establishing declarations, among others, will become effective on February 13, 2020, regardless of whether this rule is published and effective. See Section 1727(b)(1)(A) of FIRRMA. Without the processes, procedures and definitions provided by the rule as directed by FIRRMA, market participants will face substantial hardship, delay, and expense in complying with the requirements of

FIRMA. Accordingly, the Treasury Department finds good cause that notice and public procedure under 5 U.S.C. 801(a)(3) are impracticable, unnecessary, and contrary to the public interest. This rule will become effective on February 13, 2020, notwithstanding 5 U.S.C. 801(a)(3).

#### List of Subjects 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 Treasury Department adds 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

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#### Subpart B—Definitions

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- 802.210 Covered port.
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- 802.217 Extended range.
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- 802.219 Foreign government.
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- 802.226 Lease.
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- 802.228 Minimum excepted ownership.
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- 802.230 Party to a transaction.
- 802.231 Person.
- 802.232 Principal place of business.
- 802.233 Property right.

- 802.234 Purchase.
- 802.235 Real estate.
- 802.236 Section 721.
- 802.237 Transaction.
- 802.238 United States.
- 802.239 Urban cluster.
- 802.240 Urbanized area.
- 802.241 U.S. business.
- 802.242 U.S. national.
- 802.243 U.S. public entity.
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#### 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.
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- 802.505 Determination of whether to undertake an investigation.
- 802.506 Determination not to undertake an investigation.
- 802.507 Commencement of investigation.
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- 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

- 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 and Other U.S. Government Sites

**Authority:** 50 U.S.C. 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, as amended (50 U.S.C. 4565) authorizes the Committee on Foreign Investment in the United States to review transactions involving real estate that meet specified criteria, which are referred to in this part as “covered real estate transactions” and defined at § 802.212, and to mitigate any risk to the national security of the United States that arises as a result of such transactions. Section 721 also authorizes the President to suspend or prohibit any covered real estate transaction when, in the President’s judgment, there is credible evidence that leads the President to believe that the foreign person engaging in a covered 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 *et seq.*) do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security of the United States in the matter before the President.

(b) This part implements regulations pertaining to covered real estate transactions. Regulations pertaining to “covered transactions” are addressed in part 800 of this chapter.

##### § 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

(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 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 February 13, 2020.

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

- (1) The completion date is prior to February 13, 2020; or
- (2) The parties to the transaction have executed, prior to February 13, 2020, a binding written agreement, or other binding document, establishing the material terms of the transaction.

**§ 802.105 Rules of construction and interpretation.**

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

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

**Subpart B—Definitions**

**§ 802.201 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, DC, area are closed. 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 § 802.201:** See § 802.604 regarding the tolling of deadlines during a lapse in appropriations.

**§ 802.202 Certification.**

(a) The term *certification* means a written statement signed by the chief

executive officer or other duly authorized designee of a party filing a notice, declaration, or information, certifying under the penalties provided in the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001) that the notice, declaration, or information filed:

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

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

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

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

- (1) In the case of a partnership, any general partner thereof;
- (2) In the case of a corporation, any officer or director thereof;
- (3) In the case of any entity lacking partners, officers, and directors, any individual within the organization exercising executive functions similar to those of a general partner of a partnership or an officer or director of a corporation; and
- (4) In the case of an individual, such individual or his or her legal representative.

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

**Note 1 to § 802.202:** A sample certification may be found at the Committee’s section of the Department of the Treasury website. See §§ 802.402(f) and 802.502(k) regarding filing procedures for transactions in which a U.S. public entity is a party to the transaction.

**§ 802.203 Close proximity.**

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

**§ 802.204 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.

**§ 802.205 Completion date.**

The term *completion date* means, with respect to a 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 § 802.205:** See § 802.304 regarding the timing rule for a contingent equity interest.

**§ 802.206 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 a covered port. This term includes the assignment of a concession, in whole or in part, by the party who is not the U.S. public entity.

**§ 802.207 Contingent equity interest.**

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

**§ 802.208 Control.**

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

- (1) The sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business;
- (2) The reorganization, merger, or dissolution of the entity;
- (3) The closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the entity;
- (4) Major expenditures or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Note 1 to § 802.208:** This definition is included herein for the purpose of determining whether a foreign person may be involved in a covered real estate transaction. For additional information, see the examples provided at § 800.208, as relevant.

#### § 802.209 Conversion.

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

#### § 802.210 Covered port.

(a) The term *covered port* means, subject to paragraph (b) of this section, any port that is listed:

(1) In the Department of Transportation, Federal Aviation Administration's annual final enplanement data as a "large hub airport," as that term is defined in 49 U.S.C. 40102;

(2) In the Department of Transportation, Federal Aviation Administration's annual final all-cargo landed weight data as an airport with annual aggregate all-cargo landed weight greater than 1.24 billion pounds;

(3) By the Department of Transportation, Federal Aviation Administration as a "joint use airport," as that term is defined in 49 U.S.C. 47175;

(4) By the Department of Transportation, Maritime Administration as a commercial strategic seaport within the National Port Readiness Network; or

(5) By the Department of Transportation, Bureau of Transportation Statistics as a top 25 tonnage, container, or dry bulk port.

