

Supporting Statement for Paperwork Reduction Act Submission
OMB Control Number 1505-0121
“Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons”

Section A. Justification

1. Explain the circumstances that make the collection of information necessary.

The collection of information under these regulations is intended to be largely voluntary. Section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007 (P.L. 110-49), provides the President, acting through the Committee on Foreign Investment in the United States (“the Committee”) authority to review mergers, acquisitions and takeovers proposed or pending after the date of enactment by or with foreign persons that could result in foreign control of any person engaged in interstate commerce in the United States in order to determine the effects of those transactions on the national security. These regulations provide that parties to such transactions may voluntarily notify the Committee and provide information necessary for the Committee to conduct a national security review. Alternatively, any agency that is a member of the Committee may notify the Committee. The required contents of such a notice is spelled out in Section 800.402 of the regulations.

Parties to a notified transaction are expected to respond to Committee requests for further information, as needed, on a timely basis. Section 721 gives the President 30 days after a transaction has been notified to determine whether additional review (an investigation) is required. Once a notified transaction has been accepted, parties will generally be expected to respond within two business days to requests for additional information.

2. How, by whom, and for what purpose is the information to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information to be collected under these regulations will be used by the Committee on Foreign Investment in the United States, an inter-agency committee that comprises the Secretaries of the Treasury, Commerce, Defense, State, Homeland Security, and Energy, the United States Trade Representative, and the Director of the Office of Science and Technology Policy. In addition, FINSA designates the Director of National Intelligence and the Secretary of Labor as *ex officio* members. Information constituting notice under Section 721 is sent to the Treasury Department, which chairs the Committee’s meetings to consider the appropriateness of further action under Section 721. The information is required by Section 721 to be treated as confidential, and will therefore not be disseminated or divulged outside the Committee.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms

of information technology. Also describe any consideration of using information technology to reduce burden.

The collection of information currently involves the use of electronic submission of responses. Parties that choose to file electronically are currently required to submit just one signed paper copy to the Treasury Department, which disseminates the notices electronically to the other members of the Committee. The proposed regulations require parties to file all notices electronically, in addition to providing one paper copy. Each Committee member agency that receives an electronic copy of the notice prints out as many copies as it needs, saving the notifying parties from having to supply multiple paper copies.

4. Describe efforts to identify duplication.

There is no duplication of requirement. The Treasury Department receives all information on behalf of the member agencies and has the responsibility for disseminating it to other members of the Committee. The Committee also accepts documents already available to parties, such as corporate annual reports, as well as copies of filings with other agencies, whenever relevant, to respond to specific concerns.

In cases where information is available in other formats, it will be accepted. For example, a company's filing with the Securities and Exchange Commission or with the Defense Department (for purposes other than Section 721) may in some cases be useful in responding to Committee questions, and would therefore be accepted. However, there will be some questions that a party cannot answer with readily available documentation, and it will therefore be asked to submit materials specifically for purposes of Section 721.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

In the interest of maintaining an open investment climate in the United States, the Committee had endeavored to develop information gathering procedures that minimize the burden on private parties, both large and small. The Committee has accordingly developed a series of questions to be asked of parties seeking to give notice under Section 721 in order to gather the information necessary for conducting a review of a notified transaction. However, since the focus of the Committee's inquiry is on the national security, the Committee must attempt to collect all relevant information, regardless of the size of the notifying party.

6. Describe the consequences to Federal program or policy activities if the collection were not conducted or was conducted less frequently, as well as any technical or legal obstacles to reducing burden.

This question is not relevant to these proposed regulations since there is no specified periodicity of reporting; a party reports (by giving notice) only if and when it is involved in a transaction that is subject to Section 721. Moreover, notification is voluntary. If a party

chooses not to notify a transaction that is subject to Section 721, a member agency may notify. In such cases, the agency would request information from the parties to supplement its own findings.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner: (a) requiring respondents to prepare information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study; (f) requiring the use of a statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Information is not required to be submitted according to any specified periodicity. However, under the proposed regulations, once parties make a filing under Section 721, the Committee may request that follow-up materials be provided within two business days, unless the Committee agrees to a longer response time. The reason for this requirement is that the Committee must comply with the very tight deadlines for taking action that are specified under the statute. If the Committee does not have complete information it will not have an informed basis on which to make judgments to protect the national security or make recommendations to the President. The Committee does receive a good deal of confidential business information from parties, and is statutorily prohibited under Section 721 from making this information public.

