

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 vast majority of filings are made by parties voluntarily, without any prior contact from CFIUS. The required contents of such a notice are 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 are generally expected to respond within three 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 (chair), 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, and Executive Order 11858 designates the heads of five White House Offices as observers: the Director of the Office of Management and Budget; the Chairman of the Council of Economic Advisers; and the Assistants to the President for National Security Affairs, Economic Policy, and Homeland Security and Counterterrorism. Information constituting notice under Section 721 is sent to the Treasury Department, which disseminates the information to CFIUS agencies for consideration in assessing the national security effects of the notified transaction under

Section 721. The information is held confidentially consistent with the requirements of Section 721.

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 are required by regulation to file electronically and to submit just one signed paper copy to the Treasury Department, which disseminates the notices electronically to the other members of the Committee. 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 has endeavored to develop information gathering procedures that minimize the burden on private parties, both large and small. The regulations implementing Section 721 accordingly contain questions that are asked of all parties seeking to give notice under Section 721 in order to gather the information necessary for conducting a national security review of a notified transaction. In light of the statute's focus on the national security of the United States, the Committee must attempt to collect all relevant information, regardless of the size of the notifying party.

6. Describe the consequences to a 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.

Inability to collect the information would impair CFIUS' ability to fully and efficiently consider and address the national security effects of the transaction notified to CFIUS. Parties to a transaction need to provide the information for a transaction only once.

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 regulations, once parties make a filing under Section 721, the Committee may request that follow-up materials be provided. Parties are required to respond within three business days, unless the Committee agrees to a longer response time because of extraordinary circumstances. 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 60-day Federal Register notice soliciting public comment appeared in the Federal Register on Thursday, August 9, 2012, at 77 FR 47704. No comments were received pertaining to the collection element of the regulations.

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 except as may be relevant to any administrative or judicial action proceeding. Consistent with this, the Committee does not publicly confirm or deny that a filing has been made. If the parties themselves have made this information available to the public, such information may subsequently be reflected in the public statement of the Chairperson of CFIUS.

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 facilitate special handling.

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 who 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 10,500 person hours. This estimate is based on 105 filings per year, with each filer spending an average of 116 person hours per filing. Based on Treasury's consultations with several private attorneys familiar with the procedures provided for in these regulations, we estimate that approximately 40 percent of the notifications are complex, requiring on average 78 person hours; some 60 percent are less complex, requiring on average 186 person hours per notification.

No. Respondents	No. Responses Per Respondent	No. Annual Responses	Hours Per Response	Total Burden
105	1	105	116	12,180

The estimated annual cost would be \$3.9 million. This estimate assumes 12,180 person hours per year, based on an average cost of \$230 per hour (combination of legal fees and company employee time). These estimates depend importantly on the number of notices and the complexity of the transactions underlying those notices.

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

Our Federal Register notice published on August 9, 2102, 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 \$8.2 million. This amount is calculated assuming 82 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.

There are changes in only item 12. The number of estimated annual respondents (notices filed) decreased by 15, from 120 to 105, as a result of external factors beyond our control. An adjustment in the amount of time per response was increase from 100 to 116 based on Treasury's consultations with several private attorneys familiar with the procedures provided for in these regulations. Total burden requested is 12,180 hours.

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.