(b) For purposes of determining whether a port constitutes a covered port under paragraph (a) of this section,

(1) Any port that is added after February 13, 2020 to any of the lists described in paragraph (a) of this section shall be deemed not to be in effect as a covered port until 30 days after the port's addition to the relevant list maintained by the Department of Transportation; and

(2) In the context of a particular transaction, the covered ports in effect

on the day immediately prior to, the earlier of, the date on which the parties sign a written document establishing the material terms of the transaction, or the completion date of the transaction, shall apply.

**Note 1 to § 802.210:** The lists described in paragraph (a) of this section are published on the Department of Transportation website.

#### § 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, a covered port; or

(b) Is located within:

(1) Close proximity of any military installation described in § 802.227(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 § 802.227(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 § 802.227(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 § 802.227(p), as identified at part 4 of appendix A to this part, to the extent located within the limits of the territorial sea of the United States.

#### § 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 under § 802.233;

(b) Other than an excepted real estate transaction, any purchase or lease by, or concession to, a foreign person of covered real estate, that, through a subsequent change in the rights that a foreign person has with respect to that covered real estate, results in the foreign person having at least three of the property rights under § 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 transactions.

**Note 1 to § 802.212:** Any transaction, transfer, agreement, or arrangement described in 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 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).

**§ 802.214 Excepted real estate foreign state.**

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

- (a) Is identified by the Committee as an eligible foreign state and
- (b) Is a foreign state for which the Committee has made a determination under § 802.1001(a).

**Note 1 to § 802.214:** The name of each foreign state identified by the Committee as an eligible foreign state will be available at the Committee's section of the Department of the Treasury website. See § 802.1001(c) regarding the publication of a notice in the **Federal Register** of a determination under § 802.1001(a). The list of excepted real estate foreign states will also be available at the Committee's section of the Department of the Treasury website.

**§ 802.215 Excepted real estate investor.**

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

- (1) A foreign national who is a national of one or more excepted 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 in the United States;
  - (iii) Seventy-five percent or more of the members and 75 percent or more of

the observers of the board of directors or equivalent governing body of such entity are:

- (A) U.S. nationals; or
- (B) Nationals of one or more excepted real estate foreign states who are not also nationals of any foreign state that is not an excepted real estate foreign state;
- (iv) Any foreign person that individually, and each foreign person that is part of a group of foreign persons that in the aggregate, holds 10 percent or more of the outstanding voting interest of such entity; holds the right to 10 percent or more of the profits of such entity; holds the right in the event of dissolution to 10 percent or more of the assets of such entity; or otherwise could exercise control over such entity, is:
  - (A) A foreign national who is a national of one or more excepted 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
    - (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) For purposes of paragraph (a)(3)(iv) of this section, foreign persons who are related, have formal or informal arrangements to act in concert, or are agencies or instrumentalities of, or controlled by, the national or subnational governments of a single foreign state are considered part of a group of foreign persons and their individual ownerships are aggregated.
  - (c) Notwithstanding paragraph (a) of this section, a foreign person is not an excepted 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, any of its parents, or any entity of which it is a parent:
      - (i) Has received written notice from the Committee that it has submitted a

material misstatement or omission in a notice or declaration or made a false certification under this part or part 800 or 801 of this chapter;

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

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

(iv) Has:

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

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

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

(vi) Has been a respondent or party in a final order, including a settlement order, issued by the Department of Commerce, Bureau of Industry and Security (BIS) regarding violations of U.S. export control laws administered by BIS, including the Export Control Reform Act of 2018 (50 U.S.C. 4801 *et seq.*), the 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, or has entered into a deferred prosecution agreement or non-prosecution agreement with the Department of Justice with respect to, any felony in any jurisdiction within the United States; or

(2) The foreign person, any of its parents, or any entity of which it is a parent is, on the date on which the parties to the transaction first execute a binding written agreement, or other binding document, establishing the material terms of the transaction, listed

on either the BIS Unverified List or Entity List in 15 CFR part 744.

(d) Irrespective of whether the foreign person satisfies the criteria in paragraph (a)(1) or (2), (a)(3)(i) through (iii), or (c)(1)(i) through (iii) of this section as of the completion date, if at any time during the three-year period following the completion date the foreign person no longer meets all the criteria set forth in paragraph (a)(1) or (2), (a)(3)(i) through (iii), or (c)(1)(i) through (iii) of this section, the foreign person is not an excepted 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 the relevant foreign state otherwise ceases to be an excepted real estate foreign state.

(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 under § 802.401 or filing a notice under § 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 with respect to the transaction, and the relevant provisions of subpart D or E will apply.

**Note 1 to § 802.215:** See § 802.501(c)(2) regarding an agency notice where a foreign person is not an excepted real estate investor solely due to paragraph (d) of this section.

#### § 802.216 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 in part 800 of this chapter 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 to the extent that such fixtures and land are incidental to the use of the real estate as a single housing unit.

(e) The lease by or a concession to a foreign person of covered real estate under paragraph (a) of § 802.211 if:

(1) The foreign person is a foreign air carrier, as that term is defined in 49 U.S.C. 40102(a)(21), for whom the Department of Homeland Security, Transportation Security Administration has accepted a security program under 49 CFR 1546.105, but only to the extent that the lease or concession is in furtherance of its activities as a foreign air carrier; or

(2) According to the terms of the lease or concession, the covered real estate may be used only for the purpose of engaging in the retail sale of consumer goods or services to the public.