8. Summarize public comments received in response to the Federal Register Notice requesting public comments and describe actions taken by the agency in response to these comments, particularly comments on cost and hour burden. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A copy of the proposed regulations, including the pre-clearance Federal Register notice is attached. The notice appeared in the Federal Register on Wednesday, April 23, 2008. No comments were received pertaining to the collection element of the proposed rule.

9. Explain any decision to provide any payment or gift to respondents.

This is not applicable since there were no respondents and Treasury offered no gifts or payments to potential respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Confidentiality is ensured under Section 721; the statute prohibits public disclosure of any information filed with the Committee. The Committee has interpreted this prohibition broadly to include any information confirming or denying that a filing has been made. If the parties themselves have made this information available to the public, the Committee may repeat that information.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The regulations request certain sensitive information about individuals, such as Social Security Numbers, that is needed to conduct background checks. The regulations require that such information be provided separately, not with the main notice, in order to ensure limited distribution .

12. Provide estimates of the hour burden of the collection of information. Also provide estimates of annualized cost to respondents for the hour burdens.

We understand from talking with attorneys that have filed notices under Section 721 that the nature and extent of the burden varies from notice to notice, depending on the nature of the transaction at issue. Since there have been no responses to our prior Federal Register notices, the following is based on anecdotal evidence.

The annual time burden on all filers is estimated to be about 12,000 person hours. This estimate is based on 120 filers per year, with each filer spending an average of 100 person hours per review, where the average review covers about 30-days. Based on Treasury's consultations with a private attorney familiar with the procedures provided for in these regulations, we estimate that 40 percent of the notifications are complex, requiring 75-100 man hours; some 60 percent are less complex, requiring 25 person hours per notification. For the small percentage of notices that result in a 45-day investigation (roughly 10 percent per year), the man hours expended per notification are estimated to be a minimum of 200.

The estimated annual cost to the public is \$3,600,000. This amount is calculated assuming 12,000 man hours per year, costing an average of \$300 per hour (mostly legal fees). The estimates depend importantly on the number of notices.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers not included in Item 12 and Item 14.

Our Federal Register notice published on **April 27, 2006**, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e.,

estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. Since we did not receive any responses to our notice, we have no information on the costs described in this paragraph.

14. Provide estimates of annualized costs to the Federal government.

The annual costs to the Federal Government for collecting, analyzing, and storing the information to be collected under these regulations are estimated to be about \$10 million. This amount is calculated assuming 100 FTEs per year at an average annual salary of \$100,000 and \$20,000 in equipment costs annually.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of OMB Form 83-I.

113. Annual reporting and recordkeeping hour burden

a. Number of respondents	<u>120</u>
b. Total annual responses	<u>120</u>
1. Percentage of these responses collected electronically	<u>100 %</u>
c. Total annual hours requested	<u>12,000</u>
d. Current OMB inventory	<u>3,900</u>
e. Difference	<u>8,100</u>
f. Explanation of difference	
1. Program change	<u>3,700</u>
2. Adjustment	<u>4,400</u>

There are changes in only item 13. The number of burden hours per response increased by 40, from 60 to 100, largely because the proposed regulations require filers to include in a notice under Section 721 information that the Committee has routinely been asking them to provide on a follow-up basis, after a notice had been accepted. Requiring by regulation all filers to provide this information in a notice is much more transparent and efficient. Thus, the increase in the stated burden hours, although due to program changes, will not be effectively as large as shown because it reflects developments in the Committee's practice over the past few years. The number of respondents increased by 55, from 65 to 120, as a result of market changes beyond our control.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Provide the time schedule for the entire project.

The information to be collected will not be published.

17. If seeking approval to not display the expiration date for OMB approval, explain the reasons that display would be inappropriate.

No such approval is sought.

18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.

There are no exceptions.