(f) The purchase or lease by, or concession to, a foreign person of commercial space in a multi-unit building that is covered real estate, 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 space in such building that exceeds 10 percent of the total square footage of the commercial 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 based on the number of ownership, lease and concession arrangements for commercial space in the building.

(g) The purchase or lease by, or a concession to, a foreign person of covered real estate 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:

(1) *Example 1.* Corporation A, a foreign person, proposes to purchase all of the shares of Corporation X, a U.S. business. Corporation X is in the business of owning and leasing real estate, including real estate properties that are in close proximity to military installations identified in part 1 and part 2 of appendix A to this part. As the sole owner of Corporation X, 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 chapter.

(2) *Example 2.* Same facts as the example in paragraph (h)(1) of this section. After the transaction contemplated in Example 1 of this section is completed, Corporation X leases from another person a tract of land that is in close proximity to a military installation identified in part 1 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 an empty warehouse located in close proximity to a military installation identified in part 2 of appendix A to this part. Assuming no other relevant facts, the purchase of the covered real estate is not a covered transaction subject to part 800 of this chapter because Corporation A has not acquired a U.S. business, and the purchase is a covered real estate transaction.

(4) *Example 4.* Same facts as the example in paragraph (h)(3) of this section, except that, in addition to the proposed purchase of Corporation X’s empty warehouse, Corporation A would also acquire from Corporation X the personnel, customer list, equipment, and inventory management software used to operate the 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 chapter and therefore not a covered real estate transaction.

(5) *Example 5.* Corporation A, a foreign person, purchases covered real estate that is undeveloped and in close proximity to a military installation identified in part 1 of appendix A to this part. 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, the purchase of the covered real estate is not a covered transaction subject to part 800 of this chapter, and Corporation A’s purchase of the covered real estate is 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 transaction is not a covered real estate transaction because the covered real estate is located in an urbanized area.

(7) *Example 7.* Same facts as the example in paragraph (h)(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.

(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 identified in part 1 of appendix A to this part. 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 the example in paragraph (h)(9) of this section, except that the foreign person also purchases an adjacent five acres of undeveloped land a year later. Assuming no other relevant facts, the purchase of the adjacent land is a covered real estate transaction.

(11) *Example 11.* A foreign person leases five percent of the total commercial space in a building located 0.5 miles from a military installation identified in part 1 of appendix A to this part. There are nine other tenants that have leases for commercial space with the building owner. Assuming no other relevant facts, the transaction is a not a covered real estate transaction.

**Note 1 to § 802.216:** With respect to paragraph (d) of this section, for purposes herein, fixtures and land may 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.

#### § 802.217 Extended range.

The term *extended range* means, with respect to any military installation identified in § 802.227(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, not exceeding the outer limit of the territorial sea of the United States.

#### § 802.218 Foreign entity.

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

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

#### § 802.219 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.

#### § 802.220 Foreign national.

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

#### § 802.221 Foreign person.

(a) The term *foreign person* means:  
 (1) Any foreign national, foreign government, or foreign entity; or  
 (2) Any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.  
 (b) Any entity over which control is exercised or exercisable by a foreign person is a foreign person.  
 (c) Examples:

(1) *Example 1.* Corporation A is organized under the laws of a foreign state and is engaged in business only outside the United States. All of its shares are held by Corporation X, which solely controls Corporation A. Corporation X is organized in the United States and is wholly owned and controlled by U.S. nationals. Assuming no other relevant facts, Corporation A, although organized and operating only outside the United States, is not a foreign entity due to § 802.218(b) and is not a foreign person.

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

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

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

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

(6) *Example 6.* Same facts as the example in paragraph (c)(5) of this section, except that

one of the foreign investors, a foreign national, controls Corporation A. Assuming no other relevant facts, Corporation A is not a foreign entity due to § 802.218(b), but it is a foreign person under paragraph (a)(2) of this section because it is controlled by a foreign national.

#### § 802.222 Hold.

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

#### § 802.223 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.

#### § 802.224 Investment fund.

The term *investment fund* means any entity that is an "investment company," as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), or would be an "investment company" but for one or more of the exemptions provided in section 3(b) or 3(c) thereunder.

#### § 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 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.

(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 and assignments in whole or part.

(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 the example in paragraph (b)(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 chapter.

#### § 802.227 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;
- (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;
- (m) Military ranges as defined in 10 U.S.C. 101(e)(1) owned by the Navy or 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) Navy off-shore range complexes and off-shore operating areas.

#### § 802.228 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 real estate 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 real estate foreign state or the United States, 80 percent or more of its voting interest, the right to 80 percent or more of its profits, and the right in the event of dissolution to 80 percent or more of its assets.

#### § 802.229 Parent.

- (a) The term *parent* means, with respect to an entity:
  - (1) A person who or which directly or indirectly:
    - (i) Holds or will hold at least 50 percent of the outstanding voting interest in the entity; or
    - (ii) Holds or will hold the right to at least 50 percent of the profits of the entity, or has or will have the right in the event of dissolution to at least 50 percent of the assets of the entity; or
  - (2) The general partner, managing member, or equivalent of the entity.
- (b) Any entity that meets the conditions of paragraph (a)(1) or (2) of this section with respect to another entity (*i.e.*, the intermediate parent) is also a parent of any other entity of which the intermediate parent is a parent.
- (c) Examples:
  - (1) *Example 1.* Corporation P holds 50 percent of the voting interest in Corporations R and S; Corporation R holds 40 percent of the voting interest in Corporation X; and Corporation S holds 50 percent of the voting interest in Corporation Y, which in turn holds 50 percent of the voting interest in Corporation Z. Corporation P is a parent of Corporations R, S, Y, and Z, but not of Corporation X. Corporation S is a parent of Corporation Y and Z, and Corporation Y is a parent of Corporation Z.
  - (2) *Example 2.* Corporation A holds warrants which when exercised will entitle it to vote 50 percent of the outstanding shares of Corporation B. Corporation A is a parent of Corporation B.

(3) *Example 3.* Investor A holds 60 percent of the outstanding voting interest in Corporation B. Investor C holds the right to 80 percent of the profits of Corporation B. Each of Investor A and Investor C is a parent of Corporation B.

#### § 802.230 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, the person from whom such ownership interest is acquired, and the entity whose ownership interest is being acquired, without regard to any person providing brokerage or underwriting services for the transaction;
  - (2) In the case of a 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 as a result of 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 any other transaction, transfer, agreement, or arrangement, the structure of which is designed or intended to evade or circumvent the application of section 721, any person that participates in such transaction, transfer, agreement, or arrangement.
  - (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 paragraph (a) of this section that the Committee, or a lead agency acting on behalf of the Committee, determines is relevant to mitigating a risk to the national security of the United States.

#### § 802.231 Person.

The term *person* means any individual or entity.

#### § 802.232 Principal place of business.

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

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

#### § 802.233 Property right.

(a) 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:

- (1) To physically access the real estate;
- (2) To exclude others from physically accessing the real estate;
- (3) To improve or develop the real estate; or
- (4) To attach fixed or immovable structures or objects to the real estate.

(b) Examples:

(1) *Example 1.* Corporation A, a foreign person, enters into a lease of real estate. Although at least one other person shares concurrently with Corporation A the right to access the property, Corporation A retains the right to physically exclude others from access that would interfere with its rights under the lease. Under the lease, Corporation A has the right to exclude others from physically accessing the real estate, and therefore affords the foreign person a property right.

(2) *Example 2.* Corporation A, a foreign person, enters into a lease of real estate that allows Corporation A to develop the real estate. The exercise of the right to develop the real estate is subject to Corporation A obtaining the appropriate regulatory permits. Notwithstanding the fact that Corporation A has not fully exercised its lease right pending the issuance of the permits, Corporation A is a party to lease that affords it a property right for purposes of this part.

#### § 802.234 Purchase.

(a) The term *purchase* means an arrangement conveying an ownership interest in 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 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, as amended (50 U.S.C. 4565).

#### § 802.237 Transaction.

The term *transaction* means any purchase or lease by, or concession to, a person of real estate, whether proposed or completed.

#### § 802.238 United States.

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

#### § 802.239 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.

#### § 802.240 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.

#### § 802.241 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 § 802.241:** See examples to definition in § 800.252.

#### § 802.242 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.

#### § 802.243 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 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.

#### § 802.244 Voting interest.

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

### Subpart C—Coverage

#### § 802.301 Transactions that are covered real estate transactions.

Transactions that are covered real estate transactions include:

(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 examples in paragraphs (h)(1) and (2) of this section.)

(b) A purchase by a foreign person (other than an excepted real estate investor) 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 paragraph (h)(3) of this section.)

(c) A purchase or lease by, or concession to, a foreign person (other than an excepted real estate investor) 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 paragraph (h)(4) of this section.)

(d) A purchase or lease by, or concession to, a foreign person (other than an excepted real estate investor) of a portion of covered real estate with respect to which the foreign person has at least three property rights. (See the

example in paragraph (h)(5) of this section.)

(e) A purchase, lease, or assignment of a concession, of covered real estate that meets the criteria of § 802.212 by one foreign person (other than an excepted real estate investor) from another foreign person. (See the example in paragraph (h)(6) of this section.)

(f) A purchase or lease by, or concession to, a foreign person (other than an excepted real estate investor) of covered real estate, that, through a subsequent change in the rights that a foreign person has with respect to covered real estate, results in the foreign person having at least three property rights. (See the example in paragraph (h)(7) of this section.)

(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 U.S. business. 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 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 transaction is a covered real estate transaction.

(2) *Example 2.* Corporation A purchases covered real estate that is undeveloped land. Corporation A's only asset in the United States is the covered real estate, and Corporation A is not itself nor does it own a U.S. business. In a subsequent transaction, Corporation B, a foreign person, purchases 100 percent of the shares of Corporation A. Assuming no other relevant facts, the subsequent transaction as an indirect purchase of real estate is a covered real estate transaction.

(3) *Example 3.* 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 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 transaction is a covered real estate transaction.

(4) *Example 4.* Corporation A, a foreign person, purchases real estate. Half of such real estate is located in close proximity to a military installation identified in part 1 of appendix A to this part and is therefore covered real estate. 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.

(5) *Example 5.* Corporation A, a U.S. business, purchases covered real estate that is entirely located in close proximity to a

military installation identified in 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.

(6) *Example 6.* 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 also afforded three property rights. Assuming no other relevant facts, each transaction is a covered real estate transaction.

(7) *Example 7.* Corporation A, a foreign person, leases from Person B covered real estate, and is afforded two property rights. Person B subsequently provides Corporation A an additional property right in connection with the lease. Assuming no other relevant facts, the lease is a covered real estate transaction because the subsequent change in rights results in the foreign person having at least three property rights.

#### **§ 802.302 Transactions that are not covered real estate transactions.**

Transactions that are not covered real estate transactions include:

(a) A transaction that meets the definition of excepted real estate transaction in § 802.216.

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

(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.

(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.

#### **§ 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, regardless of whether accompanied by the creation in favor of the foreign person of a secured interest in the covered real estate, shall not, by itself, constitute a covered real estate transaction.

(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 a purchase or lease by, concession to, or a change in rights involving a foreign person may result from the default or other condition and that would constitute a covered real estate transaction.

(2) Where the Committee accepts a notice or declaration concerning a mortgage, loan, or similar financing arrangement under 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. nationals or excepted real estate investors 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 the loan is the building that Corporation B is purchasing, and upon default, Corporation A would obtain an ownership interest and be afforded at least three property rights with respect to the building. 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 a contingent equity interest will acquire upon conversion of, or exercise of a right provided by, that interest in the Committee's analysis of whether a notified transaction is a covered 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 or submitted transaction is a covered real estate transaction, the Committee will disregard the contingent equity interest for purposes of that transaction except to the extent that they convey immediate rights to the holder with respect to the entity that issued the interest.

#### Subpart D—Declarations

##### § 802.401 Procedures for declarations.

(a) A party or parties may submit a voluntary declaration of a 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.

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

(c) Information and other documentary material submitted to the Committee under this section shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 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 regarding the transaction, 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 changes shall become part of the declaration filed by such persons under this section, and the certification required under § 802.403(d) shall apply to such changes.

(e) Parties to a transaction that have filed with the Committee a written notice regarding a transaction under § 802.501 or § 800.501 or a declaration under § 800.403 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 transaction under § 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.)

(b) Other than as provided under paragraph (f) of this section, 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 under § 802.401 shall describe or provide, as applicable:

(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:

(i) A brief description of the rationale for and nature of the transaction, including its structure (e.g., purchase, lease, or concession) and term, whether the foreign person is acquiring a collection of assets or interest in an entity, and whether it is part of a larger project undertaken by the foreign person;

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

(iii) The status of the transaction, including 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, such as a purchase, lease, or concession agreement, or if none exists, the document establishing the material

terms of the transaction, which in the context of a transaction involving a covered port, must be signed and dated.

(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 fourth digit, of the real estate that is the subject of the transaction;

(ii) The name(s) of and distance(s) to any covered port, military installation, or any other facility or property of the U.S. Government as identified in this part and that is relevant to CFIUS jurisdiction given the location of the real estate.

(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); and current use of the real estate including any physical security measures.

(iv) A description of the plans of the foreign person with respect to the real estate and structures that are or will be on the real estate; and

(v) A description of any leases, licenses, permits, easements, encumbrances, or other grants or approvals associated with the real estate, including whether any involve the U.S. Government.

(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 the real estate;

(ii) To exclude others from physically accessing 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.

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

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

(i) The immediate parent, the ultimate parent, and each intermediate parent, if

any, of each foreign person that is a party to the transaction;

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

(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, any parent of the foreign person, or any person of which the foreign person is a parent, has been convicted in the last 10 years of a crime in any jurisdiction.

(d) Each party submitting a declaration shall provide a certification of the information contained in the declaration consistent with § 802.202. A sample certification may be found on the Committee's section of the Department of the Treasury website.

(e) A party that offers a stipulation under paragraph (c)(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 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 and is not submitting a declaration, 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 under § 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 transaction that is the subject of a declaration shall commence on the date on which the declaration is received by the Committee from the Staff Chairperson. Such period shall end no later than the thirtieth day after it has commenced, or if the thirtieth day is not a business day, no later than the next business day after the thirtieth day.

(c) During the 30-day assessment period, the Staff Chairperson may invite the parties to a covered 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 under § 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 § 802.202. A sample certification may be found on the Committee's section of the Department of the Treasury website.

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

(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 party (or parties) that submitted a declaration when the Committee has found that the transaction that is the subject of a declaration is not a covered real estate transaction.

(c) Parties to a transaction that have submitted a declaration under § 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 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, or a declaration submitted under part 800 of this chapter, without the approval of the Staff Chairperson.

#### § 802.405 Committee actions.

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

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

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

(3) Initiate a unilateral review of the transaction under § 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) Except as otherwise prohibited under paragraph (j) of this section, a party or parties to a proposed or completed transaction may file a voluntary notice of the transaction with the Committee. Voluntary notice to the Committee is filed by sending an electronic copy of the notice that includes, in English, the information set out in § 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.

(b) If the Committee determines that a transaction for which no voluntary notice has been filed under this part, and with respect to which the Committee has not informed the parties in writing that the Committee has concluded all action under section 721, may be a covered 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 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 of such covered real estate transaction under paragraph (a) of this section.

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

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

(i) That member has reason to believe that the transaction is a covered 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 determined that such transaction is not a covered real estate transaction, or the President has announced a decision not to exercise the President's authority under section 721(d) with respect to such transaction; and

(B) Either:

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

(2) A party to such transaction 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 a transaction where a foreign person is not an excepted real estate investor due to the application of § 802.215(d), any member of the Committee, or his or her designee at or above the Under Secretary or equivalent

level, may file an agency notice to the Committee through the Staff Chairperson regarding such transaction 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

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

(ii) No notice filed under this paragraph (c)(2) shall be made with respect to a transaction more than one year after the completion date of the transaction, unless the Chairperson of the Committee determines, in consultation with other members of the Committee, that because the foreign person no longer meets all the criteria set forth in § 802.215(a)(1) or (2), (a)(3)(i) through (iii), or (c)(1)(i) through (iii), the transaction may threaten to impair the national security of the United States, and in no event shall an agency notice under this paragraph be made with respect to such a transaction more than three years after the completion date of the transaction.

(d) Notices filed under paragraph (c) of this section are deemed accepted upon their receipt by the Staff Chairperson. No agency notice under paragraph (c)(1) of this section shall be made with respect to a 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 transaction are encouraged to consult with the Committee in advance of filing a notice and, in appropriate cases, to file with the Committee a draft notice or other appropriate documents to aid the Committee's understanding of the transaction and to provide an opportunity for the Committee to request additional information to be included in the notice. Any such pre-

notice consultation should take place, or any draft notice should be provided, at least five business days before the filing of a voluntary notice. All information and documentary material made available to the Committee under this paragraph shall be considered to have been filed with the President or the President's designee for purposes of section 721(c) and § 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 final certification required under § 802.502(l).

(i) For any voluntarily submitted draft or formal written notice that includes a stipulation under section § 802.502(j) that a transaction is a covered real estate transaction, the Committee shall provide comments on the draft or formal written notice or accept the 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.

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

#### § 802.502 Contents of voluntary notices.

(a) If a party or the parties to a transaction file a voluntary notice, they shall provide in detail the information set out in this section, which must be accurate and complete with respect to the party or parties filing the voluntary notice and to the transaction. (See also paragraph (k) of this section regarding U.S. public entities and paragraph (h) of this section and § 802.202 regarding certification requirements.)

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

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

(i) A summary setting forth the essentials of the transaction, including a statement of the purpose of the transaction, its scope, both within and outside of the United States, as applicable, whether the foreign person is acquiring a collection of assets or interest in an entity, and the extent to which it is part of a larger project undertaken by the foreign person;

(ii) The nature of the transaction, for example, whether the transaction involves a purchase, lease, or concession of real estate and the term, if any;

(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;

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

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

(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 sources of financing for the transaction;

(xi) A copy of the definitive documentation of the transaction, such as a purchase, lease, or concession agreement, or if none exists, the document establishing the material terms of the transaction, which in the context of a transaction involving a covered port, must be signed and dated;

(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 physically accessing the real estate;

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

(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 leases, licenses, permits, easements, encumbrances, or other grants or approvals associated with the real estate, including whether any involve the U.S. Government, as well as any feasibility studies conducted with respect to the real estate; and

(iv) The name(s) of and distance(s) to any relevant covered port, military installation, or any other facility or property of the U.S. Government as identified in this part, and that is relevant to CFIUS jurisdiction given 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:

(i) A description of the business or businesses of the foreign person and its ultimate parent, 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 any physical security measures employed at the real estate; and

(C) Assigning, modifying, or terminating any leases, 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 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 or has or controls ownership interests, including contingent equity interest, of the foreign person that is a party to the transaction or any parent of the foreign person, and if so, the nature and amount of any such interests, and with regard to contingent equity interest, the terms and timing of conversion;

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

(C) Holds any other contingent interest (for example, such as might arise from a lending transaction) in the foreign person that is a party to the transaction 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 person 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 any foreign person that is a party to the transaction or between such foreign person and other foreign persons to act in concert on particular matters affecting the 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 equivalent governing body (including external directors and other persons who perform duties usually associated with such titles) and officers (including president, senior vice president, executive vice president, and other persons who perform duties normally associated with such titles) of the 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 foreign person engaged in the transaction and in the foreign person's

ultimate parent, the following information:

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

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

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

(2) All other names and aliases used;

(3) Business address;

(4) Country and city of residence;

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

(6) Place of birth;

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

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

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

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

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

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

(B) Business address;

(C) Business phone number, website address, and email address; and

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

(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) Parties 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 (l) of this section shall apply to such amendments.

(f) Parties filing a voluntary notice shall include:

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

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

(ii) Where the ultimate parent is a private company, the ultimate owner(s) of such parent; 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, focusing in particular on any powers (for example, by virtue of an agreement, statute, or regulation) that the foreign person will have with regard to the covered real estate, and how those powers can or will be exercised.

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

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

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

(h) Each party filing a voluntary notice shall provide a certification of the notice consistent with § 802.202. A sample certification may be found on the Committee's section of the Department of the Treasury website.

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

(j) A party filing a voluntary notice may stipulate that the transaction is a covered real estate transaction. A stipulation offered by any party under 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 the purposes of section 721 and all authorities thereunder, and waives the right to challenge any such determination. Neither the Committee nor the President is bound by any such stipulation, nor does any such stipulation limit the ability of the Committee or the President to act on any authority provided under section 721 with respect to any covered real estate transaction.

(k) 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.

(l) 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 § 802.202.) A sample certification may be found at the Committee's section of the Department of the Treasury website.

#### **§ 802.503 Beginning of 45-day review period.**

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

- (1) Determined that the notice complies with § 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, or the Chairperson of the Committee has requested a notice under § 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.

(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

(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(l).

(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 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.**

(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, as defined in § 800.214 of this title, 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.**

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;

(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 extension of an investigation may not be delegated to any person other than the deputy head (or equivalent thereof) of the lead agency. If the Chairperson extends an investigation under this paragraph with respect to a covered 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, the term *extraordinary circumstances* means circumstances for which extending an investigation is necessary and the appropriate course of action, in the Chairperson's discretion, due to a force majeure event or to protect the national security of the United States.

**§ 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:

(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 a notice is refiled under § 802.501; and

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

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

(d) A notice of a transaction that is submitted under paragraph (c)(2) of this section shall be deemed a new notice for purposes of the regulations in this part, including § 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 the parties to provide to the Committee the information necessary to consider such factors. The Committee's assessment, review, or investigation (if necessary) shall examine, as appropriate, whether:

(1) The transaction is a covered real estate transaction;

(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 and declarations.

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

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

#### **§ 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.**

All authority available to the President or the Committee under section 721(d), including divestment authority, shall remain available at the discretion of the President with respect to any covered real estate transaction. Subject to § 802.501(c)(1)(ii), such authority shall not be exercised if:

(a) 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;

(b) The parties to the transaction have been advised in writing under § 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

(c) The President has previously announced, under section 721(d), his or her decision not to exercise his or her authority under section 721 with respect to the covered 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 subpart 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 transaction. Parties to a transaction that have filed information with the Committee shall promptly advise the Staff Chairperson of any material changes to such information. If deemed necessary by the Committee, information may be obtained from parties to a transaction or other persons through subpoena or otherwise, under the Defense Production Act Reauthorization of 2003, as amended (50 U.S.C. 4555(a)).

(b) Documentary materials or information required or requested to be filed with the Committee under this part

shall be submitted in English. Supplementary materials written in a foreign language shall be submitted in certified English translation.

(c) Any information filed with the Committee in connection with any action for which a report is required under section 721(l)(6)(B) with respect to the implementation of a mitigation agreement or condition described in section 721(l)(3)(A) shall be accompanied by a certification that complies with the requirements of section 721(n) and § 802.202. A sample certification may be found at the Committee's section of the Department of the Treasury website.

#### **§ 802.802 Confidentiality.**

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

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

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

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

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

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

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

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

(2) A request to withdraw a notice or a declaration is granted under § 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

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

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

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

### Subpart I—Penalties and Damages

#### § 802.901 Penalties and damages.

(a) Any person who submits a declaration or notice with a material misstatement or omission or makes a false certification under § 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 with, a material condition imposed by, or an order issued 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.

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

a lesser amount than that stipulated in the agreement.

(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 conduct to be penalized and the amount of the penalty, shall be sent to the subject person electronically and by U.S. mail or courier service. Notice shall be deemed to have been effected by the earlier of the date of electronic transmission and the date of receipt of U.S. mail or courier service. For the purposes of this section, the term *subject person* means the person or persons who may be liable to the United States for a civil penalty.

(e) Upon receiving notice of a penalty to be imposed under paragraphs (a) through (c) of this section, the subject person may, within 15 business days of receipt of such notice, submit a petition for reconsideration to the Staff Chairperson, including a defense, justification, or explanation for the conduct to be penalized. The Committee will review the petition and issue any final penalty determination within 15 business days of receipt of the petition. The Staff Chairperson and the subject person may extend either such period through written agreement. The Committee and the subject person may reach an agreement on an appropriate remedy at any time before the Committee issues any final penalty determination.

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

#### § 802.902 Effect of lack of compliance.

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

(a) Negotiate a plan of action for the party or parties to remediate the lack of compliance, with failure to abide by the plan or otherwise remediate the lack of compliance serving as the basis for the Committee to find a material breach of the agreement or condition;

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

(c) Seek injunctive relief.

### Subpart J—Foreign National Security Investment Review Regimes

#### § 802.1001 Determinations.

(a) 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 Committee may rescind a determination under paragraph (a) of this section if the Committee determines that such a rescission is appropriate.

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

#### § 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 under § 802.1001(b).

(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 under § 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
- (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.

**Appendix A to Part 802—List of Military Installations and Other U.S. Government Sites**

Site name	Location
<b>Part 1</b>	
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.
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.

Site name	Location
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.
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.
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.
Peason Ridge Training Area .....	Leesville, LA.
Pentagon .....	Arlington, VA.
Peterson Air Force Base .....	Colorado Springs, CO.
Picatunny 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

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.
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.

Site name	County	Township/range
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Part 3

90th Missile Wing, Francis E. Warren Air Force Base Missile Field (Colorado, Nebraska, and Wyoming).	Logan, CO .....	All lands except those located south of Township 8 North and east of Range 51 West using the Bureau of Land Management's Public Lands Survey System.
	Morgan, CO .....	All lands located north of Township 3 North using the Bureau of Land Management's Public Lands Survey System.
	Sedgwick, CO .....	All lands except those located east of Range 46 West using the Bureau of Land Management's Public Lands Survey System.
	Washington, CO .....	All lands located north of Township 4 North, and west of Range 52 West using the Bureau of Land Management's Public Lands Survey System.
	Weld, CO .....	All lands located north of Township 4 North, and east of Range 64 West using the Bureau of Land Management's Public Lands Survey System.
	Banner, NE .....	All.
	Cheyenne, NE .....	All.
	Deuel, NE .....	All lands located south of Township 15 North, and west of Range 43 West using the Bureau of Land Management's Public Lands Survey System.
	Garden, NE .....	All lands located south of Township 19 North, and west of Range 43 West using the Bureau of Land Management's Public Lands Survey System.
	Kimball, NE .....	All.
	Morrill, NE .....	All lands except those located north of Township 21 North using the Bureau of Land Management's Public Lands Survey System.
	Scotts Bluff, NE .....	All.
	Sioux, NE .....	All lands except those located north of Township 26 North, and east of Range 57 West using the Bureau of Land Management's Public Lands Survey System.
	Goshen, WY .....	All lands except those located north of Township 27 North using the Bureau of Land Management's Public Lands Survey System.
	Laramie, WY .....	All lands except those located south of Township 14 North, and west of Range 64 West using the Bureau of Land Management's Public Lands Survey System.

Site name	County	Township/range
341st Missile Wing, Malmstrom Air Force Base Missile Field (Montana).	Platte, WY .....	All lands except those located north of Township 27 North using the Bureau of Land Management's Public Lands Survey System.
	Blaine, MT .....	All lands except those located north of Township 24 North using the Bureau of Land Management's Public Lands Survey System.
	Cascade, MT .....	All.
	Chouteau, MT .....	All lands except those located north of Township 24 North, and east of Range 8 East using the Bureau of Land Management's Public Lands Survey System.
	Fergus, MT .....	All lands except those located east of Range 26 East using the Bureau of Land Management's Public Lands Survey System.
	Glacier, MT .....	All lands located south of Township 35 North, and east of Range 7 West, using the Bureau of Land Management's Public Lands Survey System.
	Golden Valley, MT .....	All lands except those located south of Township 11 North, and east of Range 20 East using the Bureau of Land Management's Public Lands Survey System.
	Judith Basin, MT .....	All.
	Lewis and Clark, MT .....	All lands except those located south of Township 14 North using the Bureau of Land Management's Public Lands Survey System.
	Liberty, MT .....	All lands except those located north of Township 31 North, and east of Range 5 East using the Bureau of Land Management's Public Lands Survey System.
	Meagher, MT .....	All lands except those located south of Township 12 North, and west of Range 9 East using the Bureau of Land Management's Public Lands Survey System.
	Musselshell, MT .....	All lands located north of Township 10 North, and west of Range 23 East using the Bureau of Land Management's Public Lands Survey System.
	Petroleum, MT .....	All lands located west of Range 27 East using the Bureau of Land Management's Public Lands Survey System.
	Phillips, MT .....	All lands located south of Township 23 North, and west of Range 25 East using the Bureau of Land Management's Public Lands Survey System.
	Pondera, MT .....	All lands except those located west of Range 9 West, using the Bureau of Land Management's Public Lands Survey System.
	Stillwater, MT .....	All lands located north of Township 3 North, and west of Range 20 East using the Bureau of Land Management's Public Lands Survey System.
	Sweet Grass, MT .....	All lands located north of Township 3 North, and east of Range 12 East using the Bureau of Land Management's Public Lands Survey System.
	Teton, MT .....	All lands except those located west of Range 10 West using the Bureau of Land Management's Public Lands Survey System.
	Toole, MT .....	All lands except those located north of Township 34 North using the Bureau of Land Management's Public Lands Survey System.
	91st Missile Wing, Minot Air Force Base Missile Field (North Dakota).	Wheatland, MT .....
Bottineau, ND .....		All lands except those located east of Range 77 West using the Bureau of Land Management's Public Lands Survey System.
Burke, ND .....		All lands except those located west of Range 93 West using the Bureau of Land Management's Public Lands Survey System.
Dunn, ND .....		All lands located north of Township 148 North, using the Bureau of Land Management's Public Lands Survey System.
McHenry, ND .....		All lands except those located north of Township 156 North, and east of Range 80 West using the Bureau of Land Management's Public Lands Survey System.
McKenzie, ND .....		All lands located east of Range 95 West, using the Bureau of Land Management's Public Lands Survey System.
McLean, ND .....		All lands except those located south of Township 145 North using the Bureau of Land Management's Public Lands Survey System.

Site name	County	Township/range
	Mercer, ND .....	All lands located north of Township 145 North, east of Range 90 West, using the Bureau of Land Management's Public Lands Survey System.
	Mountrail, ND .....	All.
	Pierce, ND .....	All lands located south of Township 155 North, west of Range 72 West using the Bureau of Land Management's Public Lands Survey System.
	Renville, ND .....	All.
	Sheridan, ND .....	All lands except those located south of Township 148 North, and east of Range 78 West using the Bureau of Land Management's Public Lands Survey System.
	Ward, ND .....	All lands except those located north of Township 155 North, and east of Range 83 West using the Bureau of Land Management's Public Lands Survey System.
	Williams, ND .....	All lands located south of Township 158 North, and east of Range 96 West using the Bureau of Land Management's Public Lands Survey System.

Site name	Location
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**Part 4**

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.
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: January 6, 2020.

**Thomas Feddo,**

*Assistant Secretary for Investment Security.*

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